

**Joint Standing Committee on the Corruption
and Crime Commission**

Red flags...red faces

**Corruption risk in public procurement in
Western Australia**

Report No. 14

Presented by

Ms M.M. Quirk, MLA and Hon J.E. Chown, MLC

Laid on the Table of the Legislative Assembly and Legislative Council on
14 May 2020

Inquiry Terms of Reference

An inquiry into public sector procurement of goods and services and its vulnerability to corrupt practice.

The Committee will examine—

1. The adequacy and nature of oversight mechanisms, policies and guidelines for procurement within the WA public sector to prevent corruption and serious misconduct;
2. The profile and training of public sector personnel engaged in procurement;
3. Corruption prevention and risk strategies deployed in WA Public Sector agencies;
4. The sufficiency and use of sanctions for individuals found to have engaged in corrupt and serious misconduct in procurement duties;
5. Best corruption prevention practices in procurement from other jurisdictions;
6. Reform to current legal and administrative practices in the area of procurement to prevent and reduce the risk of corruption;
7. Adequacy of whistleblowing protections in the context of allegations of corruption in procurement.

Chair's Foreword

In hindsight everything is much clearer.

Bart Cummings

This report departs from the usual monitoring and oversight role of the Joint Standing Committee on the Corruption and Crime Commission.

In November 2017 under 2(b) of the Committee's powers and functions¹, we resolved to inquire into public sector procurement.

Public procurement is a business area of government that is vulnerable to real and perceived corruption and maladministration.

The terms of reference for this inquiry are set out on page ii.

It is only in hindsight that we can assess the magnitude of this undertaking.

And it is only with hindsight that we now realise how timely the inquiry was.

In 2015 the Corruption and Crime Commission indicated that its strategic focus was on fraud, conflicts of interest, gifts and benefits as posing corruption risks within the public procurement process.

In February 2018 Mr John Langoulant AO released his report *Special Inquiry into Government Programs and Projects*. This contained a number of observations that current procurement practice and contract management for capital works was sub-optimal.²

Following that, throughout 2019 the Corruption and Crime Commission released a number of reports which collectively involved corruption and manipulation of procurement practices involving millions of dollars of public money.

These allegations were shocking, captured the public imagination, galvanised the public sector into expediting overdue reform and made the ordinarily esoteric subject of public procurement interesting.

The corruption disclosed within those reports needed addressing not only with an investigative lens but also from a policy perspective. Accordingly, the Committee extended the inquiry. We nevertheless remained mindful that some charges against individuals are still to be adjudicated.

1 This permits inquiry and report to Parliament on the means by which corruption and prevention practice may be enhanced within the public sector.

2 This was subject to further examination by the Public Accounts Committee in its Report No. 13, an excellent report titled *Knowing what good looks like - Challenges in managing major public sector contracts*, tabled in November 2019.

The Committee is aware that the Department of Finance is undertaking sector-wide procurement reforms. However, this was commenced soon after our inquiry began in November 2017 and is still not concluded. We were therefore unable to review them in the context of corruption risk. New legislation is pending. However, it is by no means certain that the legislation will be passed in both Houses in this session of Parliament.

Far from being prescient, the Committee decided to inquire into public procurement and the risk of corruption in 2017 as it has been the focus not only of the Corruption and Crime Commission but also for many international organisations in recent years.³

Internationally there was also a growing recognition in the context of the UN's Sustainable Development goals that corruption in procurement has a disproportionate impact on the poor and most vulnerable, increasing costs and reducing access to services, including health, education and justice.

It is delusional however to think corruption in public procurement is only present in developing countries. That kind of thinking has led to a level of complacency evident until recently in the Western Australian public sector.

The controversial title of the report *Red flags...red faces* alludes to the circumstances where the so-called red flags signalling corruption were clearly present in agencies for a considerable time. These were seemingly ignored or overlooked with consequent embarrassment of the authorities when systemic corrupt practices were exposed.

Not only were public monies siphoned off to the detriment of key services like health and housing, but a loss of morale of staff eventuated for those working in the agencies. Trust in government was further eroded. All undesirable outcomes.

Lack of training, inconsistent policies, patchy oversight mechanisms, little scrutiny for smaller value expenditures, widespread exemptions, limited internal audits and lack of transparency were all factors which created the perfect storm making corruption inevitable.

It is recommended in the report that the government should move towards open contracting. Although now trite, the words of Justice Brandeis '*sunlight is the best disinfectant*' are still apt in this context. The more open a contracting process from planning, tendering, awarding and fulfilling the contract the greater integrity the process has. Advocates of open contracting believe it delivers, *inter alia*, a more competitive procurement environment, restores trust in government, leads to better quality decision-making and great engagement with stakeholders. Most importantly it minimises the vulnerabilities to corruption.

A recurring theme during our consultations and hearings was the imperative to change organisational culture at agency level to better prevent or minimise risk of corruption. The Committee found that without concerted attention to this aspect, however, the many new guidelines and regulations introduced as a reaction to recent events may prove ineffectual.

³ For example, the United Nations Office on Drugs and Crime, Transparency International and the OECD. Publications by these organisations are referred to in the body of this report.

Initiatives which will assist in cultural and governance change include specialist training of procurement personnel, closer focus on delegations, the creation of audit committees within agencies, where they do not currently exist, and more robust management of conflicts of interest.

It was also apparent that in some cases a false sense of security was gained by external audits commissioned by an agency. This is because they tend to be of limited scope, are only as good as the instructions given and resources allocated. It is dangerous to extrapolate that these limited audits amount to a clean bill of health across the whole agency. These should not be seen as an alternative to rigorous internal audits and systems.

It is also best practice to change external auditors after a period of years. It is understood a Treasurer's Instruction (see TI 1201) to this effect has recently been issued.

Similarly audits by the Auditor General's office are about systemic weaknesses rather than focussing on individual transactions. Of concern to the Committee is that not infrequently recommendations for improvement by such audits were not implemented or even followed up subsequently. Further, no-one appears to take responsibility for this failure to act.

It is noteworthy that unlike most Auditors General worldwide, as a reaction to the Corruption and Crime Commission's findings, the WA Auditor General has now been conferred with a forensic/internal audit role focussed on transactions. This is in addition to the more traditional function of external audit of systematic processes.

It is true that in the future with more widespread use of data analytics, patterns of potentially corrupt conduct will be able to be identified in large numbers of transactions. This will be a valuable adjunct to robust internal systems. This process still needs parameters for analysis to be set, which requires trained personnel within the agencies familiar with vulnerabilities and potential risks.

Inadequacies of current oversight mechanisms and accountability controls are highlighted by the fact that, without the information of whistleblowers, most cases of corruption in procurement would never have come to light.

As part of organisational cultural reform the Committee considered more needs to be done within agencies to encourage and support public interest disclosures.

Would-be whistleblowers need to know that they can raise allegations of misconduct or corruption without fear of reprisal. The Committee also heard that whistleblowers generally only embark on such a course of action after their concerns are not actioned or taken seriously internally. This needs to change.

The Committee also found there are minimal consequences for public officers who demonstrate non-compliance with procurement policies or procedures. Likewise, gross incompetence leading to massive blowouts in the procurement costs but which fall short of proven corruption or personal gain do not necessarily attract sanctions or disciplinary action.

Another way a public officer can avoid sanction for non-compliant conduct in procurement short of fraud or corruption is to resign before any disciplinary action or investigation is finalised.

The other side of the procurement equation is the contractor. There are several courses of action which need to be implemented to restrict the opportunity for corrupt practice. We would like to see more education and training of potential tenderers. What is expected of them and what practices are considered inimical to probity standards? This approach has proved useful in other jurisdictions and has reduced instances of contractors participating in corruption.

Allied to this is the notion of a code of integrity applicable to both contracting parties possibly enshrined in the legislation itself.⁴ This would elevate the current tick-a-box cursory assurance to a more meaningful acknowledgment of what is expected. A range of sanctions for breach could then be applied.

Finally, a growing body of work is being undertaken internationally in the area of exclusion and debarment of contractors involved in misconduct or corruption.

These sanctions can include debarment from tendering either for a specified period or indefinitely, inclusion on a register which is publicly accessible or the imposition of conditions before the entity can tender on government work again. These conditions might include undertaking compliance programs or satisfying a certifying body that the entity has undergone organisational change in order to regain access.

In some regimes the right to exclude or debar is conviction-based; in others it follows an administrative determination. Either way, these are the kind of deterrents which will help to prevent procurement corruption occurring in the first place.

The Committee considers that such matters should form an integral part of the new legislative framework under consideration.

There is much to reflect upon in this report. Its size may deter all but the most fervent from reading it. We nevertheless commend it as an excellent reference. It canvasses the key issues of corruption in procurement which globally are being debated and targets areas for improvement in this State.

The report will also form a valuable background for members when the new procurement bill is debated in Parliament in the future.

Besides, the report should be taken seriously if for no other reason than '*the accomplice to the crime of corruption is frequently our own indifference*'.⁵

4 See for example *The Punjab Transparency in Public Procurement Act, 2019* (Punjab Act No. 12 of 2019), section 7.

5 Bess Myerson

We appreciated the participation of the witnesses at hearings who were generous with their time and expertise.⁶ Likewise, those who made written submissions.⁷ Both groups contributed greatly to our understanding.

As noted earlier, this inquiry was a huge task in addition to the Committee's ongoing oversight and monitoring role. Access to experts overseas was limited which meant the Committee's secretariat carried an additional research burden.

I appreciate the commitment and engagement of Committee members: Deputy Chair, Hon Jim Chown, MLC; the Member for Kalamunda, Mr Matthew Hughes, MLA; and the Hon Alison Xamon, MLC.

The Committee was ably and conscientiously supported by the secretariat, Ms Vanessa Beckingham, Ms Lucy Roberts and Ms Sylvia Wolf. Previous secretariat assisting the Committee were Ms Alison Sharpe, until March 2019, and briefly, Ms Marion Huntly, in September and October of 2018.

A handwritten signature in black ink, appearing to read 'M. Quirk'.

MS M.M. QUIRK, MLA
CHAIR

6 See full list at Appendix 3.

7 See full list at Appendix 2.

Contents

Inquiry Terms of Reference	ii
Chair’s Foreword	iii
Executive Summary	xv
Ministerial Response	xix
Findings and Recommendations	xxi
1 Overview of the Committee’s inquiry	1
Public procurement is vulnerable to corruption	2
Public sector trends exacerbating corruption risk	3
Procurement is a strategic focus of the CCC	4
Rationale for the Committee’s inquiry	4
Scope of the inquiry	5
Inquiry limited to the general government sector	5
Other limitations	5
Does WA have a problem with corruption?	5
2 What is corruption in public sector procurement?	7
When the interest of the individual prevails over the public interest	7
Types of corruption often found in public procurement	7
Bribery	7
Collusion	8
Conflicts of interest	8
Fraud	8
Incompetence or corruption?	9
The significant cost of corruption in public procurement	10
3 Reforming a broken procurement system	13
Public procurement in WA is decentralised and compliance-driven	13
The procurement framework is complex, inconsistent and difficult to navigate	16
Unintended consequences of policies or rules – or, be careful what you wish for	19
Procurement reform	21

Background	21
The role of the Department of Finance in reforming procurement	21
Capital works procurement reform	22
The importance of getting it right	23
 4 Procurement in WA – key areas for reform	 25
Transparency	25
A lack of transparency in procurement	25
Tenders WA	26
What is not measured is not managed	27
Open contracting and data sharing – global initiatives in transparency	29
Accountability and oversight	31
Where does the buck stop?	33
The role of oversight and integrity bodies within the procurement framework	33
Accountability mechanisms	33
Oversight mechanisms	35
Open and effective competition	42
 5 Agency governance and culture	 47
There is nothing to see here, until there is something to see	47
Corruption will flourish without good governance	48
The four lines of assurance for agencies to prevent corruption	49
First line of defence: internal controls	51
Internal control measures	51
Education and training	54
Second line of defence: monitor, oversight and report	61
Risk management	62
Accountability	63
Corporate visibility of procurement activities	64
Data analytics	66
Third line of defence: internal audit and review	69
Internal audit	70
Audit committees	70

Integrity units and investigative functions	72
Resourcing and capability of audit committees and investigative units	73
The audit program	76
Suggestions for reform from external auditors	77
Outsourcing of internal audit and investigation	78
Conflicts of interest and the independence of auditors	79
Audit quality	80
Relying on external bodies to deliver internal governance functions	81
Organisational culture and behavioural drivers	82
Why does culture matter?	83
Changing organisational culture	85
 6 Conflicts of interest	 87
Conflicts of interest are present in nearly all procurement-related investigations into corruption	87
The North Metropolitan Health Service	88
Report on Corruption in Information Technology at Horizon Power	88
Serious Misconduct in procurement of environmental services	89
Report into how conflicts of interest undermine good governance – a report on the Chief Executive Officer of the Shire of Halls Creek	89
Small communities mean conflicts are common	90
Public sector trends exacerbating risk	92
Secondary employment	92
Greater reliance on private sector to deliver services	93
Agency management of conflicts of interest	94
Requirement for agency codes of conduct	94
Conflicts of interest registers – a system based on trust	96
Effective management of conflicts of interest	97
A culture of reporting needs to be a focus	98
Training for public sector officers on conflicts of interest	99
Educating suppliers and contractors – conflict of interest declarations as part of procurement processes	100

7	Whistleblowers in the public sector	103
	A dependence on whistleblowers	103
	What is whistleblowing?	106
	Avenues for reporting	106
	Public interest disclosures	107
	Encouraging whistleblowing	109
	Why should agencies encourage whistleblowing?	109
	Integrity frameworks	110
	Organisational culture	111
	The personal cost of whistleblowing	112
	Support for whistleblowers	113
	Incentives for whistleblowers	114
	Senate committee report	114
	<i>Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019</i>	115
	Conclusion on incentives	115
8	Sanctions for corruption – are they enough?	117
	Effective sanctions	117
	Types of sanctions	118
	Sanctions for incompetence or non-compliance with policy and procedures	118
	Other negative consequences – reputation	121
	Criminal charges	122
	The difficulty in the prosecution of fraud	123
	A difference in standards of proof – balance of probabilities versus beyond reasonable doubt	123
	When confessions cannot be used as evidence	124
	Relationship between WA Police and the Corruption and Crime Commission	124
	Potential for prejudice	125
	Debarment regimes	126
9	Completing the picture – a sector wide approach	129
	The public sector is reactive rather than proactive	129
	Discovering what went wrong	129

Responding to corruption	131
The cost of acting after the fact	132
Public sector integrity: from <i>ad hoc</i> response to integrated approach	132
System – the systems in place reduce opportunity for corruption	133
Culture – changing culture to make corruption unacceptable	135
Accountability – making people accountable for their actions	135
Improving integrity in public authorities	137
The role of the Public Sector Commission	138
The role of public authorities	140
 Appendices	 141
1 Committee’s functions and powers	141
2 Submissions received	143
3 Public hearings	145
4 Glossary	151
5 The procurement framework in Western Australia – General government sector	153

Executive Summary

The Committee began this inquiry in late 2017 with the premise that corruption is not widespread in the Western Australian public sector. This may be the case. Certainly, early evidence received by the Committee supported this hypothesis.

However, since late 2017, Western Australia has been rocked by the discovery of several cases of corruption in the public procurement system. These have resulted in reviews, audits and reforms of procurement processes and governance frameworks.

Corruption in public procurement occurs when the interests of individuals prevail over the public interest, and can involve bribery, collusion, conflicts of interest and fraud.

Corruption is hard to measure due to its covert nature, so it is difficult to gauge how often corrupt behaviour occurs in public procurement in this state. It is likely that it is more common than previously thought.

What has been established is that public procurement is vulnerable to corruption. One vulnerability is the complex, fragmented procurement framework. Trends in public sector procurement, such as the increased outsourcing of services, increase the risk.

Overall, the WA public sector is generally reactive, rather than proactive, in its approach to corruption. When fraud or corruption is identified in the public sector, governance reviews and other investigations are often commenced to find out what went wrong. Reforms are often swiftly enacted which aim to ensure that weaknesses in governance and oversight are addressed. However sometimes reforms create more rules and regulation without addressing core issues.

There is a cost to acting after the fact. It is time for agencies, and the public sector as a whole, to be on the front foot.

Integrity strategies are part of the new best practice approach to corruption. This type of approach is increasingly being seen as more effective than reactive responses which include generating more rules and regulations.

The Public Sector Commission has released an integrity strategy for public authorities in this state which aims to embed integrity into organisational systems, controls, culture, and in also in individuals' actions. This should be implemented as a matter of priority.

Both a sector-wide approach, and reforms at agency level, are required. At the sector level, a useful model is the Organisation for Economic Co-operation and Development (OECD) blueprint for a public integrity strategy. It shifts the focus from *ad hoc* policy to cultivating a culture of integrity across society. The OECD model is built on 3 pillars: system, culture and accountability. The final chapter in this report explores how these three components are relevant to the findings in this report.

The WA public sector requires system-wide reform to ensure a more functional and integrated approach, so that roles and responsibilities are clear and there are no gaps in oversight. Rather than everybody thinking somebody else is doing it, there must be clarity about what is being done and by whom.

The fragmentation, complexity and inconsistency of the current procurement legislative and policy framework creates uncertainty, which increases corruption risk. Confusion around process can enable individuals to excuse non-compliant behaviour. It may also engender a culture of ‘avoiding red tape’, where cutting corners becomes acceptable because following due process is seen as too unwieldy.

There is now significant reform occurring across the sector. The Committee welcomes the procurement reform currently underway and encourages the government to prioritise corruption prevention in reform initiatives. Corruption prevention and detection should be a core aim of the new procurement framework, rather than it being addressed in an *ad hoc* manner every time the Corruption and Crime Commission uncovers corrupt practice.

The Committee’s inquiry has identified four aspects of the current procurement framework which require improvement in order to curb corruption — transparency, accountability, oversight and effective competition.

In addition, culture matters—because breaches of integrity damage the trust that the public has in government. A culture must be developed across the sector in which corruption is identified and not tolerated. Culture pervades every activity in an organisation, and impacts on the attitudes of staff and management as to how they do their jobs. Culture influences whether lip service is paid to compliance, accountability and integrity or whether these measures are genuinely implemented in the spirit intended. Training and education are key to improving culture.

As well as sector-wide reform, improvements are needed at an agency level. Weak governance, poor culture and ineffective internal controls are recurring themes in corruption in public procurement.

A strong internal control framework in an agency should have both tangible and intangible elements: procurement controls and an integrity framework; and organisational culture and behavioural drivers. Agencies with good governance and robust internal control frameworks that address both elements are better placed to mitigate corruption risk.

The WA Auditor General describes four lines of defence for good agency governance, which are important for curbing corruption in procurement:

- internal control measures, such as good recordkeeping, segregation of duties and compliance with policy
- internal oversight and monitoring of internal controls, which are reported on
- internal audit and review
- external audit, investigations and reviews.

And finally, individuals need to be accountable for their actions.

This report devotes a chapter each to the issues and initiatives to be taken with regard to conflicts of interest, whistleblowing and the sanctions applied in instances of identified corruption.

The cost of not being proactive on corruption in public procurement is significant, when both financial and non-monetary costs are taken into account.

Not only does the sector lose large sums of money through the corruption itself, but also there is money then spent on finding out what went wrong and attempting to fix the problem. While this benefits the external providers who are contracted to deliver the investigations and governance reviews, it leaches yet more money from the public purse and creates additional work away from frontline services.

Then there is the reputational damage done to the public sector and particular agencies when corruption is uncovered. This results in the public losing faith in the sector, and a loss of morale by public officers. This damage can take long time to repair.

When it comes to corruption in public sector procurement, prevention is better than cure.

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Premier and the Minister for Finance report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Chapter 1 – Overview of the Committee’s inquiry

Finding 1

Page 3

The nature of public procurement renders it vulnerable to corruption. Factors which contribute to this vulnerability are the volume and value of transactions, the often complex and inconsistent processes, the close interaction between public officials and business, and the diversity of stakeholders involved.

Finding 2

Page 3

Changes in the way government delivers services, now largely outsourced through contracts with non-government providers, come with associated corruption and misconduct risks.

Finding 3

Page 4

In 2015 the Corruption and Crime Commission identified fraud, conflicts of interest, gifts and benefits as particular risk areas for corruption and misconduct within the public procurement process. This is supported by evidence received by the Committee.

Finding 4

Page 4

Procurement-related misconduct has been a strategic focus of the Corruption and Crime Commission since 2014.

Finding 5

Page 6

It is difficult to measure the full extent of corruption due to its covert nature.

Finding 6

Page 6

Corruption in public procurement in Western Australia is an issue warranting action at the highest levels and sector-wide.

Chapter 2 – What is corruption in public sector procurement?

Finding 7

Page 10

Incompetence and inexperience exhibited in the procurement process may be hiding corrupt behaviour which is difficult to identify. Identified incompetence in the public sector procurement process should be viewed as a strong indicator of corruption risk.

Finding 8

Page 11

The cost of corruption in public procurement is significant, when both financial and non-monetary costs are taken into account. Reputational damage is a particularly significant cost.

Chapter 3 – Reforming a broken procurement system

Finding 9

Page 16

Procurement in WA is structured around compliance with policies and rules, the success of which generally relies on public sector employees acting ethically and in the best interest of the state.

Finding 10

Page 16

A compliance-driven approach to procurement means that corrupt behaviour is easy to hide so long as compliant behaviours appear evident.

In the modern procurement environment, apparent compliance with transactional-based policy is not enough, on its own, to prevent or detect corruption. A more strategic approach is needed.

Finding 11

Page 18

The procurement framework in WA is fragmented, complex, inconsistent and difficult to navigate. There is confusion within industry as to which statutes and policies apply to particular works procurements. The range of agencies impacted by a particular policy or piece of legislation can vary and procurement practices vary widely across the sector. This situation is a heightened corruption risk.

Finding 12

Page 20

The fragmentation of the policy and legislative framework can unintentionally impose competing requirements. This is a corruption risk, as confusion around process can make it easier for individuals to excuse non-compliant behaviour.

Finding 13

Page 20

The complexity surrounding competing policy directions can be administratively difficult for procurement officers. It can also reduce clarity in being able to see when procurement is done well and when it is not.

Finding 14

Page 21

Procurement frameworks need to allow sufficient flexibility to apply various policy directives, and be underpinned with quality training, so that public officers know how to juggle competing priorities.

Recommendation 1

Page 23

Reforming the procurement framework should remain a priority for the government with firm deadlines set. It should carefully consider recent cases of alleged corruption and allocate the necessary resources to incorporate findings into a workable sector-wide procurement model.

Recommendation 2**Page 23**

Corruption prevention and detection should be a core aim of the new procurement framework, rather than being an issue addressed *ad hoc* every time the Corruption and Crime Commission uncovers corrupt practice.

Chapter 4 – Procurement in WA – key areas for reform**Finding 15****Page 31**

The monitoring, tracking, measuring and reporting of procurement activities at a sector-wide level requires an immediate overhaul.

Recommendation 3**Page 31**

The Department of Finance, as part of the procurement reform program, should assess public procurement processes in Western Australia against the principles of the Open Contracting Data Standard. Where procurement processes fall short of compliance with those principles, increased compliance (where practicable) should be addressed as a matter of priority. The Minister should report to the Parliament on where compliance could be increased in its response to this report or within six months of the date of tabling of this report.

Finding 16**Page 39**

A significant number of statutory bodies, boards and committees sit outside the remit of the *State Supply Commission Act 1991* and not all public procurement is the responsibility of the Department of Finance.

Finding 17**Page 39**

The State Tender Review Committee only sees procurements of high risk and high value. High risk and high value is defined as those projects valued at above \$5 million. This nexus between value and risk is problematic.

Finding 18**Page 39**

The State Tender Review Committee does not act as an oversight mechanism in terms of corruption prevention and best practice principles for procurement.

Finding 19**Page 39**

The Committee is concerned that there is a misconception that the State Tender Review Committee provides a further form of corruption detection.

Recommendation 4**Page 39**

The composition, role and function of the State Tender Review Committee should be more clearly delineated by the Department of Finance as a part of its ongoing reform process, taking into account the observations made here.

Finding 20 **Page 42**

Oversight, anti-corruption and integrity bodies play an important role in mitigating corruption risk in public procurement. However, these bodies are not a substitute for the role that agency accountable authorities have in detecting and preventing corruption. The most important defences against corruption are those embedded within agency governance structures, internal controls and organisational culture.

Finding 21 **Page 42**

Overall, the public sector is not accountable enough in the expenditure of public money. The external accountability mechanisms in place around public procurement are inadequate from a corruption prevention aspect.

Finding 22 **Page 42**

The external oversight of public procurement in Western Australia is patchy at best, and entirely absent at worst.

Finding 23 **Page 42**

The Office of the Auditor General is not an anti-corruption body; rather, it provides a 'health check' of agency's internal controls through its external audit function.

The proposed new role for the Office of the Auditor General in the forensic audit of agency procurement increases external oversight and accountability. It remains, however, primarily the role of agencies to ensure procurement processes are corruption-free.

Finding 24 **Page 45**

While poor planning could be the main reason for exemptions from the State Supply Commission's *Open and Effective Competition Policy*, it must be noted that certain exemptions may hide something more sinister. A good indication of process not being followed, and therefore a red flag for corruption, is the number of exemptions for sole supply that have been made.

Finding 25 **Page 45**

There is currently a general lack of oversight of, and transparency around, a large number of exemptions claimed in relation to the mandated requirements for open and effective competition. This is an obvious corruption risk.

Chapter 5 – Agency governance and culture

Finding 26 **Page 48**

Agencies often do not consider there is a problem with corruption until surprised by a Corruption and Crime Commission report, or a similar investigation. This results in a chain of events being triggered, which usually results in an emphasis on greater compliance and more regulation. Then, when the scandal subsides, it is back to business as usual, with the entrenched organisational culture remaining largely unchanged.

Finding 27**Page 49**

A strong internal control framework in an agency has both tangible and intangible elements: procurement controls and an integrity framework; and organisational culture and behavioural drivers. Agencies with good governance and robust internal control frameworks that address both elements are better placed to mitigate corruption risk.

Finding 28**Page 60**

Weaknesses in internal controls within agencies which present a corruption risk and which are present in most examples of identified corruption in procurement include poor recordkeeping, a lack of role segregation, public officers remaining in positions of trust for long periods of time, widespread non-compliance with policy, and the prioritisation of efficiency over due process.

Finding 29**Page 60**

Professional and well-trained personnel are an important part of maintaining integrity in procurement systems. Officers should be specialists and be given status accordingly. At present procurement is seen as being part of general administrative duties, and there has been a depletion of skills in procurement capacity within the Western Australian public sector.

Finding 30**Page 60**

Tailoring the training program to suit the target audience would appear to be a useful step in ensuring that the training achieves its aim.

Finding 31**Page 61**

It is important that private industry is well informed of its obligations when dealing with the public sector. A greater emphasis and focus should be placed on educating contractors and tenderers on engaging in procurement transactions with the utmost integrity. The Committee will maintain a watching brief on the roll-out of the Ethical Procurement Framework by the Department of Finance.

Recommendation 5**Page 61**

That the Public Sector Commission undertake a systemic review of all training currently being delivered across government around the areas of procurement, ethical decision making and corruption prevention.

As a result of this review, the Public Sector Commission should report to Government as to a preferred framework for the delivery of training and who is best placed to deliver those components.

Finding 32**Page 68**

Monitoring the effectiveness of internal controls and acting on audit reports (both internal and external) and other inquiries, are all integral to good governance and essential for corruption prevention.

Finding 33**Page 69**

There is evidence of weaknesses in accountability frameworks in agencies in the Western Australian public sector, particularly in procurement and delegations of purchasing authority. This is exacerbated in agencies with regional branches, where a large amount of delegated authority makes the organisation vulnerable to poor practice.

Finding 34**Page 69**

In cases of corruption, there is often a lack of effective oversight of and accountability for decisions, with little or no corporate visibility of procurement activity and expenditure across the organisation. Monitoring, measuring and reporting on performance and expenditure is an important part of an agency's corruption prevention framework.

Finding 35**Page 69**

Alongside other internal controls, such as proper roles, relationships and responsibilities, visibility over what is being procured entrenches a culture where corruption stands out.

Finding 36**Page 77**

Evidence shows that despite recent discoveries of fraud and corruption in areas of the public sector, internal audit does not receive the attention it deserves at the senior governance level.

Finding 37**Page 77**

Departmental audit committees have varying levels of experience and capacity as well as differing levels of exposure to, and ability to conduct, investigations. Generally audit committees in the Western Australian public sector are not as mature as in other jurisdictions.

Finding 38**Page 78**

Agencies generally have limited capacity to carry out audits and investigations. It is essential that audit committees and investigative branches are resourced adequately within agencies.

Finding 39**Page 82**

Agencies are increasingly outsourcing internal audit and investigative functions to consultancies, at a considerable financial cost. While useful in terms of accessing resources not available within public authorities, this must also be managed as a corruption risk, due to the large sums of money involved, and the potential for a lack of transparency and conflicts of interest which undermine independence.

Recommendation 6**Page 82**

The Committee encourages the relevant decision makers to watch the progress of the Commonwealth inquiry closely in order to integrate its findings into the procurement reform process.

Recommendation 7**Page 82**

The Department of Finance should consider, as part of its review of the state's procurement policy framework, the role played by companies that provide audit and financial services.

Finding 40**Page 84**

Culture pervades every activity in an organisation, and impacts on the attitudes of staff and management as to how they do their jobs. Culture influences whether lip service is paid to compliance, accountability and integrity or whether these measures are genuinely implemented. If organisational culture does not support agency internal controls, corruption risk is heightened.

Chapter 6 – Conflicts of interest**Finding 41****Page 89**

Corruption and Crime Commission investigations into procurement-related misconduct and corruption invariably find that a public officer has a significant conflict of interest. These conflicts of interest have resulted in serious wrong-doing by the public officer and others, leading to loss of public monies, loss of employment for the officers, and in some cases, criminal charges and prosecutions.

Finding 42**Page 91**

Western Australia is a relatively small community, with, in some cases, a limited supplier base. Effectively managing conflicts of interest is particularly difficult in small communities. In particular, public procurement in regional WA is susceptible to conflicts of interests being problematic.

Finding 43**Page 92**

Secondary employment is a corruption risk. It can lead to misuse of public resources, and the abuse of an officer's position due to an inappropriately managed conflict of interest.

Finding 44**Page 94**

As governments move further towards delivering services through outsourced models, and to greater reliance on consultants from outside the public sector, they become more vulnerable to personal interests being placed above the public interest.

Finding 45**Page 96**

Agencies are required to have a code of conduct which addresses conflicts of interest and gifts and benefits. Agencies examined by the Committee complied with this requirement; however, there are generally no compliance checks. A declaration is seen as an employee's individual responsibility.

Finding 46 **Page 97**

The simple act of making a declaration is not a sufficient and adequate mechanism for managing a conflict. Effective conflict of interest management post-declaration is the true preventative measure. The Committee would like to see these registers being used as a proactive tool for investigating and managing conflicts.

Recommendation 8 **Page 97**

All public sector employees with a remit that includes spending public money should be required to maintain a register of interests and associations. This should be in addition to specific declarations of actual or perceived conflicts of interest.

Finding 47 **Page 98**

Agencies must interrogate conflict of interest registers to discover partial, misleading and missing declarations, in order to reduce vulnerability to corruption.

Recommendation 9 **Page 98**

That the Premier, as Minister for Public Sector Management, take steps to ensure that public sector authorities are required to have in place a management plan which details how to handle a conflict of interest once it is declared. The management plan should detail clear and appropriate consequences for non-compliance.

Finding 48 **Page 99**

If declaring conflicts of interest is embedded into organisational culture, then it becomes more noticeable when non-compliance occurs. It is incumbent on colleagues to notice when a conflict does not appear to have been declared and managed.

Finding 49 **Page 100**

It must be the responsibility of each Director General, that training for public sector officers on conflict of interest management should address culture with a view to equipping public officers with the skills to make good judgements and to recognise public duty versus private interest, rather than just following a rules-based procedure without thinking about why.

Finding 50 **Page 101**

Training and awareness-raising about what is required when doing business with government is important for suppliers and contractors, in order to identify and manage conflicts.

Chapter 7 – Whistleblowers in the public sector

Finding 51 **Page 106**

The Corruption and Crime Commission is largely dependent on tip-offs to uncover and investigate corruption. Whistleblowing by a public officer or former public officer in particular, is important to the investigation of corruption in procurement.

Finding 52 **Page 109**

The Public Interest Disclosure avenue of reporting is underutilised and public servants are reportedly not confident of the protections offered. Furthermore, the adequacy of protections under the *Public Interest Disclosure Act 2003* remain largely untested.

Finding 53 **Page 112**

Organisational culture and integrity frameworks within an agency are key to encouraging reporting wrongdoing. Both of these things can have a significant impact on whether or not an individual chooses to make a report of misconduct.

Chapter 8 – Sanctions for corruption – are they enough?

Finding 54 **Page 121**

There are minimal consequences for public officers who demonstrate non-compliance with policies and procedures or incompetence.

Finding 55 **Page 121**

Chief executives and directors general need to be accountable for the expenditure of public money and this accountability needs to be embedded into their key performance indicators.

Finding 56 **Page 121**

There are limitations in the application of sanctions for misconduct once the officer has ceased employment with the public sector.

Finding 57 **Page 127**

Exclusion regimes are emerging as useful tools in removing risks associated with governments engaging suppliers that have undertaken certain types of wrongdoing or demonstrated unacceptable performance.

Chapter 9 – Completing the picture – a sector wide approach

Finding 58 **Page 133**

A sector-wide approach to corruption prevention is required in Western Australia, in addition to agency-level improvements. A useful model is the OECD blueprint for a public integrity strategy. This model shifts the focus from *ad hoc* policy to cultivating a culture of integrity across society, and is built on the three pillars of system, culture and accountability.

Finding 59 **Page 133**

The Western Australian public sector requires system-wide improvements to reduce opportunity for corruption. It also requires reform to ensure a more functional and integrated approach, so that roles and responsibilities are clear and there are no gaps in oversight.

Finding 60**Page 134**

The Committee has identified a need for system-wide implementation of a procurement framework that prioritises corruption prevention and detection. Procurement frameworks across Australian jurisdictions generally place more emphasis on value for money (with some thought on anti-corruption as an additional consideration).

Finding 61**Page 135**

Internal controls within agencies should keep public officers accountable and a strong internal audit function is key to accountability. Directors general and other agency heads then should be held to account for the effectiveness of these functions and the overall financial management of the agency.

Recommendation 10**Page 136**

The Premier should direct the Public Sector Commissioner to investigate how directors general and other agency heads could be held to account for the effectiveness of internal controls, the internal audit function and the overall financial management of their agency.

Finding 62**Page 136**

The Financial Legislation Amendment Bill 2020 appears to strengthen what is expected of accountable authorities with regard to managing internal controls and financial delegations within agencies. The emphasis is on record keeping and financial reporting, proper roles and responsibilities, and compliance with Treasurer's Instructions.

Recommendation 11**Page 140**

That the Premier direct the Public Sector Commissioner to monitor implementation of the *Integrity Strategy for WA Public Authorities 2020-2023*. The quality and timeliness of implementation should be made the subject of performance agreements for all directors general. The strategy should be reported on annually to the Parliament.

Chapter 1

Overview of the Committee's inquiry

Public procurement, by its nature, is vulnerable to corrupt practice.

Procurement has been a strategic focus of the Corruption and Crime Commission since 2014. It has identified fraud, conflicts of interest, and gifts and benefits as particular areas of risk for corruption and misconduct.

Even so, the Committee began this inquiry with the premise that corruption is not widespread in the WA public sector. This may be the case. Certainly, early evidence received by the Committee supported this proposition.

However, since this inquiry commenced in late 2017, WA has been rocked by several cases of corruption uncovered within the public procurement system. While corruption is hard to measure due to its covert nature, the Committee is concerned that corruption in procurement may be more common than first thought.

There are now several areas of public sector reform underway, both in the procurement framework and in the public sector more widely, largely arising from recent public sector reviews and cases of corruption.

When the Corruption and Crime Commission (CCC) published its August 2018 report⁸ exposing corruption within the North Metropolitan Health Service (NMHS), the public sector was suddenly, and sharply, focussed on corruption risk in public procurement.

In the months following, the CCC engaged with public sector agencies to educate directors general and their executive teams about this risk and the red flags which can signal corrupt behaviour. The Chief Executive of the CCC observed that senior management throughout the public sector was now 'certainly engaged and certainly concerned for what might be going on in their organisation.'⁹

I have been surprised at what actually has been found under the surface. We have no way of knowing whether corruption is rife, or in comparatively small pockets. I suspect the latter, but we have really no way of knowing.

*- Hon John McKechnie QC,
Corruption and Crime Commissioner*

Following the alleged corruption exposed in the Department of Communities in late 2019, the Premier announced changes to public sector procurement and governance, in addition to a reform program already underway in the

8 Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, 16 August 2018.

9 Mr Raymond Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 11.

sector. The reform program and other initiatives within the sector are welcomed by the Committee.

It is the aim of this report to add value to the reform process and particularly highlight some key lessons from the Committee's extensive inquiries into public sector procurement and its vulnerability to corrupt practice.

Recommendations for reform are made in general terms, rather than presented as prescriptive legislative or policy changes. It is hoped that this will allow the intent of the Committee's recommendations to be taken into consideration, and to be adapted to the procurement model prescribed by any new legislation.

Public procurement is vulnerable to corruption

There is a wide range of literature and research on the vulnerability of public procurement to corruption. Organisations such as Transparency International, the Organisation for Economic Co-Operation and Development (OECD) and the United Nations Office of Drugs and Crime have extensive resources available for procurement practitioners, legislators and policy makers.

The OECD states that public procurement remains the government activity most vulnerable to waste, fraud and corruption due to the size of the financial flows involved.¹⁰ According to Transparency International's Bribe Payers Index, construction and public works rank as the industry sectors most prone to corruption.¹¹

*Procurement is an activity
with persistent
maladministration and
corruption risks and which is
highly vulnerable to
exploitation and
mismanagement...*

*- South Australian ICAC (Report:
Troubling ambiguity: Governance in
SA Health)*

The risk of corruption within the public procurement process is high. This is unsurprising given the volume and value of transactions, the often complex processes, and the diversity of stakeholders involved. Organisational factors such as weak governance and internal controls, and the pervading culture, can exacerbate this risk.

In WA agencies, there are often only a small number of public officers who understand, and are involved in, the tender and contract process. According to the CCC there is incentive and opportunity for corruption of public officers.¹²

This vulnerability is exacerbated by trends in public sector operations over the past few decades.

10 Organisation for Economic Co-operation and Development, *What is Public Procurement?*, accessed 1 July 2019, < <http://www.oecd.org/gov/public-procurement/support/>>.

11 Transparency International, *Curbing corruption in public procurement: A practical guide*, July 2014, p. 21.

12 Corruption and Crime Commission, *Annual Report 2017-18*, Western Australia, 2018, p. 37.

Public sector trends exacerbating corruption risk

Over the past 30 years, there has been 'a shift away from the traditional form of public administration characterised by rigid hierarchies and rule-bound bureaucracies perceived by some to hinder innovation and the efficient delivery of public sector goods and services.'¹³

The most obvious change is the way government delivers services. Those who design and deliver these services 'are increasingly less likely to be employees of a public sector agency.'¹⁴

The shift from traditional service-delivery to outsourced business models has meant that procurement and contract management feature more prominently in the activities of agencies and public officers.¹⁵ In the past these activities were generally undertaken by corporate services within an agency, but now many are devolved to business areas to manage. There is a risk that agencies lack the corporate skills, controls and/or governance systems to manage this changed role and associated corruption and misconduct risks.¹⁶

In addition, political, community or agency-level pressure to deliver major works can facilitate the risk that 'corners will be cut' at the expense of compliance.¹⁷

In 2015 the CCC identified fraud, conflicts of interest, and gifts and benefits as risk areas for corruption and misconduct.¹⁸ Particular vulnerabilities are associated with:

- major projects, infrastructure and building and works
- non-government service providers
- ICT systems and software.¹⁹

Finding 1

The nature of public procurement renders it vulnerable to corruption. Factors which contribute to this vulnerability are the volume and value of transactions, the often complex and inconsistent processes, the close interaction between public officials and business, and the diversity of stakeholders involved.

Finding 2

Changes in the way government delivers services, now largely outsourced through contracts with non-government providers, come with associated corruption and misconduct risks.

13 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 9.

14 *ibid.*

15 Corruption and Crime Commission, *Report on the Misconduct Intelligence Assessment of the WA Public Sector*, Western Australia, March 2015, p. 15.

16 *ibid.*

17 Corruption and Crime Commission, *Report on the Misconduct Intelligence Assessment of the WA Public Sector*, Western Australia, March 2015, p. 25.

18 *ibid.*, pp. 25-26.

19 *ibid.*

Finding 3

In 2015 the Corruption and Crime Commission identified fraud, conflicts of interest, gifts and benefits as particular risk areas for corruption and misconduct within the public procurement process. This is supported by evidence received by the Committee.

Procurement is a strategic focus of the CCC

As far back as 2010, the CCC identified tendering and the purchase of goods and services as significant corruption risks.²⁰ Since 2014 procurement-related misconduct has been a strategic focus,²¹ with around 60 per cent of the CCC's investigative resources allocated to procurement-related investigations during the 2017-18 reporting period.²²

In a 2015 report, the CCC identified the risks associated with new business and service-delivery models involving increased outsourcing of services, and that these therefore warranted more extensive procurement and contract management.²³

This work provided the CCC with a broad understanding of misconduct risk in the WA public sector, and allowed it to identify public sector agencies and activities inherently more susceptible to corruption threats and misconduct risks.

Finding 4

Procurement-related misconduct has been a strategic focus of the Corruption and Crime Commission since 2014.

Rationale for the Committee's inquiry

The Committee identified public procurement as a potential high risk area for corruption in late 2017, resolving to inquire into and report upon the procurement of goods and services in Western Australia and its vulnerability to corrupt practice.²⁴

The following factors constitute the rationale for carrying out this inquiry:

- the Committee's role in reporting on corruption prevention in the public sector
- the oversight role of the Committee, which is to scrutinise the functions of the CCC and the Parliamentary Inspector of the Corruption and Crime Commission
- that the vulnerability of public procurement to corruption is a well-established proposition, with certain trends in public sector governance and service delivery exacerbating corruption risk

20 Corruption and Crime Commission, *Commission warning on tendering and procurement*, media statement, 8 December 2010.

21 Submission 8, Corruption and Crime Commission, p. 1.

22 Corruption and Crime Commission, *Annual Report 2017-18*, Western Australia, 2018, p. 37.

23 Corruption and Crime Commission, *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector*, Western Australia, 2015, p. 12.

24 Terms of reference were tabled in the Western Australian Parliament on 22 November 2017.

- recent reviews and reports highlighting failings within the current public procurement framework, which the Committee considers demonstrate significant corruption risks (these are referenced throughout this report).

Scope of the inquiry

Inquiry limited to the general government sector

The Committee limited its investigation to procurement in the general government sector, which is comprised of all the government entities and non-profit institutions that are controlled and largely financed by government. The inquiry considered the procurement of goods, services and works within the general government sector. Appendix Five details the legislative and policy framework currently applying to these procurements in WA.

Procurement undertaken by local governments, government trading enterprises (GTEs), universities and TAFEs is not the focus of this report. Also excluded from consideration is public procurement within the community services sector, which is subject to a different policy regime under the Department of Finance's *Delivering Community Services in Partnership* policy.

Other limitations

This inquiry did not investigate or critically review individual cases of corruption or misconduct. Rather, it drew upon examples of procurement-related misconduct reported on by the CCC to illustrate key points.

Does WA have a problem with corruption?

The Committee began this inquiry with the premise that corruption is not widespread in the WA public sector. This may be the case. Certainly, early evidence received by the Committee supported this proposition. Statistics on the prevalence of corruption in any jurisdiction are difficult to find due to its covert nature.

However, the Committee is concerned that corrupt behaviour may be more common than first thought. It has occurred at the NMHS, and as recently revealed, within the Housing Authority for many years.

The New South Wales Independent Commission Against Corruption (NSW ICAC) recently reported on corruption in the NSW public sector. While noting the limitations on the measurement of corruption, it presented available figures which shed some light on 'the state of corrupt conduct in Australia and NSW.' It noted that 'while individual statistics are unlikely to be of significant value, analysing a number of studies and surveys tells us that, relative to other countries, the level of corruption in Australia is low.' Interestingly it also observed that 'there is conflicting evidence about whether these low levels of corruption are edging higher.'²⁵

25 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 16.

In WA, very little corruption or misconduct in procurement is uncovered by the Auditor General because it is not the primary role of this body to uncover and investigate corruption. In fact, for the overwhelming majority of agencies, clear audit opinions on all three relevant audited categories (finances, key performance indicators, and internal agency controls) are usually conferred by the Office of the Auditor General, with a few exceptions. It is interesting to consider that prior to the exposure of endemic corruption in the Victorian Department of Education and Training in 2015 (see Box 5.8 in Chapter 5), the Victorian Auditor General had not uncovered anything untoward through the general audit process.

It is worth noting (and is discussed at length later) that the majority of cases which have come to light have been uncovered due to information from whistleblowers and other tip-offs. That begs the question whether current controls and oversight are sufficiently robust.

There is not an overwhelming number of cases of corruption that have been exposed in procurement in the Western Australian public sector. However, ‘the size, scope and reach of those’ as well as how long these situations exist for, and fact that they were not picked up through the usual mechanisms, are concerning issues.²⁶

Finding 5

It is difficult to measure the full extent of corruption due to its covert nature.

Finding 6

Corruption in public procurement in Western Australia is an issue warranting action at the highest levels and sector-wide.

26 Ms Sharyn O’Neill, Commissioner, Public Sector Commission, *Transcript of Evidence*, 20 March 2019, p. 8.

Chapter 2

What is corruption in public sector procurement?

Corruption in public procurement occurs when the interests of individuals prevail over the public interest. The types of corruption often found in public procurement are bribery, collusion, conflicts of interest and fraud. Often, it can be difficult to distinguish between incompetence and corrupt behaviour.

The cost of corruption in public procurement is significant, when both financial and non-monetary costs are taken into account. Reputational damage is a particularly significant cost. This has been evident in the WA public sector in the wake of the Health and Housing corruption allegations.

When the interest of the individual prevails over the public interest

Broadly speaking, corruption can be described as ‘any situation where the interests of an individual or particular group of individuals or a firm override the public interest.’²⁷

Corruption in public procurement occurs when a public officer intentionally uses their position within the procurement process to gain some benefit, financial or otherwise, for themselves and/or others. A public officer commits misconduct when he or she abuses their position for personal gain, causes detriment to another person, commits an offence, or acts in a way that is contrary to the public interest.²⁸

In my experience, someone always has a strategy, and if it is not you — the good guys who are doing the procurement in the public sector — who has a strategy to get the sorts of outcomes you really need, then those who have another agenda will prevail.

- Christine Tonkin, Procurement Practitioner

Types of corruption often found in public procurement

Bribery

Bribes can be gifts, money, favours, jobs for family members or any other benefit in return for a certain outcome. Bribery was a large part of the corruption reported by the Corruption and Crime Commission (CCC) at the North Metropolitan Health Service (NMHS).

Transparency International suggests corruption is more subtle ‘when bribes are used to manipulate budget allocations and project selection, even before the contracting process begins, through the manipulation of eligibility criteria in the tender documents, or having technical specifications that are biased and without merit.’²⁹

²⁷ Ms Christine Tonkin, Procurement Practitioner, *Transcript of Evidence*, 26 November 2018, p. 4.

²⁸ *Corruption, Crime and Misconduct Act 2003*, s. 4.

²⁹ Transparency International, *Curbing Corruption in Public Procurement: A Practical Guide*, 2014, p. 6.

Collusion

Procurement is particularly vulnerable to collusion, which can be described as an arrangement between parties, 'in the public and/or private sector, to conspire to commit actions aimed to deceive or commit fraud with the objective of illicit financial gain.'³⁰

It is alleged that collusion featured in the corruption uncovered within the Housing Authority and Department of Communities. In this example, two parties, one a public servant and one a private citizen, are alleged to have conspired to set up shelf companies and make ongoing payments of false invoices to these companies.

Conflicts of interest

Significant corruption risks 'arise from conflict of interest in decision-making, which may distort the allocation of resources through public procurement.'³¹

The management of conflicts of interest presents a particular problem in Western Australia and is an issue in nearly every procurement matter investigated by the CCC. This is discussed in some detail in Chapter 6.

Fraud

Most cases of occupational fraud are carried out through corrupt practices (as opposed to stealing assets or cash, for example).³² They can include:

- buying goods and services unnecessarily
- unwarranted changes in projects (scope creep)
- public officers awarding work to suppliers they own or control without disclosing a conflict of interest
- allowing the supplier to design the scope of work or specifications
- paying invoices without cross-matching the purchase order, invoice and documented receipt of goods and services
- splitting orders or payments to avoid scrutiny or to remain below thresholds requiring competition
- failing to issue a tender or obtain quotes as required by policy
- obtaining false/misleading tender responses or quotes
- failing to record the receipt of goods and services and not updating asset registers.³³

30 Transparency International, *Curbing Corruption in Public Procurement: A Practical Guide*, 2014, p. 7.

31 Organisation for Economic Co-operation and Development, *Preventing Corruption in Public Procurement*, 2016, p. 6.

32 Association of Certified Fraud Examiners, *Report to the Nations: 2018 Global Study on Occupational Fraud and Abuse: Asia-Pacific Edition*, 2018, p. 4-5.

33 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 50.

Incompetence or corruption?

There may not necessarily be corruption in cases where agencies lose millions of dollars through inefficient, reckless, negligent or non-compliant behaviour. The behaviour may not even reach the threshold which triggers a notification of minor misconduct, let alone serious misconduct.

It can be difficult to distinguish between incompetence and corrupt behaviour. The difference between a finding of corruption and incompetence may just be a lack of evidence or being unable to prove intent to the requisite standard in a criminal prosecution.

Often the CCC will investigate what looks to be corruption and find only gross incompetence. Unless a deliberate intent for personal gain can be identified, the conclusion must be that the behaviour in question is simply a lack of ability, for whatever reason, to do the job properly.

The fact that many CCC investigations do not result in a finding of serious misconduct or corruption does not mean that it does not exist. In fact, the Committee is concerned that incompetence left unchecked is a breeding ground for corrupt behaviour.

Furthermore, the Committee is concerned that corruption may be too easily mistaken for incompetence, in the absence of any proof to the contrary. The dereliction of duty and incompetence gives rise to situations where non-performance of procedures in relation to procurement are considered disciplinary matters, even though the loss to the state could be considerable. These are generally dealt with by individual agencies under the *Public Sector Management Act 1994* with a performance management approach, rather than by the CCC or Public Sector Commission as misconduct.³⁴

There are several examples where the CCC concluded that non-compliance and poor practice within procurement processes were the result of incompetence and poor agency culture. The Committee notes that Information and Communications Technology (ICT) procurement is a particular vulnerability.

One of the more well-known of these examples is the Department of Health's centralised computing services ICT project. The ICT project was initiated in 2010 by way of a contract between the Department and a supplier (Fujitsu Australia Ltd) for the provision of centralised computing services. In 2018 John Langoulant reported in his review of government programs and projects that 'the initial contract value was \$93.8 million. With 77 variations, the actual cost has almost doubled to an estimated \$175 million.'³⁵

By 2014 concerns about the project were such that the Auditor General made a decision to conduct a comprehensive audit of the project's governance arrangements and procurement

34 Ms Sharyn O'Neill, Commissioner, Public Sector Commission, *Transcript of Evidence*, 7 November 2018, p. 7.

35 This was reported on by the Auditor General and the Education and Health Standing Committee in 2016 and was also examined in the 2018 *Special Inquiry into Government Programs and Projects: Final Report Volume 2*, prepared by Mr John Langoulant AO. The figures quoted here are taken from the 2018 Langoulant Report, see p. 215 in Volume 2.

processes. The report highlighted governance and organisational failings within the Department of Health, systemic failings in contract management processes, significant non-compliance with policy and procedure, and a marked lack of oversight by accountable bodies. Poor record keeping hindered the audit process, with key documents unable to be located,³⁶ all red flags for corrupt behaviour.

Due to the scale of mismanagement uncovered, the Auditor General referred the matter to the CCC for review. The CCC advised the Committee that it thoroughly investigated the notifications arising from this project and it was satisfied that no serious misconduct or corruption had occurred. It did point out however, that various red flags for corruption were exhibited throughout the procurement process. For example, people acting outside of, or exceeding, their authority and delegation, and 'contract variations, including variations suggested by the supplier.'³⁷

While no corruption was uncovered, this situation demonstrates how large scale incompetence creates an environment where corrupt behaviour may go unnoticed, particularly if key records and documents are not kept.

In light of the above considerations, the Committee is of the view that incompetence and corruption exist on a continuum of behaviour, rather than being two separate issues.

Finding 7

Incompetence and inexperience exhibited in the procurement process may be hiding corrupt behaviour which is difficult to identify. Identified incompetence in the public sector procurement process should be viewed as a strong indicator of corruption risk.

The significant cost of corruption in public procurement

Measuring the exact cost of corruption is difficult due to its covert nature. There is however, a substantial amount of international research on the quantification of the cost of corruption.

According to estimates by the Organisation for Economic Co-operation and Development, between 20 and 25 per cent of the public procurement budget is likely to be lost to corrupt activity.³⁸ It also notes other estimates which are as high as 30 per cent.³⁹

The Department of Finance online publication *Who Buys What and How*, reports that the expenditure on goods and services for 2017-18 in the WA public sector was just over \$15 billion. It is clear that even a conservative estimate of 20 per cent, or \$3 billion, lost to corrupt activity would be a substantial amount.

36 For further detail see: Office of the Auditor General, *Health Department's Procurement and Management of its Centralised Computing Services Contract*, Western Australia, February 2016.

37 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 4.

38 Organisation for Economic Co-operation and Development, *Implementing the OECD Principles for Integrity in Public Procurement*, 2013, p. 22.

39 Organisation for Economic Co-operation and Development, *Preventing Corruption in Public Procurement*, 2016, p. 7.

It was suggested to the Committee that putting in place a strategic management framework for procurement can lead to a '10 to 15 per cent cost improvement' and where there is a high level of leakage of expenditure due to fraud and corruption, this saving can be as high as 20 to 30 per cent.⁴⁰

The cost of corruption can also be measured in non-financial ways. Probably the most significant cost is the erosion of public trust in government that occurs when corruption comes to light.

Commissioner McKechnie said in relation to the NMHS, while the money involved was not significant, the greater cost was the reputational damage, which is hard to undo.⁴¹

There is also the price paid when corruption 'diverts funds away from social needs, engenders bad decisions, distorts markets and competition, raises prices and costs, and increases the likelihood that services and goods will be poor quality, potentially putting sustainability, the environment and human life at risk.'⁴²

One of my investigators told me that on the morning after the [CCC] report, or the Saturday morning, they were shopping and somebody came up to them, because they knew they worked for the CCC, and said, "Look, I work at north metro. I'm a nurse. I'm absolutely ashamed to say that I work at north metro." That is the damage, often. It is not just financial; it is the huge reputational damage.

*- Hon John McKechnie QC,
Corruption and Crime Commissioner*

Finding 8

The cost of corruption in public procurement is significant, when both financial and non-monetary costs are taken into account. Reputational damage is a particularly significant cost.

⁴⁰ Ms Christine Tonkin, Procurement Practitioner, *Transcript of Evidence*, 26 November 2018, p. 3.

⁴¹ Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 13.

⁴² Transparency International, *Curbing corruption in public procurement: A practical guide*, 2014, p. 8. While not the focus of this inquiry, there is a growing recognition that corruption in procurement has a disproportionate impact on the poor and most vulnerable, increasing costs and reducing access to services, including health, education and justice. For more information see: <https://sustainabledevelopment.un.org/sdgs>.

Chapter 3

Reforming a broken procurement system

The Committee received considerable evidence about the complexity and fragmented nature of the current procurement legislative and policy framework. This leads to inconsistencies and creates uncertainty. This is a corruption risk, as confusion around process can make it easier for individuals to excuse non-compliant behaviour. It also engenders a culture of non-compliance, where it becomes acceptable to cut corners because the right way to do things is seen as unnecessarily cumbersome.

Furthermore, the fragmented nature of procurement legislation and policy can unintentionally impose competing requirements, and unanticipated outcomes, which are counter to best practice for public procurement.

The Committee welcomes the procurement reform being undertaken by government, and encourages it to make corruption prevention a key consideration in reform initiatives. Corruption prevention and detection should be a core aim of this new framework, rather than being addressed in an *ad hoc* manner every time the Corruption and Crime Commission uncovers corruption.

Public procurement in WA is decentralised and compliance-driven

The world of public procurement management has moved on since the 1980s and 1990s when the transactionally focused ... approach to procurement policy and management evident in the State Supply Commission policies was first fashionable in Australia.

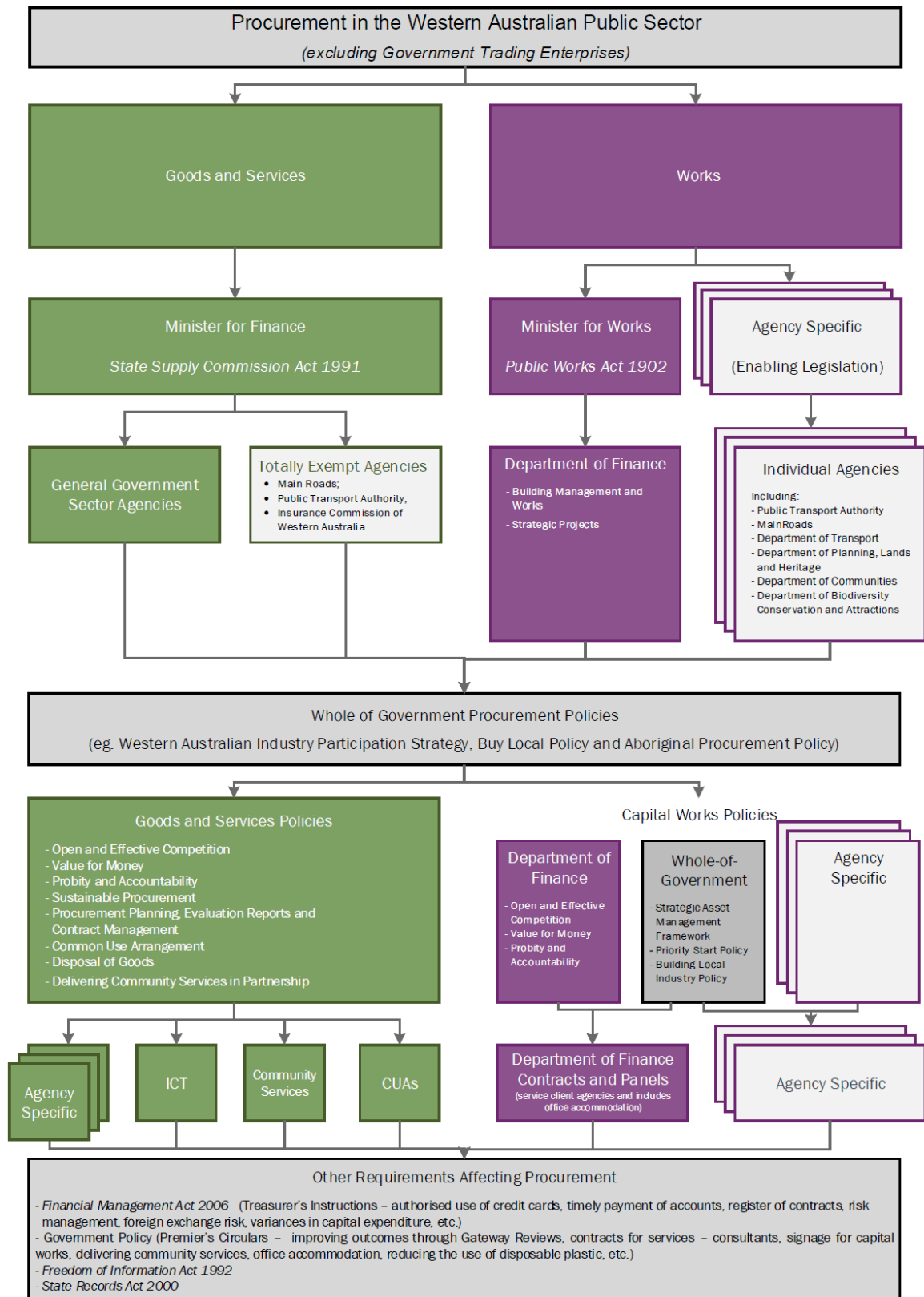
- Christine Tonkin, Procurement Practitioner

Procurement in Western Australia is largely decentralised. Agencies generally carry out their own procurement functions within a centrally managed framework. Guidance and regulation is provided through legislation, policy, central governance structures, access to central systems and the availability of Common Use Arrangements (CUAs).

Procurement practices are structured around compliance with policies and rules

set by central agencies, such as the Public Sector Commission, Department of Finance and Treasury. The success of such a system relies on public sector employees acting ethically and in the best interest of the state.

Figure 3.1: Procurement framework in WA⁴³



June 2019

The Special Inquiry into Government Programs and Projects (Langoulant report) found a general level of compliance with policy, but identified that improvements were needed in procurement planning and contract management. It noted that a desire to achieve compliance meant that the focus of agencies was often on process, rather than outcomes.⁴⁴

The Auditor General also highlighted a tendency for public sector officers to follow the rules rather than make a decision based on an intuitive assessment of all competing priorities and considerations.⁴⁵

**Public sector
procurement policy
[in WA] ... and the
framing of
procurement strategy
appears to lack depth
and focus on results.**

- Christine Tonkin,
Procurement Practitioner

Western Australia's current framework is focused on outcomes related to compliance, value for money, service delivery and efficiency.⁴⁶ While there is nothing wrong with these goals, they do not go far enough in the prevention of corruption.

For example, a compliance-driven approach means that corruption may remain undetected as long as all the expected behaviours are displayed. This was illustrated by the case of the reported corruption in NMHS facilities management. It is also evident in the alleged corruption within the Housing Authority and Department of Communities.⁴⁷

In relation to the NMHS matter, corruption went unchecked for over a decade largely because attention was not given to smaller transactions which came in under delegation thresholds.

The 2019 governance review of the NMHS noted that the risk-based approach adopted by the Department of Health and the NMHS meant that higher value contracts (over \$250,000) were given greater scrutiny in terms of ensuring open and transparent decision-making. The purchasing threshold-based requirements of the procurement policy reflected this approach. Smaller transactions were not scrutinised, or considered as a whole over a period of time.⁴⁸

Similarly, with the corruption recently uncovered within the Department of Communities, it is alleged that the senior public servant involved approved invoices for amounts which came in just under the threshold of \$50,000, an amount which he could approve for payment

43 Ms Cindy Dymock, Executive Assistant to the Director General, Department of Finance, email (attachment), 11 June 2019.

44 Public Sector Commission, *Special Inquiry into Government Programs and Projects: Final Report Volume 1*, report prepared by Mr John Langoulant AO, Special Inquirer, Western Australia, February 2018, p. 84.

45 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 11.

46 Submission 9A, Ms Christine Tonkin, pp. 4-5.

47 The co-accused are alleged to have manufactured false invoices at the Department of Communities over a period of 11 years, and to have had money paid into company bank accounts before withdrawing it for personal use. They are charged with stealing more than \$22 million over an 11-year period of time.

48 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p11-12.

without scrutiny. It is alleged this allowed him to siphon away a considerable amount of money over a period of time, while appearing to comply with policy.

In the modern procurement environment, apparent compliance with transactional-based policy is not enough to prevent or detect corruption. A more strategic approach, one which addresses vulnerability to corruption, is needed.⁴⁹

Finding 9

Procurement in WA is structured around compliance with policies and rules, the success of which generally relies on public sector employees acting ethically and in the best interest of the state.

Finding 10

A compliance-driven approach to procurement means that corrupt behaviour is easy to hide so long as compliant behaviours appear evident.

In the modern procurement environment, apparent compliance with transactional-based policy is not enough, on its own, to prevent or detect corruption. A more strategic approach is needed.

The procurement framework is complex, inconsistent and difficult to navigate

The legislative and policy framework for public procurement in WA is complex, fragmented and inconsistently applied across the public sector. As a result, there is a range of practices across the public sector for procurement.

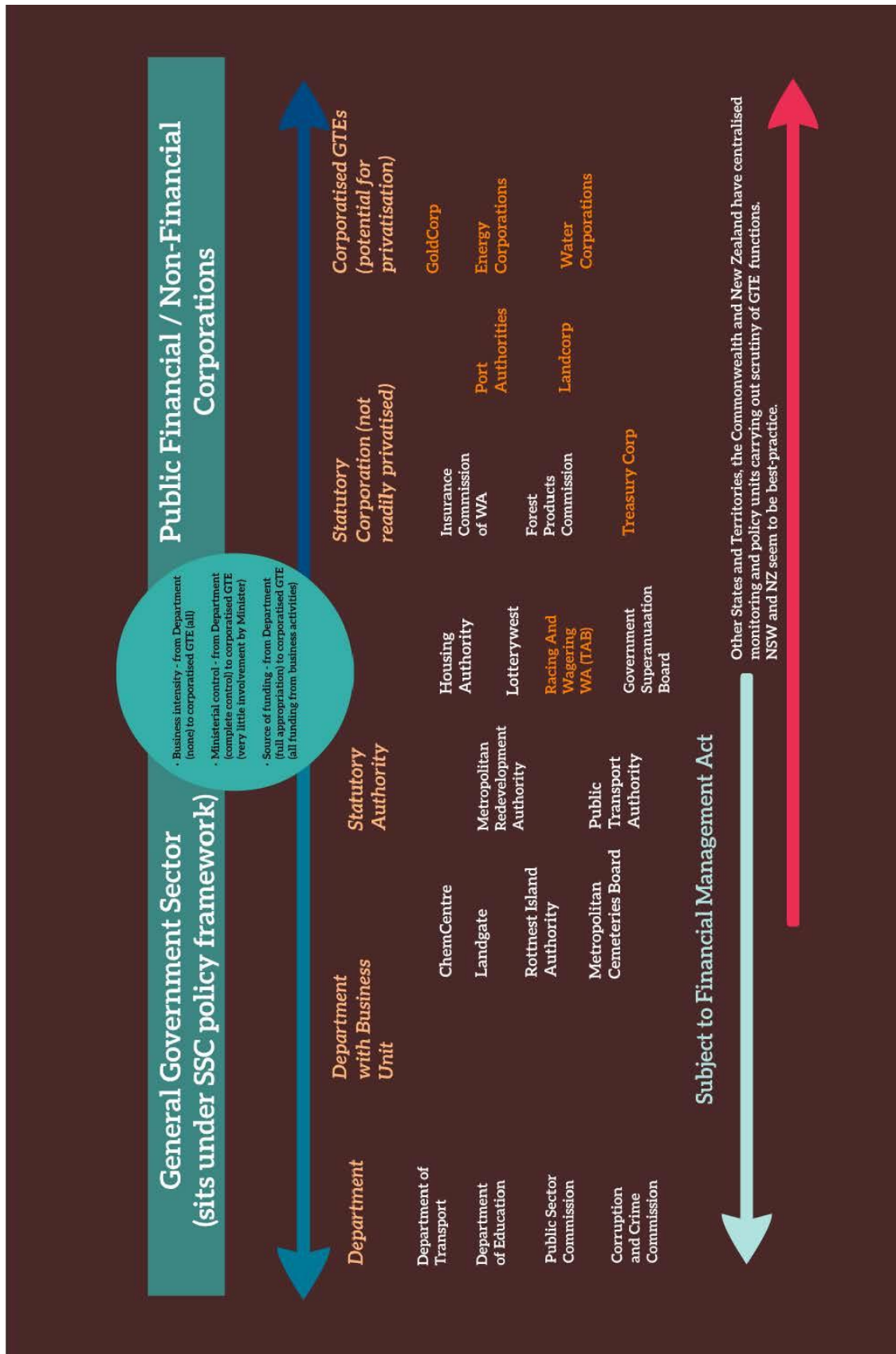
Differing frameworks apply to procurement depending upon whether the public authority is a general government sector agency, statutory authority, government trading enterprise (GTE), university, TAFE or local government authority. Although a significant number of bodies are subject to the policy requirements of the State Supply Commission (SSC) and as such fall within the remit of the Department of Finance, there are statutory bodies, boards and committees that sit outside this framework.⁵⁰

Adding to this complexity is the fact that differences between general government sector agencies and GTEs are not static—these bodies sit on a spectrum (see Figure 3.2 below). Some are subject to the requirements of the *Financial Management Act 2006*, while others are not.

49 Submission 9A, Ms Christine Tonkin, p. 17.

50 Mr John Langoulant AO, Special Inquirer into Government Programs and Projects, *Transcript of Evidence*, 9 May 2018, p. 3.

Figure 3.2: Spectrum of general government sector agencies through to corporatised GTEs⁵¹



The Committee also found that the policy framework is not applied consistently across agencies. The range of agencies impacted by a particular policy or piece of legislation can vary. Box 3.1 provides an example of two pieces of legislation, which both impact upon procurement, but which differ in scope and application.

Box 3.1: Inconsistencies in the application of procurement-related legislation

The Western Australian Industry Participation Strategy (WAIPS) applies to a different range of public sector bodies and types of procurement than the *State Supply Commission Act 1991*.

The *State Supply Commission Act 1991* (SSC Act) applies to public authorities, including universities and TAFEs, but not GTEs. It applies to the procurement of goods and services but not works.

The *Western Australian Jobs Act 2017* (Jobs Act) requires the Minister to develop and implement a written strategy about the participation by local industry in activities for or in connection with certain supplies, or procurements, as defined by the Jobs Act.⁵²

In contrast to the SSC Act, the WAIPS applies to all departments, agencies, statutory authorities and GTEs. It does not apply to universities, local government and grants. It applies to all forms of procurement—goods, services, housing and works.

External oversight and audit are more difficult in such a system. For example, the Office of the Auditor General must tailor each audit to take into account a unique framework of policy and statute. Within the overarching financial framework and Treasurer's Instructions different implementation, as well as any exemptions due to regulatory instruments or other mechanisms, makes audit complex. Performance audits in particular—which examine a particular topic—require careful planning to ensure compliance is accurately assessed.⁵³

Overall, the fragmentation, complexity and inconsistency of the legislative and policy framework creates uncertainty, which increases corruption risk. This was a key factor in allowing the corruption at the NMHS to occur and then flourish⁵⁴ as Case Study 1 sets out.

Finding 11

The procurement framework in WA is fragmented, complex, inconsistent and difficult to navigate. There is confusion within industry as to which statutes and policies apply to particular works procurements. The range of agencies impacted by a particular policy or piece of legislation can vary and procurement practices vary widely across the sector. This situation is a heightened corruption risk.

51 Figure adapted from Attachment 1 (p.213) in the 2018 *Special Inquiry into Government Programs and Projects: Final Report Volume 1*, prepared by Mr John Langoulant AO.

52 Government of Western Australia, *The Western Australian Industry Participation Strategy 2019*, Western Australia, July 2019.

53 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 3.

54 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p. 3 and pp. 8-9.

Case Study 1

Works procurement at the North Metropolitan Health Service

NMHS staff note that during the period in which the corruption was occurring in facilities management, in the absence of a clear policy specific to works, there was often uncertainty as to whether certain purchases under \$250,000 were considered 'goods and services' or 'works'.

In particular, when procuring the services of consultants related to building projects, such as architects or engineers, there was uncertainty on whether this classified as 'services', as it is a consulting activity; or 'works', since it relates to the construction of works.

The classification of 'good and services' versus 'works' is important.

The procurement of goods and services over \$50,000 leads to involvement from the Health Corporate Network.

Larger capital works projects are run through Building Management & Works or Strategic Projects in Finance (for example, hospital construction). Works over \$250,000 trigger involvement from the Department of Finance.

Neither the Health Corporate Network nor the Department of Finance are required to be involved in lower value works-related procurement. This is where the corruption occurred.⁵⁵

Unintended consequences of policies or rules – or, be careful what you wish for

The fragmentation of the policy and legislative framework can unintentionally impose competing requirements. This is a corruption risk, as confusion around process can make it easier for individuals to excuse non-compliant behaviour.⁵⁶ It also engenders an internal culture of avoiding red tape, where it becomes acceptable to cut corners because the right way to do things is viewed as being cumbersome.

When assessed from the perspective of managing corruption risk, well-intentioned policy directives implemented with poorly designed processes and incentives can lead to unintended consequences, creating a situation that is ripe for corruption.⁵⁷ It can be a case of 'be careful what you wish for.' Performance measures provide incentives for organisations to behave in particular ways. What at face value may appear to be useful may in fact be counter-productive.⁵⁸

55 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p9.

56 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 23.

57 *ibid.*, p. 5.

58 Submission 9A, Ms Christine Tonkin, p. 11.

The complexity surrounding competing policy directions can be administratively difficult for procurement officers. It can also reduce clarity in being able to see when procurement is done well and when it is not.

The Auditor General identified the benefit of having a framework of principles in place, to establish good practice and rules where necessary, but which allows sufficient flexibility when it makes sense to do something else.⁵⁹

Box 3.2: Competing policy directives – a closer look at the Buy Local Policy

The Buy Local Policy is used by the WA Government to maximise supply opportunities for Western Australian and Australian businesses by means consistent with achieving value for money. In support of this aim, the policy contains initiatives that are intended to provide local businesses with an enhanced opportunity when bidding to supply to the Western Australian Government.⁶⁰

The Buy Local Policy involves tilting the balance in favour of a particular vendor, which introduces the potential for issues concerning probity. Ensuring a level playing field is the best way to avoid any probity issues.

In effect, the Buy Local Policy operates counter to a principle which is considered best practice in procurement, that of open and effective competition.

Reducing open competition can provide increased opportunity for corruption to occur. Buy local policies can also encourage suppliers masquerading as local companies or collusion between local and non-local suppliers.⁶¹

The Office of the Auditor General found that the Buy Local Policy is not generally enabling local companies to have a chance to compete on a level playing field. In fact, there are a range of avenues available for non-local companies to win a contract. Other issues include determining what constitutes 'local', or that having a registered office in WA might count as local, even though the business is not, in reality, local.⁶²

Identifying these complexities is not to suggest there is no place in procurement for local content. Procurement policies that prioritise local procurements are not unique to WA—they are utilised by many governments to achieve outcomes and are a part of the modern procurement framework. Rather the policymaking and implementation process should consider the possibility of unintended outcomes.⁶³

Finding 12

The fragmentation of the policy and legislative framework can unintentionally impose competing requirements. This is a corruption risk, as confusion around process can make it easier for individuals to excuse non-compliant behaviour.

Finding 13

The complexity surrounding competing policy directions can be administratively difficult for procurement officers. It can also reduce clarity in being able to see when procurement is done well and when it is not.

59 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 13.

60 Department of Finance, *Buy Local Policy*, Western Australia, July 2002.

61 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 24.

62 Mr Jason Beeley, Assistant Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 12.

63 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 25.

Finding 14

Procurement frameworks need to allow sufficient flexibility to apply various policy directives, and be underpinned with quality training, so that public officers know how to juggle competing priorities.

Procurement reform

Background

Two recent reviews of the public sector in WA have emphasised the need for reform of the procurement framework. The first of these was the Service Priority Review, which identified shortcomings in the use of procurement data collected purportedly to increase accountability and supplier management. It was also critical of the lack of transparency and accessibility to information. The review identified a need for specialist commercial acumen to maximise value in procurement and to protect the state's interests, particularly in high value goods and services contracts.

The second was the Special Inquiry into Government Programs and Projects (Langoulant report) that highlighted a number of issues relating to accountability, transparency and expertise in procurement. In particular, it suggested a need for simplifying and standardising arrangements across the sector, with greater oversight and centralised leadership.

The role of the Department of Finance in reforming procurement

The Department of Finance is progressing reform which aims to establish it as the functional leader for procurement and to set consistent standards.⁶⁴ This means it will have an equivalent role with works procurement and goods and services.

A consolidated piece of legislation is to provide the basis for sector-wide policies which apply to all forms of procurement.⁶⁵ It is anticipated that the new Act will regulate procurement, but still allow agencies autonomy to purchase independently and operate the business of the agency.

There will be a central policy function and central advice function, along with training. These functions will be for all types of procurement.⁶⁶ Importantly, compliance checks on works will be included, which is missing from the current structure.

The proposed single procurement framework, expected in 2021, will cover all aspects of the process, from planning through to contract management. The Department of Finance

⁶⁴ Submission 1, Department of Finance, [to the Public Accounts Committee, Inquiry into public sector contract management practices], p. 3; Ms Stephanie Black, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 3. and Ms Stephanie Black, Department of Finance, *Transcript of Evidence* [to the Public Accounts Committee, Inquiry into public sector contract management practices], 20 March 2019, p. 8.

⁶⁵ Mr Mark Bryden, Director, Strategic Issues, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 8.

⁶⁶ *ibid.*, p. 5.

envisages requiring agencies to provide information, financial or otherwise, if considered necessary.⁶⁷

The government has cautioned however, that while the new Act aims to reduce complexity, ‘simplifying the policy framework for procurement will be an ongoing challenge given the increasing expectations of what can be achieved through procurement.’⁶⁸

Capital works procurement reform

Works procurement is not centrally led. Rather, it is primarily conducted under specific works legislation at an agency level, as follows:

- the Department of Finance’s Building Management and Works, and Strategic Projects business units procure capital works under the *Public Works Act 1902*
- other ‘works’ agencies (e.g. Main Roads WA) procure works under their own legislation.⁶⁹

The Works Agency Council’s Procurement Reform Working Group brings together the larger works agencies in order to come to a consensus on what best practice looks like in relation to the procurement of capital works by government.⁷⁰ It includes the GTEs (Western Power and Water Corporation), Main Roads WA, the Public Transport Authority, and the Department of Communities. These agencies represent around 80 to 90 percent of the state government expenditure on capital works.⁷¹

There seems to be a general acceptance of the need for reform amongst these agencies which will, for the first time, come under the remit of the Department of Finance in relation to the procurement of works.⁷²

The Works Agency Council met three times in 2019. These workshops included the development of the broad procurement reform program, a new procurement policy suite and ethical procurement content.⁷³ This consultation also canvassed an overarching procurement framework, which includes works—a first for WA.

The Committee is advised that in 2020, consultation on procurement reform will primarily be conducted through a broader Procurement Reform Working Group (with membership comprising both works and non-works agencies). There is no timeframe set for the new

67 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, *Transcript of Evidence* [to the Public Accounts Committee, Inquiry into public sector contract management practices], 20 March 2019, p. 8.

68 Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee ‘Knowing what good looks like – Challenges in managing major public sector contracts’*, Western Australia, February 2020, p. 2.

69 Submission 3, Department of Finance, 13 March 2018, p. 2.

70 Ms Jodie Cant, Director General, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 7.

71 Mr Phil Helberg, Acting Deputy Director General, Building Management and Works, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 7.

72 Mr Phil Helberg, Acting Deputy Director General, Building Management and Works, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 7; and Mr Peter Woronzow, Managing Director, Main Roads WA, *Transcript of Evidence*, 8 May 2019, p. 20.

73 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 21 January 2020.

procurement framework to be finalised and implemented. The Works Agency Council will continue to operate, as it is considering more than just procurement reform.⁷⁴

The importance of getting it right

The Committee welcomes this reform but shares a concern identified by the Public Accounts Committee, which, in a November 2019 report, made several observations about the reform process. One of those was the lack of publicly available detail around progress made towards key reform initiatives.⁷⁵

This is a major reform of a system that, from many perspectives, is very broken. There should be clarity about the nature of the reform, perhaps in the form of a blueprint or a reform agenda, against which progress can be assessed. This way the public of Western Australia can be given certainty about how procurement in this state will be improved.⁷⁶ In its response to the Public Accounts Committee report mentioned above, the government has advised that it is working towards establishing a ‘reform dashboard’ to show progress of the procurement reforms.⁷⁷

Corruption prevention and detection should be a core aim of this new framework, rather than being addressed in an *ad hoc* manner every time the Corruption and Crime Commission uncovers corrupt practice. The process needs to take into account best practice principles advocated by international anti-corruption organisations. Key principles which are not consistently applied within the current framework are discussed in the following chapter.

Recommendation 1

Reforming the procurement framework should remain a priority for the government with firm deadlines set. It should carefully consider recent cases of alleged corruption and allocate the necessary resources to incorporate findings into a workable sector-wide procurement model.

Recommendation 2

Corruption prevention and detection should be a core aim of the new procurement framework, rather than being an issue addressed *ad hoc* every time the Corruption and Crime Commission uncovers corrupt practice.

⁷⁴ Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 21 January 2020.

⁷⁵ Public Accounts Committee, *Knowing what good looks like: Challenges in managing major public sector contracts*, November 2019, pp. 13-14.

⁷⁶ Ms Christine Tonkin, Procurement Practitioner, email, 24 November 2019.

⁷⁷ Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee ‘Knowing what good looks like – Challenges in managing major public sector contracts’*, Western Australia, February 2020, p. 3.

Chapter 4

Procurement in WA – key areas for reform

Aspects of the current procurement framework require improvement in order to curb corruption.

Areas for reform can be grouped under four main principles—transparency, accountability, oversight and effective competition. These principles are considered best practice for corruption prevention in public procurement.

Transparency

A lack of transparency in procurement

The Committee has been told that Australia is generally complacent about transparency.⁷⁸

Transparency is measured by how open government actions are to public scrutiny and includes access to information and data, conduct of programs and projects, financial outcomes, and rationales for decisions.⁷⁹ Transparency is critical for minimising the risk of corruption and ensures fair competition and integrity by engendering trust in the system. It also makes it easier to detect corrupt behaviour.

Transparency around state spending in Australia is poor and the useless state tender databases need to be addressed by state governments.

Michael West, Journalist

In 2019 the Public Accounts Committee (PAC) concluded there is no sector wide approach to the collection and publication of contract information and that considerations of commercial confidentiality are often seen to be prioritised over transparency. PAC expressed the view that the Department of Finance should ‘do more to formalise standard reporting requirements for contract information.’⁸⁰

Evidence received by the Committee can be distilled into two issues around transparency—data collection and access to information. The collection and publication of sector-wide data, amongst other things, allows for the measurement of trends and risk across the sector. Access to procurement information is an important prerequisite for integrity. Inadequate access to information around decision-making can hide the corrupt manipulation of decisions in a procurement process.

78 Ms Serena Lillywhite, Chief Executive Officer, Transparency International Australia, *Briefing*, 26 October 2018.

79 Public Sector Commission, *Special Inquiry into Government Programs and Projects: Final Report Volume 1*, report prepared by Mr John Langoulant AO, Special Inquirer, Western Australia, February 2018, p. 84.

80 Public Accounts Committee, *Knowing what good looks like: Challenges in managing major public sector contracts*, November 2019, p. 39.

Box 4.3: Transparency principles codified in the Langoulant Report

The community of Western Australia is entitled to know how taxpayer's money is spent through the disclosure of information.

The establishment of any government project should include reference to accountability and transparency. Projects need to include arrangements which ensure the community can be and will be well-informed about the obligations of government.

Public interest should be considered in all investment evaluation and procurement decisions. The public should be given the opportunity to contribute to the planning stages of a government project.

Transparency and good governance increase confidence and trust. Agencies and Government Trading Enterprises should have a default position of openness about all aspects of government projects.

Withholding information from the public on the basis of 'commercial-in-confidence' should be the exception, not the rule and reflect a very tight definition around trade secrets and harm to the public interest.

Information should be made available to the public in a timely, accessible and easily understandable way following standardised and meaningful practices.

All suppliers need to support government in driving transparency in order to build public trust in their services.

Confidentiality provisions in conditions of tender and contracts should not conflict with statutory disclosure obligations or these principles.

Source: Public Sector Commission, *Special Inquiry into Government Programs and Projects: Final Report Volume 1*, report prepared by John Langoulant AO, Special Inquirer, Western Australia, February 2018, p. 91.

Tenders WA

Where an awarded contract for goods or services (or variation to contract) is valued at \$50,000 or above, a public authority must publish the contract details on Tenders WA. When the Department of Finance co-ordinates goods and services procurement valued over \$250,000 the tender is advertised and the award details are published on behalf of agencies.

Inconsistencies in the framework lead to confusion amongst stakeholders around when Tenders WA should be used. For example, within the construction industry, which routinely contracts to government for works projects, there was evidence of confusion as to which statutes and policies apply. There is particular confusion around works procurement and the requirement for open and effective competition, which then impacts upon the use of Tenders WA.⁸¹

For example, Main Roads WA and the Public Transport Authority are required to comply with SSC policies for the procurement of goods and services. This includes the requirement to advertise tenders for goods and services and to publish the award details on Tenders WA.

As works procurement is not centrally led by the Department of Finance, Main Roads WA and the Public Transport Authority procure works under agency-formulated works policies and may not have a requirement to use Tenders WA. However, both entities do regularly use Tenders WA for advertising works contracts, creating some confusion.

⁸¹ Based on information provided to the Committee by the Civil Contractors Federation WA on 29 March 2019.

The Committee learned that the Department of Finance does not necessarily know when the site is not being used as it should.⁸² In addition, there is no monitoring or auditing of the use of Tenders WA for works.⁸³

There is limited monitoring and auditing of the use of Tenders WA for goods and services. Agencies subject to goods and services policies under the SSC Act must undertake regular compliance audits. Since 2017 there has been 'a requirement for all agencies to undertake independent audits under specific terms of reference and to submit the audit findings to the Department of Finance. These audits require verification that contract details are published on Tenders WA.'⁸⁴

The Department of Finance advised that this 'most recent mandatory compliance auditing of agencies' compliance with State Supply Commission policies ... disclosed some non-compliance by agencies which has been addressed with the individual agencies.'⁸⁵

The Committee acknowledges that the Department of Finance is aware of the limitations of Tenders WA; limitations which include the fact that it only partially captures contract information, and the fact that it does not always meet reporting requirements. The Committee will watch with interest reforms enacted in this area.

What is not measured is not managed

Transparency is reliant on the collection and publication of sector-wide data and analysis. This provides evidence and allows for the measurement of trends and risk across the sector. Observations gained can yield insights on new and emerging risks and facilitate detection of anomalies across the procurement process.

The collection and analysis of procurement related data as a basis for monitoring and measuring procurement performance is not de rigueur in the Western Australian public sector.

- Christine Tonkin, Procurement Practitioner

To date, this has been done poorly across the sector in WA, both at the agency level and across the whole of government. Although, the Committee notes efforts on behalf of the Department of Finance to improve this situation (see below—new initiatives in reporting).

In 2017 a background paper released as a part of the Service Priority Review identified that analysis of centrally-held procurement data could be improved in order to identify and analyse procurement patterns across the sector. It identified that it would also be useful to evaluate the effectiveness of tenders across the sector.⁸⁶

The background paper noted that, in most cases, compiling procurement information was cumbersome and time consuming. This is because agencies must be approached individually

82 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 27 June 2018, pp. 11-12.

83 Submission 3A, Department of Finance, p. 3.

84 *ibid.*, p.2.

85 *ibid.*

86 Department of the Premier and Cabinet, *Service Priority Review Background Paper: Procurement of Goods and Services*, Western Australia, October 2017, p. 10.

to provide information, case-by-case, and there is not always an awareness of expenditure by other agencies in commensurate areas. In addition, it found that the Department of Finance was overly reliant on agencies to provide such information.⁸⁷

Who Buys What and How

The Service Priority Review reported that there is a wealth of data collected ‘in the course of the Government’s procurement operations that could be leveraged more effectively to increase accountability, service delivery and supplier management.’⁸⁸

Currently whole-of-sector reporting on procurement is achieved through the Department of Finance’s *Who Buys What and How* annual online publication. Department of Finance officers say this has increased transparency across the sector on aspects of procurement and drives agencies to perform well in procurement.⁸⁹ For example, the report details aspect of agencies’ compliance with the *Buy Local Policy* and the *Aboriginal Procurement Policy*.⁹⁰

However, the timeliness of this reporting is an issue — *Who Buys What and How* is usually published some time after the data is collected. Furthermore, it is data aggregated across the sector, which, while important in some respects, is of limited use in others.⁹¹

Another issue identified by the Committee in its inquiries is that the report draws heavily on data from Tenders WA, which means any deficiencies in this data set are carried over into whole of sector reporting.

New initiatives in whole-of-sector reporting

During 2019 the Department of Finance was developing tailored business intelligence dashboard reports for individual public sector agencies, which use data collected from Tenders WA to highlight comparison expenditure and supplier costs with other agencies. This aims to incentivise agencies to use Tenders WA so they are assured of being part of the analysis.⁹²

The Department of Finance also advised that upon roll out of the above-mentioned dashboard reports it will work with agencies to identify data gaps in Tenders WA. The Committee is advised that these dashboards are now available to aid forward procurement planning.⁹³

87 Department of the Premier and Cabinet, *Service Priority Review Background Paper: Procurement of Goods and Services*, Western Australia, October 2017, p. 10.

88 Department of the Premier and Cabinet, *Working Together: One public sector delivering for WA, Service Priority Review, Final Report to the Western Australian Government*, Western Australia, October 2017, p. 71.

89 Submission 3A, Department of Finance, p. 1-2.

90 *ibid.*, p. 2.

91 Department of the Premier and Cabinet, *Service Priority Review Background Paper: Procurement of Goods and Services*, Western Australia, October 2017, p. 10.

92 Submission 3A, Department of Finance, p. 1-2.

93 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 21 January 2020.

Open contracting and data sharing – global initiatives in transparency

The Committee attended the 2018 International Anti-Corruption Conference in Denmark and met with a range of experts focussed on combatting corruption in public procurement. Members were briefed on the latest trends in transparency initiatives, one of which is open contracting (see Box 4.4).

Open contracting is a global approach, originally developed in the World Bank Institute. It aims to deliver better value for money to government and better value to the many users of public contracting information.

Box 4.4: More transparent and effective contracting

The Committee was briefed by an expert working with the Open Contracting Partnership.

Efforts to make public contracting more transparent and effective in countries (including the UK, Ukraine, Slovakia, Mexico, Colombia, Nigeria, and Paraguay) have been most effective where they combined 3 elements:

1. Public contracts are open by design.

Governments publish contracts and make deals open by design in order to share information with government officials, private sector contractors, community members and organisations.

For example, in Slovakia a government contract is not legal until it is published. This includes putting an unambiguous public disclosure clause in all government contracts (unless appropriate public interest redactions are used, in which case, the reasons are published) and publishing data on contract milestones and performance.

2. Machine-readable, reusable open data on public procurement is available, including information about how deals are reached.

Using the Open Contracting Data Standard, governments perform smarter analysis of data, helping them maintain value for money, gain efficiencies, and easily report nationally and internationally using flexible open data. Businesses have access to previous contracts to understand markets, identify opportunities, and choose where to invest or tender based on clear project pipelines. Citizens and community organisations can monitor the use of public funds and the quality of service and infrastructure delivery.

The more governments standardise and automate the publication of information on planning, procurement and implementation of contracts, the easier it is for the government to be able to connect and use its own data for better decision-making.

As procurement is increasingly used to contribute to broader environmental and social goals, better data is needed to monitor if these policies are having their intended impact. Publishing open data also enables the market to consume, analyse and innovate around this data.

3. Engagement channels to encourage the use of data and to identify bottlenecks or to add value and insight to government services are available.

Engaging citizens, businesses and technologists in contracting can improve results.

Engagement with business means more have the information they need to make decisions about participating in procurement markets, especially based on good information about past conditions and prices, and future opportunities.

Public participation can help make sure that contracts are responding to public needs, manage expectations, and provide oversight and feedback for better delivery of goods and services. Government, contractors and citizens can work together to address irregularities and problems that are identified through engaging communities to assist with monitoring projects.

Source: Ms May Miller-Dawkins, email, 4 December 2018

Open contracting involves publishing accessible and comparable data across the complete cycle of public procurement, in support of improving transparency and accountability. The publication of data in this way acts as a means of facilitating engagement between government, citizens and businesses to identify and fix problems.⁹⁴ Open contracting is supported by governments utilising a common model of data sharing.

The Open Contracting Data Standard (OCDS) is a model that facilitates the disclosure and comparison of data at all stages of the contracting process from planning, tendering, awarding, through to the implementation of public contracts.⁹⁵

Australia is among those countries that have taken steps to adopt open contracting, utilising the OCDS. The Australian Government, in aiming to fulfil its commitments in the Open Government National Action Plan, assessed its compliance with the OCDS and following this assessment agreed to take steps to increase its compliance. The Australian Government undertook to do this by publishing AusTender contracting data in compliance with the OCDS.⁹⁶

Taking an open contracting approach that is supported by compliance with the OCDS has potential to:

- deliver a more competitive procurement environment, creating a level playing field for suppliers
- improve public integrity by deterring fraud, corruption, and conflicts of interest
- track and improve service and infrastructure delivery and outcomes
- foster collaboration, enable better data sharing across agencies and encourage service design approaches to better meet public needs
- enable a better understanding of the market and encourage diversity in suppliers and collaborations
- restore trust in government decision-making and management.⁹⁷

Although WA has an open data policy that supports adopting principles of open contracting,⁹⁸ it is not clear that it is fulfilling the aims of its open data policy in the publication of public sector procurement data. This is evident in some of the deficiencies around the use of Tenders WA where limitations in its capacity to ensure transparency are apparent.

Open contracting has a range of goals. The goal primarily relevant to this report concerns improving transparency and accountability in support of minimising corruption in procurement. WA needs to improve the publication of public sector procurement data and

94 Open Contracting Partnership, *Why Open Contracting*, accessed 18 December 2019, <<https://www.open-contracting.org/why-open-contracting/>>.

95 *ibid.*

96 Department of the Prime Minister and Cabinet, *Expand open contracting and due diligence in procurement*, 13 August 2019, accessed 19 December 2019, <<https://ogpau.pmc.gov.au/commitment/expand-open-contracting-and-due-diligence-procurement>>.

97 Ms May Miller-Dawkins, Open Contracting Partnership, email, 4 December 2018.

98 Department of the Premier and Cabinet, *Whole of Government Open Data Policy*, Western Australia, April 2015.

the OCDS provides an example of an emerging best practice model that can inform those improvements.

The WA Government should target increasing compliance with the OCDS, particularly in relation to procurement processes. Consideration needs to be given to WA's current level of compliance with the standard; the costs associated with increasing compliance; and whether full or increased compliance (as in the case of the Australian Government) would be of benefit in mitigating corruption risks.

Finding 15

The monitoring, tracking, measuring and reporting of procurement activities at a sector-wide level requires an immediate overhaul.

Recommendation 3

The Department of Finance, as part of the procurement reform program, should assess public procurement processes in Western Australia against the principles of the Open Contracting Data Standard. Where procurement processes fall short of compliance with those principles, increased compliance (where practicable) should be addressed as a matter of priority. The Minister should report to the Parliament on where compliance could be increased in its response to this report or within six months of the date of tabling of this report.

Accountability and oversight

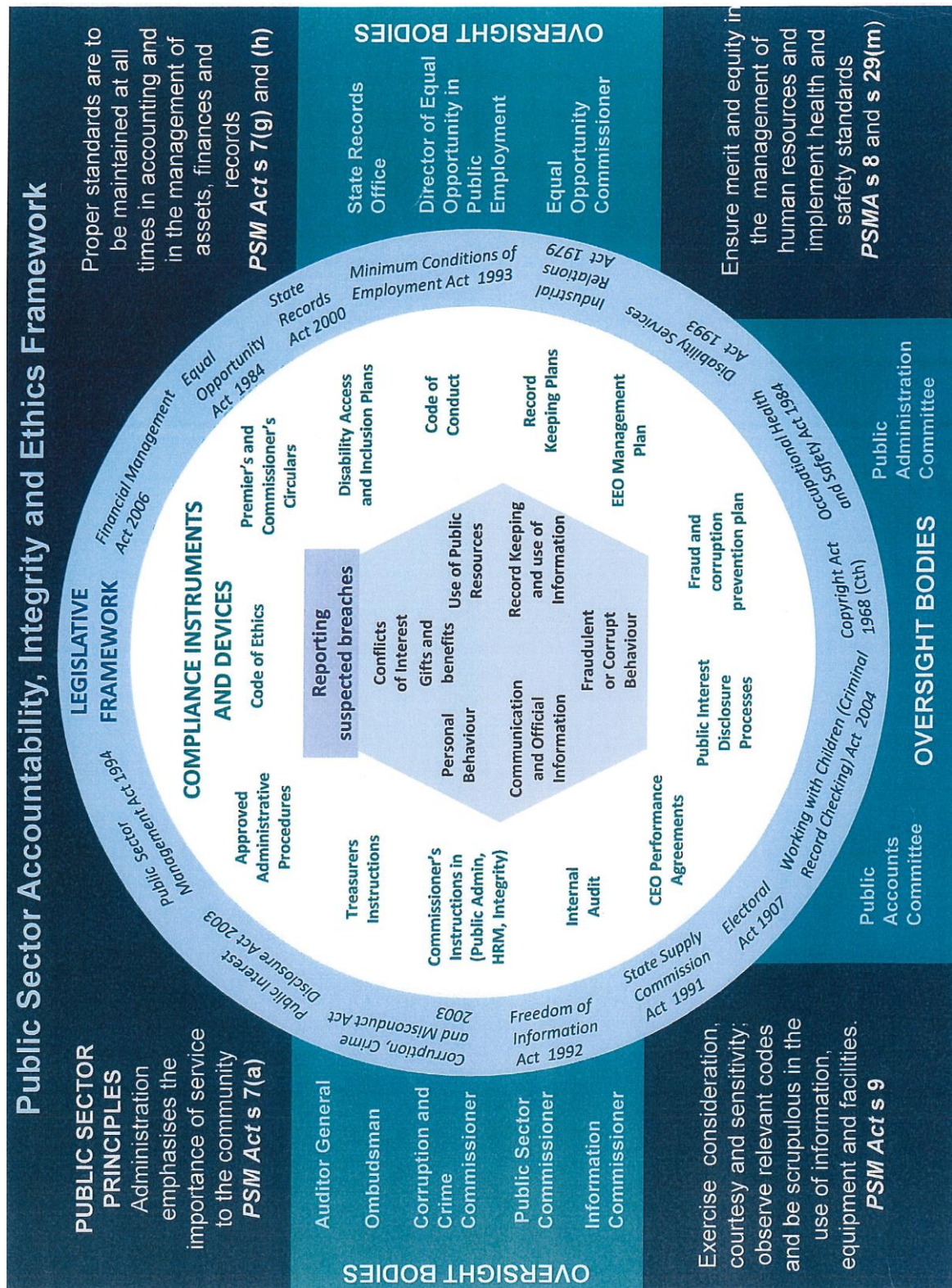
Evidence shows that agencies do not always comply with requirements that are intended to improve accountability in public spending. Furthermore, there are very few consequences for such non-compliance, due to a lack of effective oversight and minimal sanctions for non-compliance.

It is also widely held that agencies in the WA public sector have tended to operate in isolation. The Special Inquirer told the Committee that, for many years, agencies in the WA public sector have been operating within silos, seeing themselves as 'individual standalone entities'; and that there needs to be a shift towards directors general holding each other to account.⁹⁹

Directors general, when they hear of practices which are sub-standard, need to say to each other, "This is just unacceptable behaviour. What are we going to do about it? What are we as a group going to do about it?"

- John Langoulant AO, Special Inquirer into Government Programs and Projects

⁹⁹ Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2018, p. 8.

Figure 4.1: Public Sector Accountability, Integrity and Ethics Framework¹⁰⁰

100 Supplied by the Public Sector Commissioner.

Where does the buck stop?

Agencies make procurement decisions and are responsible for the outcome. Oversight bodies such as the Department of Finance can make suggestions and provide assistance, but ultimately the judgement on procurement matters rests with the accountable authority.¹⁰¹ This responsibility includes the detection and prevention of corruption in procurement processes.

Agency accountable authorities are answerable in relation to procurement matters by way of oversight and audit by the Department of Finance and the Office of the Auditor General. They are also held to account by the investigation of, and reporting on, corruption and misconduct by the Corruption and Crime Commission (CCC) and Public Sector Commission (PSC). Other oversight bodies have jurisdiction so far as their activities impact upon procurement—see Figure 4.1.

The role of oversight and integrity bodies within the procurement framework

Chapter 5 outlines the three lines of assurance within agencies which, if functioning effectively, provide the most important defence against corruption. Then, the fourth line of defence is the accountability and oversight mechanisms which are external to agencies, these being external audit (by the OAG), parliamentary inquiries and other independent reviews and investigations.

... if key accountability agencies such as the Auditor General are not going to be heard and their recommendations embraced then a central pillar of the State's governance structure will be diminished.

*- John Langoulant AO,
Special Inquirer*

Although these external bodies are an important part of the integrity framework and play an important role in public procurement, they cannot be relied upon to satisfy accountable authorities' responsibilities in detecting and preventing corruption within their agencies.

Furthermore, it is up to the accountable authorities to ensure that there is action in relation to audit reports, internal and external, and other inquiries, as well as broader sector-wide integrity initiatives. This function should sit with an agency's audit committee and internal audit function. These aspects of agency governance are discussed in Chapter 5.

Accountability mechanisms

Accountability for performance is key to effective and efficient procurement management and to addressing vulnerability to fraud and corruption. Executives and public officers must be accountable for the execution of their duties and for their decisions and actions.

¹⁰¹ The accountable authority under the *Financial Management Act 2006*. The accountable authority is usually the Director General, Chief Executive Officer or their delegate.

The Committee is not satisfied that there are adequate accountability mechanisms in place around public procurement. The Special Inquirer told the Committee that, in his view, the private sector is far more accountable than the public sector in procurement matters.¹⁰²

The role of anti-corruption and integrity agencies

Accountability is enhanced by having in place mechanisms to investigate allegations of corruption, and these act as a deterrent to future misconduct.

Furthermore, the public scrutiny that is engendered by way of publicity around high profile corruption cases investigated by the CCC is arguably the most effective catalyst for action and reform.

While not strictly considered a part of the public procurement system, best practice recognises that specialised anti-corruption bodies play a vital role in a jurisdiction's oversight and corruption prevention infrastructure. However, anti-corruption and integrity bodies should be the last resort for identifying and mitigating corruption in procurement. These agencies should investigate and report when other controls have proved inadequate.

The most important defence against corruption lies in agency governance and culture. This includes having in place robust internal controls which ensure accountability, effective internal audit mechanisms and a culture which encourages whistleblowing.

Included within this governance structure should be effective mechanisms to investigate misconduct and implement recommendations arising from such investigations. The CCC and PSC play important roles in keeping the sector accountable.

However, most allegations of misconduct are referred to the employing agency for action. Whether this is done, and to what extent the process is overseen by the CCC or PSC, largely depends on the capacity of the agency to properly investigate or otherwise deal with the allegation. Only in a few serious cases does the CCC use its considerable powers to independently investigate corruption.

The Corruption and Crime Commission

The CCC reported that during 2018-19 of the 5,034 allegations it assessed, 1,904 allegations potentially involved misconduct and required further action. The majority of those allegations (1,554) were referred to an authority for action (usually the employing agency), most of which the CCC monitored for an outcome only. Fewer than two per cent of referred allegations were subject to active monitoring and review by the CCC.¹⁰³

The CCC describes active monitoring and review as 'a structured program of engagement, consultation and proactive management.' This type of oversight is usually administered in relation to matters that are assessed as being particularly serious in nature. This type of review by the CCC is also utilised for matters involving review subjects who have an

102 Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2018, p. 5.

103 Corruption and Crime Commission, *Annual Report 2018-19*, Western Australia, September 2019, pp. 20-21.

extensive complaint history or those matters where systemic issues are identified by the CCC.¹⁰⁴

The Public Sector Commission

The PSC receives allegations of minor misconduct. As corruption is within the remit of the CCC, the PSC does not play a role in investigating corruption in procurement allegations. What is important though, is the function it serves in deterring misconduct, thus keeping the sector accountable.

Like the CCC, the PSC has an investigations capacity, albeit significantly smaller and with less capacity than the CCC. Most minor misconduct matters are generally sent back to agencies to deal with; in 2017-18 only 3 per cent of allegations received were dealt with by the PSC.¹⁰⁵ As noted by the Public Sector Commissioner, the PSC investigators' role is seen to be largely one of triage and referral.

Oversight mechanisms

Accountability is achieved through having in place mechanisms for oversight. Oversight is particularly important for a decentralised procurement system where agencies are delegated the authority to procure goods, services and in some cases, works.¹⁰⁶

As noted in Chapter 3, a significant number of statutory bodies, boards and committees sit outside the remit of the SSC Act and not all public procurement is the responsibility of the Department of Finance.

In addition, there are currently numerous gaps and weaknesses in the oversight of procurement, which are briefly outlined in the following sections. The WA Government advised the Public Accounts Committee that:

As part of the Procurement Reform project, [the Department of] Finance has committed to providing more robust centralised governance and oversight, including an effective procurement audit and assurance function. Finance will review its existing processes to determine how best to implement a sector-wide view of agency compliance breaches, noting the important role played by integrity agencies such as the Public Sector Commission (PSC), Office of the Auditor General (OAG) and the Corruption and Crime Commission in public sector governance. [...] Additional stakeholder consultation and thorough analysis of resourcing requirements is needed to determine the finer details of implementation.¹⁰⁷

104 Corruption and Crime Commission, *Annual Report 2018-19*, Western Australia, September 2019, pp. 20-21.

105 According to the Public Sector Commissioner's State of the Sector 2018 report, in the 2017-2018 financial year the PSC received 1022 allegations of minor misconduct. 65% of allegations were referred back to the originating authority to investigate, or on to the CCC to investigate. A further 32% required no further action. These figures show that 97% of allegations were referred to other agencies, leaving 3% (25 allegations) to be dealt with by the PSC.

106 Mr Arne Strand, Director, U4 Resource Centre (Norway), *Briefing*, 23 October 2018.

107 Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee 'Knowing what good looks like – Challenges in managing major public sector contracts'*, Western Australia, February 2020, pp. 4-5.

Department of Finance – goods and services procurement

Public authorities which fall under the jurisdiction of the SSC Act are subject to a rudimentary level of oversight by the Department of Finance. The Committee found that oversight of goods and services procurement by the Department of Finance has lessened in recent years. It has become the task of agencies to monitor this internally.

Even with a remit to oversight certain procurements, the Department of Finance told the Committee that it is difficult for it to identify fraud or corruption through its activities, and concedes that corruption has occurred within agencies under its watch.¹⁰⁸ Prior to 2018, the Department of Finance did not centrally manage and/or record misconduct matters relating to agencies under its remit. The Committee was also informed that there have been very few notifications to the CCC by the Department of Finance.¹⁰⁹

The role of the Department of Finance is more of a compliance check against SSC policies, but Finance officers concede that this oversight is ‘pretty basic’. This may be enhanced under the procurement reform.¹¹⁰ For example, a mechanism to provide greater visibility over whether agencies are submitting all necessary documents to the relevant review committee (e.g. the State Tender Review Committee) is expected.¹¹¹

Currently, agencies are required to have an annual or biennial audit of procurement activities, which tests for compliance with terms and conditions, relevant SSC policies and its framework.¹¹² An agency with the authority to procure up to \$250,000 without involving the Department of Finance can be audited by its internal audit team. An agency which is granted an increase in the threshold must be audited by an external audit company.¹¹³ All transactions over \$50,000 are eligible for audit sampling.¹¹⁴

The Department of Finance doesn’t appear to impose sanctions for non-compliance. If a procurement audit identifies significant non-compliance with supply policies, the Department of Finance is able to notify the agency of measures it must take to comply, require further information, publish a report naming the agency and its failings to comply and/or recommend cancellation of the partial exemption.¹¹⁵ This doesn’t ever appear to have been done.

108 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 5.

109 Ms Jodie Cant, Director General, Department of Finance, letter (attachment), 26 June 2019, p.5.

110 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence* [to the Public Accounts Committee, Inquiry into public sector contract management practices], 20 March 2019, p.8.

111 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 21 January 2020.

112 Department of Finance, *Procurement Compliance (Audit) Framework Guidelines*, Western Australia, March 2018, p. 3.

113 Department of Finance, *Procurement audit and accreditation*, 4 September 2019, accessed 15 January 2020, < <https://www.wa.gov.au/organisation/departments/departments-of-finance/procurement-audit-and-accreditation>>.

114 *ibid.*

115 Regulation 5 of the *State Supply Regulations 1991* sets out the consequences to an agency of non-compliance with supply policies. As part of the reforms underway, it is reported that SSC policies will be

Oversight of works procurement – patchy at best

According to the Executive Director of Strategic Projects in the Department of Finance, oversight of large scale works procured by the department in conjunction with other lead agencies is generally adequate. Major projects conducted by the Department of Finance have robust procurement processes due to the scale of the project and the significant associated risks.¹¹⁶

However, procurement of works at an agency level, particularly lower value works and maintenance contracts, does not have adequate oversight. In relation to the large scale non-compliance at the NMHS, the Department of Finance advised that if this had been occurring in goods and services procurement, it could have acted under the SSC Act to increase its oversight of relevant procurements.¹¹⁷

While there is a committee that reviews goods and services procurements over \$5 million (see the following section), a whole-of-sector committee for works procurement does not currently exist. It is anticipated that a mechanism for reviewing works procurement and contract management will be scoped as part of the procurement reform project.¹¹⁸ An audit and investigation function, to be administered by the Department of Finance, is being developed which will include works. However, the government cautions that ‘it may not be appropriate to apply the same measures to all forms of contracting.’¹¹⁹

State Tender Review Committee

The State Tender Review Committee (STRC) reviews high value, high risk procurement of goods and services. STRC members are appointed taking into account their expertise in procurement policy and practice. Members come from the Department of Finance and other public sector agencies.

The STRC has a mandate under SSC policies to review procurement plans, evaluation reports and contract management plans which have an estimated value of \$5 million and above.¹²⁰ The STRC also reviews contract variations that are valued at \$5 million (either individually or cumulatively).¹²¹ Although the STRC may make recommendations about procurement decisions, ultimately the accountable authority remains responsible for the procurement.

Concerns were raised with the Committee about whether the STRC has the technical expertise to effectively review procurements in specialised areas, such as information technology, helicopters or medical equipment. The STRC explained that its role is not

replaced by the new Procurement Rules. While Regulation 5 will no longer exist, there will be an increased focus on identifying and addressing agency non-compliance issues.

116 Mr Richard Mann, Executive Director, Strategic Projects, Department of Finance, *Transcript of Evidence*, 27 June 2018, pp. 5-6.

117 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 12 June 2019, pp. 5-6.

118 Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee ‘Knowing what good looks like – Challenges in managing major public sector contracts’*, Western Australia, February 2020, p. 4.

119 *ibid.*, p. 5.

120 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 3 July 2019.

121 Department of Finance, *State Tender Review Committee Constitution*, July 2018.

focussed on the specifics of a particular technical purchase, but rather on the procurement process:

We do not get right down into the technicalities of the actual service; that is what the evaluation panel [does]. Our job is to make sure the evaluation panel has reviewed the content in the right manner to make the best decisions that they can, as opposed to the technical decision they actually make.¹²²

The Committee commends the STRC for its efforts, particularly the individual staff members who take on the role in addition to their own full-time, senior roles within their respective departments. The additional workload is significant. At the time the STRC appeared before the Committee, it had been without a Chair for some months, with the role being managed by the Deputy Chair.¹²³

The Committee sees significant problems with the operation of the STRC in its current form and highlights the following issues:

- The STRC sees only goods and services procurement, not works. Procurement of works should be included within the committee's jurisdiction.
- The STRC is under-staffed; it requires additional procurement experts to be rostered on to augment the staff currently undertaking the role. In addition, the position of Chair needs to be permanently filled.
- The STRC only reviews procurements of high risk and high value.

High risk and high value is defined as those projects valued at above \$5 million. The STRC does not have a clear definition of what 'high risk' means in this context.

Unfortunately, value has become the easy way to establish whether something is appropriate for consideration by the committee. Value is how we determine all sorts of thresholds for procurement, so when the public tender threshold kicks in and when the requirement for competitive quotes kicks in. Value is an easy kind of way to assign risk.¹²⁴

This Committee considers the nexus between value and risk problematic. The CCC's investigation of alleged corruption in the Housing Authority suggests that lower value procurement with less scrutiny may actually constitute a much higher risk for corruption. It appears that the corruption occurred where multiple transactions of slightly less than \$50,000 were corruptly approved at high frequency over the course of many years. This resulted in the loss of around \$22 million in public money. The Committee contests the assumption that only high value equates to high risk.

It is the Committee's conclusion that while the STRC may be a useful mechanism for ensuring that proper procurement policy is followed for high value procurements, it is not

122 Mr Mark Thompson, Member, State Tender Review Committee, *Transcript of Evidence*, 23 October 2019, p. 3.

123 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 3 July 2019.

124 Ms Cassandra Ahearne, Deputy Chair, State Tender Review Committee, *Transcript of Evidence*, 23 October 2019, p. 2.

particularly useful in terms of corruption prevention. The Committee does not wish to detract from the importance of ensuring that policy is correctly followed, and additional scrutiny of high value procurement is undeniably warranted.

However, the Committee also acknowledges that procurements reviewed by the STRC are already subject to a high degree of assessment, which presumably makes corruption more difficult to hide.

The Committee remains unconvinced that the STRC is an effective anti-corruption measure in its current form. The WA government has recently advised that it is reviewing the function and scope of the STRC as part of the procurement reform project. For example, while documents are currently referred to the STRC based only on contract value, in the development of the new procurement framework, the Department of Finance advises that it ‘will assess whether it is practical and appropriate for risk to be included as a determinant of whether an agency submits Contract Management Plans to the relevant review committee.’¹²⁵

Finding 16

A significant number of statutory bodies, boards and committees sit outside the remit of the *State Supply Commission Act 1991* and not all public procurement is the responsibility of the Department of Finance.

Finding 17

The State Tender Review Committee only sees procurements of high risk and high value. High risk and high value is defined as those projects valued at above \$5 million. This nexus between value and risk is problematic.

Finding 18

The State Tender Review Committee does not act as an oversight mechanism in terms of corruption prevention and best practice principles for procurement.

Finding 19

The Committee is concerned that there is a misconception that the State Tender Review Committee provides a further form of corruption detection.

Recommendation 4

The composition, role and function of the State Tender Review Committee should be more clearly delineated by the Department of Finance as a part of its ongoing reform process, taking into account the observations made here.

¹²⁵ Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee ‘Knowing what good looks like – Challenges in managing major public sector contracts’*, Western Australia, February 2020, p. 4.

Auditor General

The Office of the Auditor General (OAG) conducts external audits of the financial statements, key performance indicators and internal controls of public sector bodies. It also conducts performance audits.

Agencies examined by the Committee pointed to the OAG as a means of accountability and oversight of their activities. The OAG does not set out to uncover or investigate misconduct and corruption. It is not an anti-corruption body. However, it does notify the CCC, PSC or WA Police if red flags are noted. These referrals are regular but not numerous. For example, the OAG refers between one and two matters to the CCC, on average, each year.¹²⁶ This will likely increase with the new forensic audit function recently conferred on the OAG.

External audit is an assurance tool; that is, a 'health check' on controls to identify systemic vulnerabilities. Limitations are that:

- it provides reasonable, not absolute, assurance
- it cannot guarantee the accuracy or reliability of agency information and data
- it may not identify all significant matters
- internal controls may be over-ridden by management resulting in fraud or error
- financial audit is not a fraud detection exercise.

Activities which fall outside of what is expected will draw auditors' attention. However, all too often fraud and corruption can happen within the arrangements that are legitimately in place. The corruption alleged to have occurred within the Housing Authority is a good example of where auditing did not pick up anomalies or corrupt behaviour. The Auditor General attributes this to two factors present in this particular situation: the governance mechanisms in place and the nature of the corruption.¹²⁷

Following the media coverage of the arrest of the Deputy Director General of the Department of Communities, the Auditor General told radio listeners that it is very difficult to detect fraud where there is collusion, especially collusion with external parties.¹²⁸

It is not reasonable to expect the financial audit process to identify all fraud and error, nor even material fraud where the fraud is complex and involves a number of parties acting in collusion.

*- Australasian Council of Auditors General
Submission to the Australian
Parliamentary Joint Committee on
Corporations and Financial Services:
Inquiry into Regulation of Auditing in
Australia*

The OAG audited the financial balances of the Housing Authority every year. This was done through sample testing, necessitated by the sheer number of invoices involved. When signatures of authorised delegates are evident on invoices, OAG auditors do not check to see whether goods and services were actually received. It is simply accepted at face value that

¹²⁶ Ms Caroline Spencer, Auditor General, Letter, 20 March 2020, p. 1.

¹²⁷ Radio interview on 6PR on 21 November 2019, accessed 21 November 2019, <
<https://www.6pr.com.au/podcast/auditor-general-satisfied-office-did-what-it-could-in-lead-up-to-corruption-charges/>>.

¹²⁸ *ibid.*

the delegated authority has signed off on those invoices. In addition, the alleged perpetrator was very familiar with the controls and processes in place within the internal governance structure and used this knowledge to ensure invoices were under the delegated level.¹²⁹

As the Auditor General pointed out, audit cannot be everywhere and it cannot check every transaction at every agency. Rather, there should be:

- more action to enforce internal controls, especially where weaknesses are identified, and effective monitoring of those controls by management
- more robust internal audit functions
- audit committees that follow up on recommendations.¹³⁰

Following the exposure of this recent alleged corruption, the OAG 'has been requested to conduct targeted forensic audits of agencies' contract management and systems, supported by data analytics.'¹³¹

The Committee was briefed by the OAG on the newly established forensic audit division. This will carry out forensic audits of agency activity, build data analytics capability, and improve the use of internal risk data collected by the OAG to further inform targeted audit activity.¹³²

This is a first within Australasian Auditor General offices, and will add an important level of oversight within the anti-corruption framework. It will be able to capitalise on the work already carried out by the OAG. For example, it will enable the office to further investigate anomalies and red flags which it finds in the course of its financial and performance audits, and which currently it would not be able to take further. This is particularly important for those things which, *prima facie*, fall short of the threshold of that which constitutes misconduct, and thus will not be investigated by the CCC or PSC.

The new forensic audit division is not intended to duplicate the work of the CCC or PSC. Rather, it will need to have in place protocols with these agencies in order to ensure that oversight and accountability is strengthened, while preserving the important role each one plays in mitigating corruption. Furthermore, it will need to ensure that any criminal investigation by WA Police is not compromised by the forensic audit activities of the OAG.

While this new capability will have greater potential to uncover fraud, it should not be seen as a replacement for robust and standardised agency internal controls and internal audit. Agency governance, internal controls and internal audit are discussed in the following chapter.

129 Radio interview on 6PR on 21 November 2019, accessed 21 November 2019, <
<https://www.6pr.com.au/podcast/auditor-general-satisfied-office-did-what-it-could-in-lead-up-to-corruption-charges/>>.

130 *ibid.*

131 Hon. Mark McGowan MLA, Premier and Hon. Ben Wyatt MLA, Treasurer, *Stronger financial accountability controls for WA public sector*, media statement, 25 November 2019.

132 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Briefing*, 11 March 2020.

Finding 20

Oversight, anti-corruption and integrity bodies play an important role in mitigating corruption risk in public procurement. However, these bodies are not a substitute for the role that agency accountable authorities have in detecting and preventing corruption. The most important defences against corruption are those embedded within agency governance structures, internal controls and organisational culture.

Finding 21

Overall, the public sector is not accountable enough in the expenditure of public money. The external accountability mechanisms in place around public procurement are inadequate from a corruption prevention aspect.

Finding 22

The external oversight of public procurement in Western Australia is patchy at best, and entirely absent at worst.

Finding 23

The Office of the Auditor General is not an anti-corruption body; rather, it provides a 'health check' of agency's internal controls through its external audit function. The proposed new role for the Office of the Auditor General in the forensic audit of agency procurement increases external oversight and accountability. It remains, however, primarily the role of agencies to ensure procurement processes are corruption-free.

Open and effective competition

Competition, transparency and objectivity in the award of contracts act as deterrents to corrupt behaviour. Indeed, a procurement red flag for corruption identified by the CCC is the occurrence of competitive bidders' complaints, arising from concerns that these principles have not been applied.

Table 4.1 sets out the minimum requirements for open and effective competition in the procurement of goods and services. Similar provisions apply to works procurements which are within the remit of the Department of Finance (that is, works carried out by the Building Management and Works and Strategic Projects business units).

The State Supply Commission's *Open and Effective Competition Policy* provides for exemptions¹³³ from the requirement to competitively tender in a range of circumstances. This means that in some cases a public authority can engage a supplier without going to tender.

133 It should be noted here that exemptions from the requirements of the *Open and Effective Competition Policy* are not to be confused with partial exemptions granted to agencies under the *State Supply Commission Act 1991* (described in the section above).

In addition, an exemption from public tender or advertisement can be applied for any type of procurement to which whole-of-sector policies applies (e.g. the *Aboriginal Procurement Policy*).¹³⁴ The Committee did not consider whole-of-sector policies in any detail.

Table 4.1: Goods and services procurement under the *SSC Open and Effective Competition Policy*

\$ threshold (total estimated value, including extension options and GST)	Minimum requirements for procurement
Up to \$50,000	Public authorities may determine the most appropriate procurement method including direct sourcing, or verbal or written quotations based on assessment of the nature of the market, complexity and risk, and process efficiency. Appropriate documentation of decisions must be retained.
\$50,000 to \$250,000	Request quotations in writing and offers must be received in writing. Where the awarded contract value is \$50,000 or above, a public authority must publish the contract details on Tenders WA
\$250,000 and above	A competitive process through open tender through a public advertisement, with contract award details published on Tenders WA (where no Common Use Arrangement or agency contract is available). Most agencies (those with a partial exemption up to \$250,000) must involve the Department of Finance at the start of this process, in accordance with the terms of the partial exemption.

There are several reasons that a public authority may not be required to comply with the minimum requirements in the table above, including:

- there is a *bona fide* sole source of supply
- a contract has been awarded for a similar requirement through a competitive process within the previous 12 months and there is a reasonable expectation that the market has not changed
- goods and services from a particular supplier are integrated within an existing contractual arrangement, project or ICT standard operating environment and an alternative product is not suitable
- when direct negotiations or the preferred service provider provisions of the *Delivering Community Services in Partnership* policy are applied.¹³⁵

Exemptions are appropriate in certain circumstances. However, they should be the exception rather than the rule. Advice from the Department of Finance suggests that requests for exemptions are generally the result of poor planning. It is often not the time-

¹³⁴ Submission 3A, Department of Finance, p. 4.

¹³⁵ Submission 3A, Department of Finance, p. 4.

saver that those making the application think it will be. The time it takes to justify an exemption could have been enough time for an opportunity to test the market.¹³⁶

While poor planning could be the main reason for exemption requests, it must be noted that exemptions may hide something more sinister. One of the procurement red flags identified by the CCC is an urgent need to sole source. A good indication of process not being followed, and therefore a red flag for corruption, is where the number of exemptions for sole supply made by a particular agency are unusually or inexplicably high.

The oversight of this process is within the remit of the Department of Finance. Should a public authority decide that an exemption is justified, it must seek advice from the Department of Finance prior to proceeding with exempting itself from the minimum requirements in relation to that particular procurement.

However, if the Department of Finance does not support an exemption, the agency accountable authority can still go ahead in applying an exemption from the minimum requirements outlined in the table above.

Most agencies will not go ahead with applying an exemption without the support of the Department of Finance. The Committee was told that it is rare for an accountable authority to sign off on an exemption when the Department of Finance has not supported it. In fact, they generally revisit their whole strategy.¹³⁷

The ability of the Department of Finance to prevent exemptions if they are not justified is being considered as part of the new single procurement statute and the associated policies and practice that are being formulated as a part of the procurement reform program.

Currently, oversight is patchy. The Department of Finance has involvement with some agencies more than others. For agencies that have a specific core business (Health, Education or Transport) the Committee understands that the Department of Finance officers are ensconced within those businesses and have an understanding of procurement particular to them. This means that when exemptions are claimed, the agency procurement services area within the Department of Finance (which employs experienced public procurement professionals) can make informed decisions. Matters can be escalated to more senior Department of Finance officers, and up to the Director General, if necessary. Department of Finance officers are confident that the right call is made on those requests that fall within their purview.¹³⁸

The Committee acknowledges that the decision processes more closely overseen by Department of Finance officers in relation to exemption requests are less likely to be problematic, and possibly more transparent. Nevertheless, there is currently a general lack

136 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 8.

137 *ibid.*

138 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 12.

of oversight and transparency around a large number of exemptions claimed in relation to the mandated requirements for open and effective competition.

State Supply Commission policy provides that agencies must maintain exemption registers documenting such decisions. Case Study 2 is an example of how an agency examined by the Committee complies with this requirement.

Case Study 2

Exemption registers – Main Roads WA

Main Roads WA advised that exemptions are documented and registered internally. The register that records exemptions is kept in the agency's records management system and internal oversight of the register occurs through the agency's legal and commercial services branch.¹³⁹ There is no external oversight.

In accordance with State Supply Commission (SSC) policy, Main Roads WA publishes goods and services contracts awarded over \$50,000 on Tenders WA which enables a degree of public scrutiny. It advised that these published contracts include those where an exemption from the SSC's *Open and Effective Competition Policy* has been granted.¹⁴⁰

It is not clear whether the information published makes it obvious that an exemption has been applied.

One submission identified how information in relation to contracts exempt from public listing becomes difficult to obtain. Evidence suggests that agency exemption registers may only be available by lodging a Freedom of Information request or Question on Notice in Parliament. Furthermore, if an exemption register contains details of business with private companies and payments for services, claims of commercial-in-confidence can limit access to the register. This compromises transparency in public expenditure and increases the risk of corruption.¹⁴¹

Finding 24

While poor planning could be the main reason for exemptions from the State Supply Commission's *Open and Effective Competition Policy*, it must be noted that certain exemptions may hide something more sinister. A good indication of process not being followed, and therefore a red flag for corruption, is the number of exemptions for sole supply that have been made.

Finding 25

There is currently a general lack of oversight of, and transparency around, a large number of exemptions claimed in relation to the mandated requirements for open and effective competition. This is an obvious corruption risk.

139 Mr Philip D'Souza, Acting Executive Director, Finance and Commercial Services, Main Roads WA, *Transcript of Evidence*, 8 May 2019, p. 7.

140 Mr Peter Woronzow, Managing Director, Main Roads WA, Letter, 25 June 2019, p. 1.

141 Submission 6, Community and Public Sector Union, Civil Service Association, pp. 9-10.

Chapter 5

Agency governance and culture

The previous chapter outlined where reform is required to the legislative and policy framework within which procurement and corruption prevention are undertaken in Western Australia.

This chapter outlines where improvements are needed at agency level. Weak governance, poor culture and ineffective internal controls within agencies are recurring themes in cases of corruption in public procurement.

A strong internal control framework in an agency has both tangible and intangible elements. There should be procurement controls and an integrity framework, and also a supportive organisational culture.

Agencies with good governance and robust internal control frameworks that address both elements are better placed to mitigate corruption risk.

The WA Auditor General identifies four lines of defence against corruption which underpin a strong governance framework: internal control measures; internal oversight, monitoring and reporting; internal audit and review; and external audit, investigations and reviews.

There is nothing to see here, until there is something to see

Throughout this inquiry the Committee sensed that, at least until recently, there has been a level of complacency within the public sector about the possibility of corruption occurring within procurement processes.

Agency executives giving evidence to the Committee's inquiry were of the view that their agency had sound controls in place and appeared to rely on the engagement of external providers of audit and investigative services as evidence of there being 'nothing to see here'.

It is apparent that agencies do not think they have a problem with corruption until they are surprised by a Corruption and Crime Commission (CCC) report, or similar investigation. This results in an emphasis on greater compliance and more regulation, until the scandal subsides, with the entrenched organisational culture remaining largely unchanged.

One of my most salutary reflections is that at the very same time we were discounting the need for an anti-corruption body back in 2010, this was going on in the department under our noses.

- Gill Callister, Secretary, Victorian Department of Education and Training, following the exposure of entrenched corruption within that agency.

The attitude of ‘business as usual, there are just a few bad apples’ is clearly inadequate. In WA, since 2018:

- A former Western Power employee was subject to dozens of corruption charges over his handling of almost \$1.5 million worth of contracts, where police allege he used his position as a fleet coordinator to influence tender and contract processes, and that he benefited financially from these alleged actions.
- An Assistant Director General at the Department of Communities was charged with corruptly obtaining \$22 million dollars of public funds allegedly through a false invoicing scheme.
- Corruption charges were laid against a string of contractors providing maintenance services for the North Metropolitan Health Service. The charges related to the bribery of public servants, with the provision of gratuities such as business-class flights and restaurant meals, in exchange for being given work. Charges were more recently laid against the two senior public servants named in the CCC report.
- A former employee of Horizon Power was charged with four counts of corruption and his associate with four counts of fraud following a CCC investigation and report.
- A former employee of the Department of Mines, Industry Regulation and Safety was charged with three counts of unauthorised disclosure of information by a public servant or government contractor and three counts of public officer acts corruptly in relation to claims made by the CCC that she used her position to award contracts to an associate’s company.

Other CCC reports made findings of serious misconduct in the procurement processes of various local governments.

Finding 26

Agencies often do not consider there is a problem with corruption until surprised by a Corruption and Crime Commission report, or a similar investigation. This results in a chain of events being triggered, which usually results in an emphasis on greater compliance and more regulation. Then, when the scandal subsides, it is back to business as usual, with the entrenched organisational culture remaining largely unchanged.

Corruption will flourish without good governance

Concerns about governance and culture in public sector authorities have been raised repeatedly for some time now, and as recent corruption revelations have shown, they were well-founded.

A strong internal control framework in an agency has both tangible and intangible elements: procurement controls and an integrity framework; and also organisational culture and behavioural drivers.¹⁴² Agencies with good governance and robust internal control frameworks that address both elements are better placed to mitigate corruption risk. Weak

142 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission’s Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p. 4.

governance, poor culture and ineffective internal controls are recurring themes in cases of corruption in public procurement.

Poor systems make it easier for those who might want to engage in misconduct or maladministration to do so.

- South Australian Independent Commission Against Corruption

For example, the NMHS governance review found behaviours which collectively suggested that the culture regarding governance in the NMHS, including compliance and accountability aspects, required improvement.¹⁴³ WA Health has been

subject to considerable scrutiny and review subsequent to the NMHS corruption scandal, and the Committee was heartened to see the efforts NMHS and WA Health more broadly are implementing to address the shortcomings in governance arrangements.

The Committee remains concerned about other agencies that have not (yet) attracted such scrutiny. For this reason, the Committee has identified the integrity strategy for public authorities, which has been developed by the Public Sector Commissioner, as a way for agencies to assess governance frameworks and agency culture with a view to improving anti-corruption mechanisms (see Chapter 9 for further detail).

Finding 27

A strong internal control framework in an agency has both tangible and intangible elements: procurement controls and an integrity framework; and organisational culture and behavioural drivers. Agencies with good governance and robust internal control frameworks that address both elements are better placed to mitigate corruption risk.

The four lines of assurance for agencies to prevent corruption

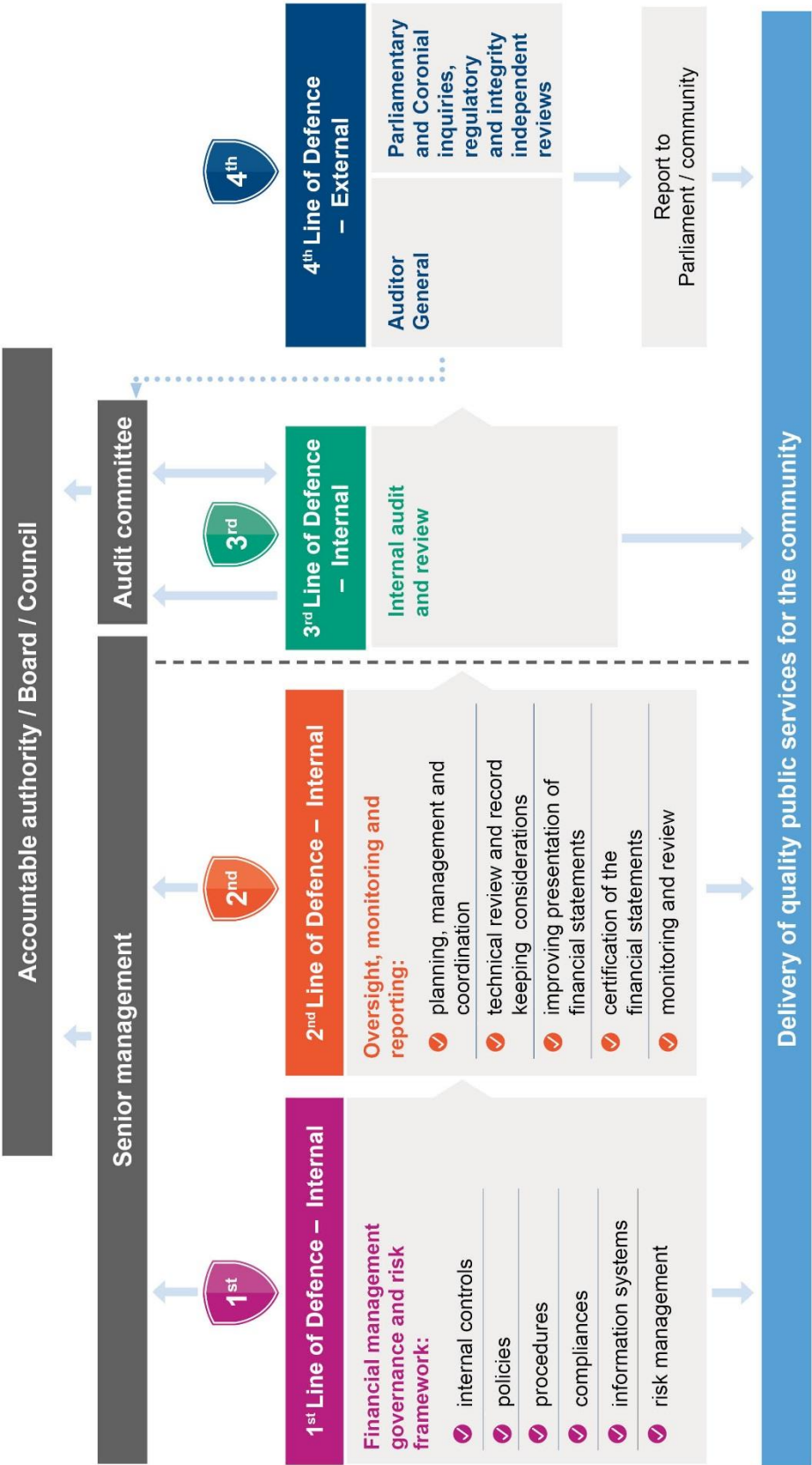
The primary responsibility to mitigate against fraud and corruption rests with agencies. A strong governance framework is essential for accountable authorities to effectively carry out this responsibility. The WA Auditor General describes four lines of defence which underpin a strong governance framework (see Figure 5.1):

- internal control measures
- internal oversight, monitoring and reporting
- internal audit and review
- external audit, investigations and reviews.

In agencies where corruption in procurement has been uncovered, both in WA and in other Australian jurisdictions, one or more of these lines of defence were compromised.

¹⁴³ Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p. 4.

Figure 5.1: Strengthening control and performance – multiple lines of defence¹⁴⁴



First line of defence: internal controls

Internal control measures

In cases of corruption in procurement there are often: weak controls; individuals who remain in positions for long periods of time; a lack of formal training; missing or incomplete records; and large scale non-compliance with, and disregard for, policy.

Internal control weaknesses were responsible for nearly half the cases of occupational fraud surveyed by the Association of Certified Fraud Examiners.

- Report to the Nations: 2018 Global Study on Occupational Fraud and Abuse, Association of Certified Fraud Examiners

Effective governance includes implementing proper controls. While the Auditor General 'health checks' controls, it is the controls themselves that are key.

A recent Auditor General 'health check' on controls over purchasing cards was reported in March 2020. The report found that government entities audited generally had 'appropriate policies and administrative systems in place to manage the use of purchasing cards.'¹⁴⁵ There was indication of a general improvement in controls when compared to the same audit in 2017. However, examples of poor practice were still evident. The OAG reported that 'entities still need to improve their policies, the monitoring of purchasing card use, and better manage transaction limits.'¹⁴⁶

Corruption red flag – weak internal control environment, widespread non-compliance

The OAG makes detailed findings and recommendations but it is up to internal audit committees within each entity to ensure that findings and recommendations are adequately addressed. Internal audit is discussed later in this chapter.

Best practice for corruption prevention in procurement recognises the importance of internal controls. A failure to adhere to basic internal controls is a red flag which should not be ignored.

Corruption red flag – chaotic, incomplete or missing paperwork

Recent inquiries demonstrate that agency record-keeping and financial reporting continue to be an issue. Agencies must be able to account for the expenditure of public funds and have ready access to the documents that guide (and record) internal decision-making. This includes publishing contract award information on Tenders WA.

This red flag was ignored by senior management within the NMHS and WA Health for a long time. In 2015 concerns were raised about the lack of documentation relating to

144 Figure supplied by Mr Tim Hughes, Principal Adviser, Officer of the Auditor General, email (attachment), 11 March 2020.

145 Office of the Auditor General, *Controls Over Purchasing Cards*, Western Australia, March 2020, p. 2.

146 *ibid.*

procurement contracts for facilities management in NMHS.¹⁴⁷ When the CCC reported on the matter in 2018, it stated that missing procurement documentation indicated ‘a deliberate strategy to conceal a corrupt process rather than a lack of understanding of good procurement and contract management.’¹⁴⁸ More recent sample testing noted continuing high levels of inconsistency in recordkeeping, in particular with regards to evidence of works specifications, award letters and contract management documentation.¹⁴⁹

Poor recordkeeping also hinders investigations and the imposition of sanctions. The South Australian Independent Commissioner reported that he had ‘closed a number of corruption investigations into conduct of SA Health employees because the system is so poorly

administered that it hampered [his] efforts to obtain appropriate

evidence’,¹⁵⁰ resulting in the loss of any possibility of successful criminal prosecutions.

Corruption red flag –
unwillingness to share duties,
reluctance to take leave

Purportedly, the new procurement framework for WA will require agencies to maintain better procurement-related records.

is

for auditors and fraud examiners is someone who has been in their role for a long time and has not taken leave and who ‘is really quite cagey’ and ‘never fully hands over responsibility to someone.’¹⁵¹ The question must be asked, what are they hiding?

One of the most important controls in procurement is the rotation of staff through functions. A red flag

Also important is the segregation of duties. The same person that procures something

should not authorise the payment and release the funds. There

Corruption red flag – the same
person incurs and certifies
payments for procurements

should be different people doing all of those things so that no-one has end-to-end control of the purse strings without scrutiny.¹⁵² It is apparent that, at least until recently, this has not always been done well within agencies in WA.

For example, in spite of repeatedly raised concerns about probity over many years, and several

147 Department of Health, *North Metropolitan Health Service: Sir Charles Gairdner Hospital - Facilities Management Procurement Review*, Western Australia, April 2015.

148 Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, August 2018, pp. 50-51.

149 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p11.

150 Independent Commissioner Against Corruption South Australia, *Troubling Ambiguity: Governance in SA Health*, South Australia, November 2019, p. 8.

151 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 6.

152 *ibid.*

instances of corruption discovered within procurement processes, the NMHS only very recently started to enforce segregation of duties.¹⁵³

Corruption red flag – ‘urgent’ payments are pushed through which subvert due process

The Committee acknowledges that such circumstances can in part be attributed to an increasing pressure on agencies to find efficiencies and prioritise the delivery of frontline services. This can mean that ‘corners may be cut and compliance and governance controls will suffer.’¹⁵⁴

The NSW ICAC reports that this type of environment can result in ‘an over-reliance on trusted individuals, who often have the greatest opportunities to engage in corrupt conduct.’¹⁵⁵ The phenomenon of the ‘trusted insider’ has been the subject of a report by the South Australian ICAC (see Box 5.5 below).

Box 5.5: The trusted insider

The trust trap—the phenomenon of the trusted insider who abuses his or her authority—has been reported on by the South Australian ICAC.

The report focuses on two investigations: an investigation into a senior manager at Yorke Peninsula Council who dishonestly appropriated over \$200,000 and an investigation into a senior manager at TAFE SA who dishonestly appropriated over \$150,000.

The common theme of the SA ICAC investigations was that both offenders had attained a level of seniority within their organisations, and had gained considerable respect and trust from their colleagues.

“A key feature of corruption by a trusted insider is the ‘trust trap’. Trusted insiders who engage in corruption are often typified by long periods of loyal service (around five years) which in turn generates organisational trust. The public officers the subject of this report had been employed in their agencies for approximately seven and six years respectively before they began their corrupt conduct,” the report said.

“Predictably, controls and risk protections applicable to such individuals are lowered or relaxed and they are often granted greater access to business processes.”

“This excessive trust blinds the organisation to potential impropriety.”

“Trusting employees is an institutional necessity. But the downside is that trust can be abused. Agencies must find a way to provide safeguards that reduce the risks of corruption while at the same time not unduly burdening or undermining trust in employees which is vital for good public administration.”

Source: Media release, 26 June 2019. Found at: <https://icac.sa.gov.au/media-release/commissioner-warns-of-the-trusted-insider>.

In the wake of the revelations about alleged long-term corruption within the Housing portfolio, the Premier and Treasurer announced a range of accountability and transparency reforms across the public sector. Relevant here is the revised Treasurer’s instruction (TI) 304

153 Dr David Russell-Weisz, Director General, Department of Health, letter, 2 November 2018, p. 8.

154 Corruption and Crime Commission, *Report on the Misconduct Intelligence Assessment of the WA Public Sector*, Western Australia, March 2015, p. 12.

155 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 12.

Authorisation of Payments which is aimed at strengthening the segregation of duties with respect to all aspects of payment authorisation processes within public authorities.¹⁵⁶

TI 304 now mandates that the functions of ordering, receiving, incurring and certifying procurement activities are to be performed by separate officers. It also provides that where it is not reasonably practicable for an agency to comply with this requirement due to limited resources, an alternative arrangement may be agreed between the agency's accountable authority and its internal audit committee. However, this alternative arrangement cannot include the same officer performing the functions of incurring and certifying in relation to a payment or transfer.¹⁵⁷

TI 304 specifies the minimum expected of agencies with regards to this important internal control. It is incumbent on accountable authorities to implement additional internal controls to ensure the legitimacy and accuracy of procurement transactions. Essentially, accountable authorities must ensure that:

- all payments and transfers are authorised
- risks to the payment authorisation process (e.g. fraud) must be mitigated through internal controls which are maintained and enforced by adequate procedures and practices
- all information required for the payment authorisation process is effectively communicated both within and outside the agency to all parties concerned
- internal controls are monitored for appropriateness and effectiveness.¹⁵⁸

Monitoring and improving internal controls through ongoing assessment is important. These activities should not be 'set and forget' actions. Monitoring and oversight of controls forms part of the second line of defence and is discussed later in this section.

Education and training

Education and training of public officers, and those contracting to government, is considered to be a key part of an agency's first line of defence against corruption, along with internal controls. Effective education and training ensures that corruption risks are front of mind when public officers are carrying out procurement activities.

A range of bodies offer training and development programs which are relevant to procurement and, more broadly, misconduct and corruption prevention. These include the PSC, CCC, Department of Finance, and more recently, Treasury. This is in addition to agency-specific training and development offered in-house by agencies.

Training which has relevance to corruption risk in procurement includes:

- the ongoing development of professional capacity in public sector roles which involve carrying out procurement activities
- targeted training on the requirements of procurement policy and legislation

156 This applies to all public sector entities, including Government Trading Enterprises.

157 Department of Treasury, *Financial Administration* Bookcase, Western Australia, January 2020.

158 *ibid.*

- more broadly, training on ethics and accountability in public sector decision making.

The Committee has concluded from its inquiries that, to date, training of public sector officers and contractors has been not been done consistently well. Improvements are currently being implemented in a range of training areas, and the Committee commends this. However, this has occurred at a glacial pace.

Capacity building for procurement officers

Professional and well trained personnel are an important part of maintaining integrity in procurement systems. Indeed, a requirement of partial exemptions issued to agencies for goods and services procurement is that agencies have ‘adequate and appropriately skilled resourcing for the procurement function.’¹⁵⁹

Transparency International suggests that ‘procurement should be professionalised and not treated as an administrative task.’ Sufficient resources should be allocated to attract qualified individuals into procurement roles and also to allow for adequate training and remuneration. Reportedly, more than one-third of Organisation for Economic Co-operation and Development (OECD) countries do not recognise procurement as a profession.¹⁶⁰

Recent reviews have highlighted the dearth of capacity in public procurement in this state. For example, the Langoulant review found that capability gaps had emerged in the public sector across a range of disciplines, including procurement. Mr Langoulant told the Committee:

It is clear to the inquiry from the study of these matters that there is not sufficiently trained people in our public service who have responsibilities for undertaking significant procurements and for then monitoring and managing contracts and even undertaking the basic levels of financial analysis you require when you are assessing procurement proposals.¹⁶¹

Although clearly understanding the value of training and capacity building in its procurement personnel, some agencies appear to have an *ad hoc* approach to training on procurement processes. For example, Main Roads WA submitted that training on ‘procurement policies and practices is provided on an ongoing basis with targeted training delivered based on audit findings in areas of poor compliance.’¹⁶²

Main Roads WA also submitted that ‘procurement capability is developed through on the job training and knowledge transfer by senior procurement staff. Knowledge gaps are identified through career conversations.’¹⁶³ While these are legitimate ways to build capacity, more formalised training is also required.

159 Submission 1 [to the Public Accounts Committee: Inquiry into public sector contract management practices], Department of Finance, p. 2.

160 Transparency International, *Curbing Corruption in Public Procurement: A Practical Guide*, 2014, p. 13 and p. 17.

161 Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2018, p. 4.

162 Submission 4, Main Roads WA, p. 9.

163 *ibid.*

Training also needs to be supported by other internal controls. The NMHS governance review found that procurement and system related training was provided by the Office of the Chief Procurement Officer and the NMHS itself. However, the absence of strong accountability structures, role-modelling and reinforcement of the training within facilities management meant that ‘insufficient attention was given to key controls and policy compliance.’¹⁶⁴

Knowledge transfer is only as good as the environment in which it is received. If there is a tendency to cut corners or turn a blind eye to non-compliance with policy, this is what will be learnt.

Procurement training offered by the Department of Finance

The Department of Finance delivers free training to the public sector. It is not mandatory, but chief procurement officers are strongly encouraged to send their staff along. It ranges from awareness of procurement policies, including probity, to contract management and more complex aspects of procurement. There is a fully accredited procurement vocational program, which is a formal qualification.¹⁶⁵ The Department of Finance reports a ‘fairly good take-up from all government agencies.’¹⁶⁶

More recently the Department of Finance has advised that it will deliver a training course focussed on identifying fraud specifically in procurement. This course is aimed at senior public servants and was anticipated to start in the first half of 2020.¹⁶⁷

A recent parliamentary committee report recommended a range of improvements to the training offered by the Department of Finance in relation to procurement (in particular, contract management). The recommendations have received some support from the WA Government; however, some aspects have not been supported or are being investigated further. Particularly relevant to this report are the following outcomes.

In relation to the recommendation that goods and services procurement training initiatives and programs be extended to include works contracts, and that these should be mandatory for officers managing contracts above a pre-determined level of risk and/or value, the Government response is mixed. Expanding capability building to works procurement is supported in principle, and some progress has already been made. For example, in 2019 contract management training sessions and online modules applicable to all types of procurement were launched by the Department of Finance.

Mandating training across the sector is not supported due to ‘staff turnover, subjective measurement of risk and the significant impost associated with measurement and enforcement.’ Cost is also a factor. The Government points out that ‘a number of agencies,

164 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission’s Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p10.

165 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 27 June 2018, pp. 1-2.

166 *ibid.*, p. 2.

167 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, Email, 21 January 2020.

especially works agencies, have their own internally developed capability development programs, which are more targeted to their own agency policies and processes.’ Thus, the Government takes the view that it would be ‘counterproductive to mandate contract managers from these agencies to attend a more generalised course developed for use across the sector.’ Rather, contract managers who require capacity building should be targeted individually.¹⁶⁸

The development and implementation of a minimum standard of commercial accreditation for public sector officers recommended by the Public Accounts Committee needs further investigation. The government has advised that this ‘may have industrial implications, impact resourcing and have a significant cost. It would also be challenging to identify and mandate all existing relevant contract managers for the accreditation process, as well as the ongoing requirement to monitor and enforce this.’ The Government advises that further investigation is required to determine the practicality of this measure.¹⁶⁹

It is anticipated that the Department of Finance will take on a more proactive role in procurement training as a part of its role as functional leader for all types of procurement.

Training on corruption prevention, ethics and decision making

The primary training mechanism for integrity matters in the public sector in WA has been the Accountable and Ethical Decision Making (AEDM) program, which is administered by the Public Sector Commission (PSC). The AEDM training program is the PSC’s overarching approach to ‘inform the sector to identify and address governance matters.’¹⁷⁰

A 2017 PSC report discussed the AEDM training in the context of secondary employment risks, and noted that while the AEDM is mandatory for the public sector, and often offered at induction, ‘it [is] unclear how often public sector employees are required to ‘refresh’ this training in the participating authorities.’¹⁷¹

It is the Committee’s opinion that the AEDM training (or a similar course) should be required to be refreshed or repeated by every public officer on a regular basis. It is currently possible that a public officer could complete the AEDM training at induction, and then never again within their career.

Corruption and Crime Commission

Since changes enacted in 2015 to the *Corruption, Crime and Misconduct Act 2003*, the CCC no longer has a legislated mandate to deliver the misconduct education and prevention function (although it still delivers this for police). This function now resides with the PSC.

168 Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee ‘Knowing what good looks like – Challenges in managing major public sector contracts’*, Western Australia, February 2020, pp. 10-11.

169 Government of Western Australia, *Government Response to Report No. 13 of the Public Accounts Committee ‘Knowing what good looks like – Challenges in managing major public sector contracts’*, Western Australia, February 2020, pp. 11-12.

170 Submission 5, Public Sector Commission, p. 4.

171 Public Sector Commission, *Managing secondary employment risks in public authorities*, Western Australia, October 2017, p. 13.

However, as a natural consequence of its ongoing work in the public sector, particularly in the wake of recent corruption revelations, the CCC still educates CEOs and other more senior public sector officers on serious misconduct and corruption matters. For example, it often supplies reports to agency heads, and the PSC, where relevant, on investigations that may not necessarily have disclosed serious misconduct, but which may expose systemic weaknesses or misconduct risks.¹⁷²

Improvements in training and capacity building are required

Despite assurances from agencies, the Committee remains concerned that training programs are insufficiently comprehensive, and conducted too irregularly to have much impact. In addition, evidence received suggests follow-up training after employment in the public sector requires more attention.

The vast majority of public sector officers consulted in forming the CPSU/CSA inquiry submission, who were working as Public Interest Disclosure Officers, or in Procurement, "...did not feel that the level of preventative training given to them was adequate."

- Submission 6, Community and Public Sector Union/Civil Service Association

External providers of audit services advised that the quality of the training provided is something on which they have previously made repeated recommendations:

In most cases, staff will do their accountable and ethical decision-making, but what we do find is some staff members from different backgrounds find it difficult to translate what does this mean in my role and what sort of fraud risks should I be aware of?...[F]or example, the procurement team that come from that more procurement corporate background or ...people within the facilities management area of a business where you might have engineers, builders and draftsmen, you do need to spend more time to make sure they understand what are the risks in procurement...We have seen really good practice of that in some departments, but on more than one occasion we have noted that it is an area for improvement.¹⁷³

Recent events appear to have spurred agencies to take a critical look at training. Main Roads WA advised that since September 2018, it had rolled out mandatory accountable and ethical decision-making training in earnest. Online training is now in place around the integrity framework, including conflict of interest declarations and gifts and benefits recording.¹⁷⁴

Similar increased efforts around training and awareness-raising have been undertaken in the Health sector since the revelations of corruption in the NMHS in August 2018. Some form of training has been in place since 2014, although, arguably, was not overly effective.

In addition to efforts by individual agencies to improve training and capacity building, the PSC has advised the Committee of increased training and support for agencies in 2020 and

172 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 16 October 2019, p. 1 and p. 3.

173 Ms Lisa Bayakly, Partner, KPMG, *Transcript of Evidence*, 4 September 2019, p. 9.

174 Mr Philip D'Souza, Acting Executive Director, Finance and Commercial Services, Main Roads WA, *Transcript of Evidence*, 20 March 2019, p. 5.

beyond. It advised that this training is focused on building integrity and capacity within agencies to assist in the detection and prevention of misconduct and corruption in agency processes. This is to be delivered in concert with the roll-out of the Public Sector Commissioner's framework for integrity strategies for agencies and other public authorities (such as GTEs and local governments). Chapter 9 outlines this in more detail.

Treasury has also begun to roll out its Financial Management Awareness Training program across the general government sector, which is aimed at public sector officers working in non-financial roles. The driver for this is the Special Inquiry into Government Programs and Projects, which found that the public sector's understanding of, and compliance with, the *Financial Management Act 2006* regulations is generally poor, with an over-reliance on technical officers. The training seeks to increase awareness within the general government sector of the financial management framework, and in so doing, improve practice and behaviour.

The Committee commends the increased effort put into training across the sector. While more work is needed, some promising developments have been reported:

Interestingly, at the moment I am hearing there are a couple of bodies who are stepping up, gearing up in this space in our jurisdiction, and will have increased capability of providing training across our public service. If there is one thing that comes out of this report it is that we actually see a higher quality of training and a consistency of training across our officers in our public service.¹⁷⁵

The Committee heard that sector-wide most training is online in module form. The Committee believes the kind of training discussed in this report may be more effectively delivered in person with participants taking part in scenarios and sharing their experiences with peers from other agencies.

Training of suppliers and contractors

It is important that private industry is well informed of its obligations when dealing with the public sector.¹⁷⁶ For example, with regards to the alleged corruption within the NMHS, the CCC concluded 'that the lack of formal and comprehensive induction of contractors resulted in a lack of awareness of the WA Health Code of Conduct and procurement guidelines.'¹⁷⁷ It observed:

The Contractors engaged to work onsite at NMHS were subject to a rudimentary induction process, despite the WA Health Code of Conduct explicitly stating that contractors were subject to the same obligations and expectations as public officers under the WA Health Code of Conduct.¹⁷⁸

¹⁷⁵ Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2018, p. 18.

¹⁷⁶ Along with training of suppliers is the notion of a code of integrity applicable to both contracting parties possibly enshrined in the legislation itself. See for example *The Punjab Transparency in Public Procurement Act*, 2019 (Punjab Act No. 12 of 2019), section 7.

¹⁷⁷ Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, 16 August 2018, p. 49.

¹⁷⁸ *ibid.*

The Department of Health has made efforts since August 2018 to educate suppliers, including writing to 8,500 suppliers prior to Christmas 2018 to reiterate expectations around gifts, conflicts of interest and conduct.¹⁷⁹

At a sector-wide level, the Department of Finance advised it is implementing an Ethical Procurement Framework, aimed at articulating the state government's expectations with respect to supplier conduct.¹⁸⁰ The framework is to be delivered in two phases: the delivery of a supplier code of conduct; and a means to ensure suppliers act responsibly.

The first phase—the Responsible Supplier Pact—was released for public comment in 2019. The Department of Finance advises that the concept 'received overwhelming support, however, some feedback was received on certain elements of the Pact, which led to further consultation with both supplier groups and unions.'¹⁸¹ It is not yet clear how effective this strategy will be.

The second phase is the delivery of a means to ensure suppliers act responsibly. A key deliverable of this phase is a debarment regime.¹⁸² This is discussed further in Chapter 8.

Finding 28

Weaknesses in internal controls within agencies which present a corruption risk and which are present in most examples of identified corruption in procurement include poor recordkeeping, a lack of role segregation, public officers remaining in positions of trust for long periods of time, widespread non-compliance with policy, and the prioritisation of efficiency over due process.

Finding 29

Professional and well-trained personnel are an important part of maintaining integrity in procurement systems. Officers should be specialists and be given status accordingly. At present procurement is seen as being part of general administrative duties, and there has been a depletion of skills in procurement capacity within the Western Australian public sector.

Finding 30

Tailoring the training program to suit the target audience would appear to be a useful step in ensuring that the training achieves its aim.

179 Mr Mark Thompson, Chief Procurement Officer, Health Support Services, *Transcript of Evidence*, 15 May 2019, p. 17.

180 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 12 June 2019, p. 3.

181 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 21 January 2020.

182 *ibid.*

Finding 31

It is important that private industry is well informed of its obligations when dealing with the public sector. A greater emphasis and focus should be placed on educating contractors and tenderers on engaging in procurement transactions with the utmost integrity. The Committee will maintain a watching brief on the roll-out of the Ethical Procurement Framework by the Department of Finance.

Recommendation 5

That the Public Sector Commission undertake a systemic review of all training currently being delivered across government around the areas of procurement, ethical decision making and corruption prevention.

As a result of this review, the Public Sector Commission should report to Government as to a preferred framework for the delivery of training and who is best placed to deliver those components.

Second line of defence: monitor, oversight and report

What is not measured is not managed ... and ... what is not managed is a hiding place for a multitude of sins.

- Christine Tonkin,
Procurement Practitioner

Monitoring, measuring and reporting on performance and expenditure facilitates the prevention and detection of corruption. In cases of corruption, there is often a lack of effective oversight of and accountability for decisions, with little or no corporate visibility of procurement activity and expenditure across the organisation.

For instance, lazy oversight within the NMHS allowed weaknesses in controls to occur and continue unchecked for many years, which facilitated more than one instance of corruption. For example:

- there was a tendency to prioritise operational expediency over compliance with policy and due process
- there was a lack of importance placed on key compliance requirements.
- there were instances where accountability was not enforced, such as a lack of conducting performance reviews
- there were reports of quality concerns with internal investigation processes that were not adequately reviewed or addressed
- there was a lack of robust follow-through on recommendations from previous reports.¹⁸³

Case Study 3 outlines the ongoing issues with internal governance plaguing the health system for many years.

¹⁸³ Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019

The experience of the OAG suggests that large agencies find internal oversight difficult to exercise. The OAG has consistently reported that up to one third of control weaknesses identified within agencies remain unresolved from the previous year's audit. Of the main areas of control weaknesses identified, most are within expenditure (procurement).¹⁸⁴ In November 2019 the OAG:

...identified 323 financial management control weaknesses and reported them to entities in 2018-19, an increase from 300 in the previous year. The number of significant issues increased by 1 to 36, while the proportion of unresolved issues decreased from 30% to 20%.

434 information system control weaknesses were identified and reported to entities in 2018-19 of which 44% were unresolved issues from the previous year. The majority of issues are simple to fix but if not resolved they will leave entities vulnerable to security incidents and disruption to systems¹⁸⁵

Monitoring the effectiveness of internal controls and acting on audit reports, both internal and external, as well as other inquiries, are integral components of good governance and essential for corruption prevention.¹⁸⁶ The Auditor General has said that there should be more action by agencies to enforce internal controls, especially where weaknesses are identified. There should also be more effective monitoring by management of those controls as an effective deterrent for people considering committing fraud.¹⁸⁷

Risk management

Treasurer's Instruction 825 sets out a requirement that accountable authorities have appropriate structures in place to manage risks associated with agency activities. This involves conducting risk assessment processes to identify the risks, being able to demonstrate the management of risks and having a plan identified in the event of responding to and recovering from any business disruption. These policies and plans should be maintained to ensure they are up to date with the activities performed by their organisation.¹⁸⁸

Corruption in procurement must be recognised as a significant risk and addressed in planning. A 2013 OAG report identified nine agencies that needed to do more to prevent fraud and corruption. In particular, fraud and corruption risks were not sufficiently linked to internal audits.

Although the agencies audited had recognised the potential for fraud, very few converted that risk into a treatment plan or had taken action to try to address fraud. Worryingly, seven

184 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Briefing*, 11 March 2020.

185 Office of the Auditor General, *Audit Results Report – Annual 2018-19 Financial Audits of State Government Entities*, Western Australia, November 2019, p. 13.

186 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 5.

187 Radio interview on 6PR on 21 November 2019, accessed 21 November 2019, <
<https://www.6pr.com.au/podcast/auditor-general-satisfied-office-did-what-it-could-in-lead-up-to-corruption-charges/>>.

188 Public Sector Commission, *Public Sector Commissioner's Circular: Risk Management and Business Continuity Planning (No 2015-03)*, Western Australia, June 2018.

of the nine agencies had actually experienced fraud, but remedial follow-up was not structured and there was no plan for dealing with the ongoing risk.

A large part of building governance capability is the appropriate management of complex risks. The Auditor General is of the view that this has become more difficult with the machinery-of-government changes because 'a larger span of control requires more sophisticated monitoring and, really, a culture of awareness of risks and good governance.'¹⁸⁹

In 2019 the OAG advised that it was conducting 'additional risk assessment and devoting some additional time and audit procedures' to these recently amalgamated agencies; for example, the Department of Communities.¹⁹⁰

In the increasingly complex risk environment faced by public authorities, risk management consultancy services are sometimes outsourced. The Department of Finance has in place a Common Use Arrangement for audit and financial services.¹⁹¹ The outsourcing of internal controls is discussed later in this chapter.

Accountability

The Committee saw evidence of weaknesses in accountability frameworks in agencies in the WA public sector, particularly in procurement and delegations of purchasing authority.

Weaknesses in accountability frameworks are exacerbated in agencies with organisational structures which include regional branches. This usually means there is a large amount of delegated authority which can leave procurement vulnerable to poor practice; the Housing Authority being one example.

189 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 5.

190 *ibid.*, p. 2.

191 Department of Finance, *Audit and Financial Advisory Services*, March 2020, accessed 13 March 2020, <https://www.wa.gov.au/government/cuas/audit-and-financial-advisory-services-cuaafa2018>.

The OAG noted that if somebody puts up the usual compliance reporting to head office but then says to their staff, 'Well, actually, this is the way we are going to do things and that is going to be okay' it breeds a culture that can be difficult to shift once it is embedded.¹⁹²

Lines of accountability also ensure that those who make decisions have the required information. The NMHS governance review revealed how lines of accountability within WA Health were diluted or broken, resulting in decisions being made without those in positions of authority being aware of all the facts. It reported that:

There were weaknesses in the governance mechanisms to ensure all relevant and pertinent information was provided to the decision-maker. This includes the decision to award Mr Fullerton with a renewed employment contract. Particular weaknesses impacting decision-making included gaps in communication and/or handover of key risk matters to key individuals; and a lack of formal performance review at a key milestone.¹⁹³

Accountability of contractors and third parties is also an issue. The Langoulant Report noted that in the case of the Department of Health's centralised computing services project there was 'extremely bad practice,' particularly where there were third parties involved who were 'almost running the process with no accountability back into the department.'¹⁹⁴

Corporate visibility of procurement activities

Understanding procurement performance is crucial for preventing 'the leakage of benefits on waste and ... meeting the needs of the fraudulent and corrupt.'¹⁹⁵ Measurement of activity 'against targeted results provides an incentive to hone and continuously improve procurement strategy to achieve the desired goals and objectives.'¹⁹⁶ One of these objectives should be a procurement process that is resistant to corruption.

The Department of Finance identified that agencies do not understand their procurement profiles as they should, which is evident in 'agencies being unable to account for 100 per

The whole structure of delegation which we have in our organisations, where someone mid-ranking can be responsible for a significant procurement—I am talking millions of dollars—we need to review that.

That would give rise to accountability at the most senior level. If we are going to ask our senior public servants to be accountable for anything, it should be the expenditure of money.

-John Langoulant AO, Special Inquirer into Government Programs and Projects

¹⁹² Mr Jason Beeley, Assistant Auditor General, Performance Audit, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 7.

¹⁹³ Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission's Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, p3.

¹⁹⁴ Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2018, p. 9.

¹⁹⁵ Submission 9A, Ms Christine Tonkin, p. 10.

¹⁹⁶ *ibid.*

cent of spend and noncompliance with the requirements of [Treasurer's Instruction 820].¹⁹⁷ A recent report by the Public Accounts Committee highlighted that the Instruction was issued because of a concern about a lack of visibility of contracts among agencies.¹⁹⁸

One way agencies can achieve a better understanding of expenditure across their operations, is by aggregating expenditure into categories of procurement. This enables a strategy to be formed for each category of procurement. This involves critically analysing the procurement requirement, stakeholders' needs and the operation of the relevant supply market. Procurement processes and outcomes can be monitored and assessed against identified targets. The process of, and evidence considered in, framing a procurement strategy within a public authority should be open and transparent. This then provides a basis for future decision-making and for monitoring and managing performance.

A critical analysis of procurement requirements is crucial, although often not done well. For example a recent OAG information systems audit report criticised the WA Health patient record system. This was unable to ascertain if the vendor was delivering the application well or if contractual costs were being managed effectively.

Entities in WA have some visibility over their processes and over the number of transactions that they run. They do not have visibility over what they are buying.

- Christine Tonkin, Procurement Practitioner

An agency should understand its value as a customer. It is popular to say that suppliers will always exploit the public sector, but the Committee heard from several sources this is not necessarily the case. Rather, an agency should gain an understanding around how suppliers view it as a customer.

Alongside other internal controls, such as proper roles, relationships and responsibilities, visibility over what is being procured entrenches a culture where corruption stands out.

Addressing vulnerability to corruption and other forms of poor procurement performance is about removing the scope for nefarious or indifferent procurement strategies by reinforcing and making transparent the pursuit of legitimate goals and objectives.

At issue in this context is the clarity with which the procurement-related goals and objectives of public authorities are identified, pursued and their achievement measured – corporately, in support of particular service/programme delivery; with respect to each category of goods and services, and at the transactional level.

- Christine Tonkin, Procurement Practitioner

197 Submission 1 [to the Public Accounts Committee: Inquiry into public sector contract management practices], Department of Finance, p. 10.

198 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, Transcript of Evidence [Public Accounts Committee: Inquiry into public sector contract management practices], 8 April 2019, p. 2.

In the NMHS example of corrupt practice, nobody had visibility over the extent of procurement of maintenance and services contracts for health facilities. In addition to this, no coordinated monitoring and analysis of data was carried out. The NMHS governance review noted that ‘given the size, scale and diversity of the NMHS’ procurement activity, good practice would be to ... conduct central monitoring and analysis over procurement data to identify high risk areas or compliance concerns.’ The review found that such monitoring was not being done.¹⁹⁹

***They are not fraudulent,
but they are kind of under
the radar, so we are
identifying those.***

*- Mark Thompson, Chief
Procurement Officer, WA Health.*

*On a trend identified within WA
Health where numerous small
transactions are aggregated for a
year, revealing whether a
contract should be in place.*

Since increasing the use of data analytics to measure and monitor procurement, the Department of Health reports that problematic procurement activities are now starting to be identified and addressed.²⁰⁰

In relation to the alleged corruption within the Housing Authority, the public officer charged has been accused of stealing \$22 million from the public sector over ten years. Without visibility over procurement in an agency, there is no way of knowing if money is being leached out of the budget.

***A transaction by transaction
approach reveals nothing ...
aggregate spend on a category
tells a story... Looking at
individual transactions of
<\$50K each is like leaf
counting. You can’t see the
woods for the trees.***

*- Christine Tonkin, Procurement
Practitioner*

It is possible that if there had been visibility over the aggregate expenditure on the services that were being procured under the fraudulent system that is alleged to have been established, it would have been noticed sooner. And, if segregation of roles is enforced as an internal control, those responsible for monitoring the aggregate expenditure would sit apart from those who authorise requisitions and their payments. This facilitates the detection and reporting of any anomalies in expenditure.

Data analytics

Data analytics can be used to facilitate monitoring and oversight, as a separate, stand-alone exercise to interrogate data for anomalies or irregularities which signal misconduct. It is also a useful tool conducted as a part of an internal audit (see the following section).

199 Public Sector Commission, *Governance Review of North Metropolitan Health Service: As it relates to the Corruption and Crime Commission’s Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, report prepared by KPMG, Western Australia, May 2019, pp12-13.

200 Mr Mark Thompson, Chief Procurement Officer, Health Support Services, *Transcript of Evidence*, 15 May 2019, p. 13.

EY advised the Committee that ‘data analytics itself is the process of inspecting, cleansing, analysing and then interpreting the outcomes of the actual process.’ It is not a technology, but rather a process enabled by technology.²⁰¹

Box 5.6 Data analytics as a tool to combat corruption

What is ‘data analytics’?

Data analytics is the use of technology to examine data sets to inform and support decision making. Data sets can include internally held data, externally available data or a combination of both. Data analytics examines the data sets using defined instructions or queries that can include comparing data sets, reporting exceptions, analysing trends or changes in data over time and other instructions that align with the insights being sought by the organisation.

How does data analytics help to prevent corruption in public procurement?

Data analytics can be used to provide ongoing proactive oversight over the procurement process and to identify high risk and trend areas for secondary review. It can be utilised to review larger data sets in close to real time, as opposed to a retrospective sample based approach. Its effectiveness is dependent on the quality of the underlying data and the design of the analysis undertaken i.e. the instructions or queries that are run on the data set.

Source: KPMG

The use of data analytics is becoming increasingly popular within the public sector. For example, and as noted above, the Department of Health is increasing capacity in this area, reporting that it now has:

... very good insights into the behaviour of our buyers. I am starting to share that with all the procurement and supply chain functions within the hospital areas and we are starting to detect some trends and ... change some of our preventative control.²⁰²

The Queensland Crime and Corruption Commission recommends as best practice the use of data analysis as a detection tool, particularly in high risk areas.²⁰³

A global survey of fraud trends published by KPMG also acknowledged the importance of technology in the fight against fraud, and emphasised that data analytics is the ‘key anti-fraud technology...a tool that can sift through millions of transactions, looking for suspicious items.’²⁰⁴ However, the KPMG report also acknowledged that:

Technology is a double-edged sword. Technological advances provide more powerful tools in strengthening companies’ defenses [sic] against fraud, as well as a means of finding areas of vulnerability for the fraudster to penetrate. But ... technology is more frequently used in perpetrating fraud than in detecting it. Technology was a major enabler for 24 percent of fraudsters... As younger, tech-

201 Mr Bradley Hooper, Partner, EY, *Transcript of Evidence*, 14 August 2019, p. 10.

202 Mr Mark Thompson, Chief Procurement Officer, Health Support Services, *Transcript of Evidence*, 15 May 2019, p. 13.

203 Crime and Corruption Commission Queensland, *Fraud and Corruption Control: Best Practice Guide*, Queensland, March 2018, p. 41.

204 KPMG, *Global profiles of the fraudster: Technology enables and weak controls fuel the fraud*, KPMG International, May 2016, p. 6.

savvy employees rise through the ranks, the incidence of technology-related fraud is likely to rise.²⁰⁵

Government agencies need to be aware of these developments and adjust their response accordingly. As technology becomes a greater enabler of fraud and corruption, so too must it become a more frequently used and more effective tool against fraud.

While data analytics is increasingly recognised and used in fighting corruption, it is arguable that it is still not being used as effectively as it could be. It has been reported that often, ‘public sector organisations analyse data but are overwhelmed by the volume of the results.’²⁰⁶ Furthermore, these bodies ‘have no effective process for rating the relative risks or refining their analytical methods to detect improper transactions.’²⁰⁷

This was supported by evidence received by the Committee. It was also alerted to some other factors that hinder effective use of data analytics:

- a lack of understanding or appreciation of data as an asset and its potential to drive organisational outcomes, compared to more traditional transaction sampling methods
- the absence or shortcomings in policy and procedure around information and knowledge management
- the accuracy and consistency of data entry and controls (i.e. data quality)
- failings in system capability to extract data in a useable form—particularly where data is stored across multiple systems.

It is important that data analytics is seen as just one way of preventing and detecting corruption. Rather than becoming complacent, agency internal audit and risk committees must continue to assess whether the data is being collected, analysed and used in a way that is most effective for the organisation.

Furthermore, effectiveness will necessarily be limited when resources are finite. It is a useful tool but must not be relied upon as the sole line of defence. Agencies should also focus on strengths of other internal controls.

“The analysis of data continues to bring disappointing results ... We advise organisations to ask themselves: are we allocating enough resources to this important function?”

- Eighth PwC Global Economic Crime Survey 2016/An Australian snapshot of economic crime in the public sector: Fighting fraud in the public sector IV

Finding 32

Monitoring the effectiveness of internal controls and acting on audit reports (both internal and external) and other inquiries, are all integral to good governance and essential for corruption prevention.

205 KPMG, *Global profiles of the fraudster: Technology enables and weak controls fuel the fraud*, KPMG International, May 2016, p. 21.

206 PwC, *Eighth PwC Global Economic Crime Survey 2016/An Australian snapshot of economic crime in the public sector: Fighting fraud in the public sector IV*, Australia, July 2016, p. 13.

207 *ibid.*

Finding 33

There is evidence of weaknesses in accountability frameworks in agencies in the Western Australian public sector, particularly in procurement and delegations of purchasing authority. This is exacerbated in agencies with regional branches, where a large amount of delegated authority makes the organisation vulnerable to poor practice.

Finding 34

In cases of corruption, there is often a lack of effective oversight of and accountability for decisions, with little or no corporate visibility of procurement activity and expenditure across the organisation. Monitoring, measuring and reporting on performance and expenditure is an important part of an agency's corruption prevention framework.

Finding 35

Alongside other internal controls, such as proper roles, relationships and responsibilities, visibility over what is being procured entrenches a culture where corruption stands out.

Third line of defence: internal audit and review

Sound governance should include a mechanism for testing and refining the internal controls and accountability frameworks within an agency. This is complemented by investigating identified breaches and implementing reforms to stop them reoccurring. When these third tier defences are fragmented and/or ineffective, corruption risk increases.

Internal audit, and the utilisation of an Audit Committee, can help an agency accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes

- Treasurer's Instruction 1201

In some agencies integrity units and investigation of misconduct matters fall within the same remit as audit. Agencies examined during the inquiry appear to have varying approaches.

The *Financial Management Act 2006* requires an accountable authority to establish and maintain an effective internal audit function which operates within the agency's risk, control and corporate governance framework, and in accordance with an internal audit charter.²⁰⁸

The officer charged with heading up the internal audit function should report to the internal audit committee, and in turn, this committee should report to the accountable authority on the internal audit program. Benchmarks that measure performance should be established, endorsed by the audit committee and approved by the accountable authority.²⁰⁹

208 Department of Treasury, *Financial Administration Bookcase*, Western Australia, January 2020.

209 *ibid.*

Internal audit

Internal audit for procurement related activities ranges from ‘compliance audits of activities with policy and procedures, through to efficiency and effectiveness audits of procurement processes and controls.’²¹⁰

Internal audit is the second most effective method of occupational fraud detection and other procurement related corruption. Whistleblowing and tip-offs are the most effective (see Chapter 7).

Internal audit can provide a useful tool for management if utilised effectively. When asked about corruption prevention and detection, agencies rightly pointed to internal audits as being a part of the strategy to carry out this function. Agencies also talked about the outsourcing of this function to external providers.

The Committee was told that in spite of known cases of fraud and corruption in areas of the public sector, internal audit does not receive the attention it deserves at the senior governance level. Procurement is a significant activity for public authorities, and yet it is not being regularly or adequately reviewed.²¹¹

In my agency, we have a procurement audit every year. That audit is tabled with our internal audit committee, which includes the Office of the Auditor General, and as CFO I welcome the scrutiny because you want to find out the problems before they get out of hand, and you take action.

- Liam Carren, State Tender Review Committee member and Executive Director, Finance and Business Services at the Department of Communities.

Audit committees

While it has long been required of agencies that they have an internal audit function, it is not certain whether all have had an independent, functional audit committee. This is now mandated in revised Treasurer’s Instructions.

Audit committees are generally responsible for auditing an agency’s processes and procedures and ensuring implementation of any findings. They should also ensure the findings of external reviews and audits are implemented and progress reported to accountable authorities. The independence of these is of paramount importance.

In November 2019, following the discovery of corruption alleged to have occurred over a period of time in the Housing Authority and then the Department of Communities, the government announced the implementation of reforms across the public sector.²¹² These include mandating that agencies establish an internal audit committee that is independent from the day-to-day activities of the agency, and which is chaired by a person external to the agency.

210 KPMG, letter, 12 August 2019, p. 2.

211 Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2019, p. 16.

212 Hon. Mark McGowan MLA, Premier and Hon. Ben Wyatt MLA, Treasurer, *Stronger financial accountability controls for WA public sector*, media statement, 25 November 2019.

Case Study 3

System failure – when all agency lines of defence are compromised

In 2010 the CCC formed an opinion that WA Health was 'unable to adequately account to the wider community for the way it managed misconduct risk and related occurrences of misconduct in a demonstrably fair, reliable and transparent way.'²¹³

The CCC was of the view that WA Health needed to develop a strategy that would build its capacity to prevent and manage misconduct across the organisation. That is, it needed an identifiable misconduct management mechanism articulated at its most senior levels.

Auditor General reports around this time also highlighted weaknesses in governance, reporting, recordkeeping, controls and accountability.²¹⁴

Four years later, another CCC report revealed the extent of WA Health's potential exposure to fraud and corruption in procurement, uncovering systemic weaknesses in the management of fraud and corruption risk in procurement.²¹⁵

This report detailed an investigation carried out by the CCC in 2010 which exposed serious misconduct by a facilities manager at a major public hospital within the South Metropolitan Health Service. The report outlined how this individual was able to fraudulently obtain benefits, totalling approximately \$490,000, from projects he managed over six years.

This corrupt practice was not identified as a result of Health's internal controls. Rather it was identified by an external organisation working with the corrupt officer.

The CCC report examined the various internal controls in place within the Health system, such as: integrity and governance frameworks; risk management mechanisms; internal audit functions; reporting mechanisms; and training.

In spite of work done by Health in these areas since 2010, the 2014 CCC report found there were still inadequate internal controls and integrity mechanisms. It identified widespread non-compliance and limited capacity to effectively manage conflicts of interest, gifts and benefits and outside employment.

In addition, dysfunction within Health's integrity and internal audit unit (the Corporate Governance Directorate) had also reached a critical point. There were issues with resourcing, investigative capacity and lines of accountability and communication.

By September 2014 the CCC had received an anonymous allegation that certain companies were favoured, and that procurement practices were not routinely followed, when contracts were awarded by NMHS facilities management.

Ultimately, due to the organisational inability of Health to adequately deal with misconduct and corruption, the CCC commenced an independent investigation in April 2016 into facilities management procurement within the NMHS. The resulting report in 2018 detailed more than a decade of corrupt conduct reaching into senior levels within WA Health.

²¹³ Corruption and Crime Commission, *Misconduct Handling Procedures in the Western Australian Public Sector: WA Health*, Western Australia, April 2010, p. xiii.

²¹⁴ Office of the Auditor General, *ICT Procurement in Health and Training*, Western Australia, October 2010; and *Pharmaceuticals: Purchase and Management of Pharmaceuticals in Public Hospitals*, Western Australia, June 2012.

²¹⁵ Corruption and Crime Commission, *Report on Fraud and Corruption in Procurement in WA Health: Dealing with the Risks*, Western Australia, June 2014.

Integrity units and investigative functions

In addition to agency audit committees, another line of defence is through integrity units, which ideally carry out functions in line with an agency's integrity framework. This includes investigations into suspected misconduct or corruption. Investigations may be carried out either by an outside contractor, or by an agency's internal capability.

Different agencies gave evidence about whether they had an integrity strategy in place, what it involved, and whether an integrity unit or dedicated integrity positions existed within their structures. Each agency had vastly different arrangements.

Table 5.1: WA Health integrity positions by Health Service Provider (information current as at May 2019)

WA Health entity	Number of FTE positions	Comments
Department of Health	14 FTE (4 of these are investigative roles)	SWIS fulfils the integrity function for the Department of Health and is also the System Manager, providing functions that involve oversight, assurance and support for HSPs. It is currently leading the Integrity Fraud and Corruption (IFAC) Project which aims to develop integrity capability across the health system.
East Metropolitan Health Service	2 FTE (Manager Integrity and Ethics [level G10] and Senior Consultant Integrity and Ethics [level HSU G8])	In June 2019, the level HSU G8 position had not yet been filled, but was intended to be advertised in the near future.
North Metropolitan Health Service	3 FTE (1 x Manager [level 10 HSU] and 2 x Senior Consultants [level 8 HSU])	All positions filled.
Child and Adolescent Health Service	1 FTE for a Manager Integrity and Ethics position	Not clear if filled.
Quadriplegic Centre	0 FTE	If required, the Quadriplegic Centre draws on the NMHS Integrity and Ethics unit.
Health Support Services	No positions that are solely dedicated to integrity matters.	A number of staff routinely deal with integrity matters as part of their role. Approximately 3.7 FTE of staff in the HR and Capability, and IR business areas deal with integrity matters. Another 0.4 FTE of GRC staff are dedicated to integrity.
South Metropolitan Health Service	1 FTE (Manager Integrity and Ethics)	Administrative support provided by staff within the office of the chief executive, but these staff are not dedicated integrity staff.
Pathwest	1 FTE (Manager Integrity and Ethics)	
Western Australian Country Health Service	3 FTE (1 x Manager of Integrity Unit, 2 x Senior Investigators)	

For example, the Public Transport Authority (PTA) has an audit committee housed within its investigations branch. It has three investigators supported by an administrative officer. This team has a direct relationship with the CCC, and is responsible for notifying the CCC of any

allegations of serious misconduct. The PTA advised that the CCC will direct it to carry out its own investigations in the vast majority of cases.²¹⁶

An interesting example is that of WA Health. The introduction of the *Health Services Act 2016* followed a long period of reporting on weaknesses and dysfunction within Health's first, second, and third tier defences: internal controls, accountability, oversight, internal audit, and the investigation of misconduct (see Case Study 3).

The 2016 reforms introduced significant change to the structure of the overall health system, with the establishment of Health Service Providers (HSPs) as independent statutory authorities, which devolved responsibility for the management of misconduct.²¹⁷ Each HSP now has responsibility for misconduct and each has its own integrity capacity embedded within its operational structure. Table 5.1 collates information provided to the Committee about integrity units within the health sector.

Resourcing and capability of audit committees and investigative units

The internal audit function requires sufficient resources to enable it to effectively carry out its mission and objectives.

- Treasurer's Instruction 1201

Allocating adequate resources to internal audit and integrity functions must be prioritised by accountable authorities.

The Committee received evidence that in the current environment there is a lack of resourcing for investigators and auditors within public authorities.²¹⁸

The Committee also identified what appears to be a lack of capacity to carry out audit and investigative functions.

In April 2020, the CCC tabled a report on an internal investigation carried out by the Department of Communities into allegations of bribery (see Case Study 4). The CCC reports that the 'investigation was protracted and scant investigative avenues were explored.' The Department 'reached a possibly premature conclusion that no serious misconduct had occurred.' In addition, numerous departmental staffing changes and poor communication with the CCC inhibited the CCC's 'ability to properly monitor the progress of the investigation.'²¹⁹

The CCC report concludes that the 'lesson for all agencies is that risk of serious misconduct is primarily for them to manage' and that it is the responsibility of government agency heads must ensure that they have 'a robust integrity function in place.'²²⁰

216 Mr Kevin Kirk, Executive Director, Finance and Contracts, Public Transport Authority and Mr Mark Burgess, Managing Director, Public Transport Authority, *Transcript of Evidence*, 17 September 2018, p. 5.

217 Ms Angela Spaziani, Director, System-wide Integrity, Department of Health, *Transcript of Evidence*, 15 May 2019, pp. 6-7.

218 For example, see Submission 6, Community and Public Sector Union/Civil Service Association, p. 12.

219 Corruption and Crime Commission, *Review of an inadequate investigation by the Department of Communities into allegations of bribery*, Western Australia, 2 April 2020, p. 1.

220 *ibid.*, p. 9.

A similar criticism can be levelled at agency internal audit capability. KPMG advised that in its experience, departmental audit committees 'have differing levels of experience based on their composition as well as differing levels of exposure to investigations depending on the nature of the business and previous experience.'²²¹

Case Study 4²²²

Review of an inadequate investigation by the Department of Communities into allegations of bribery

In September 2017, the Department of Communities (DoC) received information from a member of the public which indicated that one or more of its employees may have been accepting bribes from potential tenants in exchange for being allocated priority or expedited public housing.

Suspecting serious misconduct, DoC informed the Commission and the WA Police Force. WA Police Force decided not to investigate.

The Commission referred the matter back to DoC to investigate but maintained active oversight.

Due to a range of issues, such as departmental staffing changes, poor recordkeeping and inadequate investigative techniques, DoC's response was inadequate.

The current Director General has acknowledged this, and put in place new arrangements to address DoC's serious misconduct risks.

These include a new Governance, Capability and Reform Division that brings together the governance, capability, risk, integrity, legal, internal audit and reform functions under a single direct reporting line to the Director General, via a new Deputy Director General position.

The CCC report notes that DoC also has in place a new Integrity and Standards Unit to support the development and implementation of an integrity framework and supporting systems, tools and training for staff. This consolidates related integrity functions, as well as investigating integrity matters.

The Auditor General said that since commencing in the role, she has observed that 'audit committees in the Western Australian public sector are not as mature as they are in other jurisdictions, particularly the Commonwealth but also New South Wales, Victoria and the ACT.'²²³

221 KPMG, letter, 12 August 2019, p. 5.

222 Corruption and Crime Commission, *Review of an inadequate investigation by the Department of Communities into allegations of bribery*, Western Australia, 2 April 2020.

223 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 5.

The Auditor General stated that one of the key roles of audit committees is to follow-up on audit recommendations and ensure that they are effectively implemented in a timely way. Yet it appears to the Auditor General that this is not always happening.²²⁴ To ignore sound

We would take on the matters that we had the capacity to take on—mainly the more serious ones—and the ones that we did not have the capacity or the resources to take on ... would be farmed back to the areas and they would undertake their own investigations. Sometimes they would do those investigations themselves by one of the senior people there, HR or whoever, or they would farm it out to a private investigator.

- Ross Emerson, former investigator with the Department of Health's Corporate Governance Directorate

advice provided by a legitimate oversight body is a waste of public resources.

One argument from agencies for employing external experts to conduct internal audits is to address the issue of internal capability. KPMG recognised the limitations on capacity of agencies to carry out more serious investigations and complex audits internally.²²⁵

The more developed an agency's capacity, the more likely that the external oversight bodies (CCC and PSC) will be to refer notifications made under the *Corruption Crime and Misconduct Act 2003* back to the agency to investigate and deal with. For example, the Department of Education, an agency with a more mature integrity unit, with a highly skilled workforce in this area, is considered by the PSC to be able to conduct its own investigations.²²⁶

The PSC aims to build the capacity of public sector authorities to carry out investigations. It provides training by way of funding the 'Certificate IV in Government Investigations' course. It also advises that it continues to look for additional ways to build capacity.²²⁷

Non-frontline personnel in governance, audit, risk management, integrity and corruption prevention roles are expected to maintain the standards required of such roles, but with constrained resources. The Public Sector Commissioner notes the importance of adequately resourcing these areas within agencies.²²⁸

Case Study 5 is an example where the capacity of an agency was not considered adequate in relation to the prevention, detection and investigation of misconduct.

224 *ibid.*

225 KPMG, Letter, 12 August 2019, p. 5.

226 Ms Sharyn O'Neill, Commissioner, Public Sector Commission, *Transcript of Evidence*, 20 March 2019, p. 7.

227 Ms Sharyn O'Neill, Commissioner, Public Sector Commission, letter, 31 May 2019, pp. 2-3.

228 Discussion panel at the June 2019 Integrity Forum in Perth, Western Australia, hosted by the Public Sector Commission and the Corruption and Crime Commission.

Case Study 5

Real life example provided by the Corruption and Crime Commission

Allegation: An employee with a declared conflict of interest was ensuring that a specific works contractor received preferential treatment over other vendors.

Background: Following the anonymous allegation the agency commenced an internal investigation.

Assessment: The CCC referred the matter for active monitoring and review due to the high monetary value of the contracts and its strategic focus on exposing and responding to corruption risks in procurement and financial management.

The CCC had an initial meeting with the agency to discuss its concerns and the oversight process. The agency was required to provide regular updates on the progress of the investigation, which was subject to extensive review both during the investigation and on completion.

The CCC review identified significant failings, particularly in relation to system weakness and a failure to understand the extent of the misconduct. The review concluded that the agency did not demonstrate a mature process for preventing, detecting and investigating serious misconduct and was unable to quantify the value of the contracts affected by the conduct.

Outcome: The CCC advised the agency that its response to this matter was inadequate and recommended a review of its investigative processes and accompanying policies to ensure that they align with public sector standards and best practice principles.

The audit program

Audit committees work to establish a program to suit an agency's business needs. External providers may advise on the development of the audit plan, but the ultimate direction is decided by the audit committee.

KPMG suggests this is a collaborative exercise that involves input from a wide variety of sources, including:

- the organisation's risk profile
- past audit findings, elsewhere and in other sectors
- topics raised in reviews or inquiries
- key business initiatives and emerging risk areas
- consultation with the OAG.²²⁹

²²⁹ KPMG, letter, 12 August 2019, p. 5.

While KPMG provides input and suggestions on the scope of an internal audit, the focus areas are ultimately determined by the client based on their business needs, risks and budget.²³⁰

Budget constraints can affect the scope of audit. The PTA, for example, presents a shortlist of around 12 areas to the audit committee for consideration, which includes an OAG representative.²³¹

Everyone agrees that audit committees are not working as effectively as they could be ... they are not rigorously following up on audit recommendations.

- Caroline Spencer, WA Auditor General

Follow-up on audits is the responsibility of agency management. If a rigorous implementation process is not enforced, the value will be lost. It is apparent that more robust internal audit functions, and audit committees that follow up on recommendations, are required in public sector authorities in WA.²³²

Suggestions for reform from external auditors

EY and KPMG identified areas for improvement within the public sector, observed through carrying out internal audit work for agencies. KPMG identified fraud risk awareness; governance and promoting a culture of compliance as areas for improvement.²³³

EY listed a range of challenges facing the public sector, including change management and fatigue; budget pressures and financial constraints; cyber risk and digital disruption; digital enablement; and workforce culture and capability building.²³⁴

Finding 36

Evidence shows that despite recent discoveries of fraud and corruption in areas of the public sector, internal audit does not receive the attention it deserves at the senior governance level.

Finding 37

Departmental audit committees have varying levels of experience and capacity as well as differing levels of exposure to, and ability to conduct, investigations. Generally audit committees in the Western Australian public sector are not as mature as in other jurisdictions.

²³⁰ *ibid.*

²³¹ Mr Mark Burgess, Managing Director, Public Transport Authority, *Transcript of Evidence*, 17 September 2018, pp. 3-4; and Mr Kevin Kirk, Executive Director Finance and Contracts, Public Transport Authority, *Transcript of Evidence*, 17 September 2018, p. 4.

²³² Radio interview on 6PR on 21 November 2019, accessed 21 November 2019, <<https://www.6pr.com.au/podcast/auditor-general-satisfied-office-did-what-it-could-in-lead-up-to-corruption-charges/>>.

²³³ KPMG, *Transcript of Evidence*, 4 September 2019, p. 10.

²³⁴ Mr Bradley Hooper, Partner, EY, *Transcript of Evidence*, 14 August 2019, p. 6.

Finding 38

Agencies generally have limited capacity to carry out audits and investigations. It is essential that audit committees and investigative branches are resourced adequately within agencies.

Outsourcing of internal audit and investigation

Agencies are increasingly outsourcing internal audit and related functions to consultancies. This comes at a considerable cost. In the 2017-18 year alone, around \$20.6 million was spent on audit and financial advice that includes taxation and accounting, risk and governance, and a range of forensic and other auditing services.²³⁵

Whilst the Committee has not been alerted to specific causes for concern, where large sums of money are involved in the procurement of services from an external provider, there is a risk of conflicts of interest. This applies equally to the procurement of audit and investigative services.

There is also a risk that external providers may be compromised in being able to maintain an appropriate level of independence. Auditor independence is a key characteristic of ‘an auditor’s ability to achieve their fundamental objective—that is, to obtain reasonable assurance that the financial report as a whole is free from material misstatement.’ The other key characteristic of audit quality is auditor competence, or capacity.²³⁶

The Commonwealth Parliament’s Joint Committee on Corporations and Financial Services (see its terms of reference in Box 5.7) is currently looking at the quality, regulation and market for corporate audits; conflicts of interest within the big four firms; and the performance of regulators.²³⁷

The inquiry is responding to the erosion of trust in the integrity of the work of the ‘big four’ audit firms (Deloitte, EY, KPMG and PwC). For some time there have been calls to prohibit or at least ‘curtail the ability of auditors to also do non-audit work for audit clients that compromises, or seems to compromise, independence.’²³⁸

235 Department of Finance, *Who buys what and how*, 30 June 2018, accessed 8 October 2019, <<https://www.wa.gov.au/government/publications/who-buys-what-and-how>>.

236 Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of Auditing in Australia*, February 2020, accessed 6 April 2020, para 4.1, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing/Interim_Report/section?id=committees%2freportjnt%2f024330%2f72618>.

237 Parliament of Australia, *Regulation of Auditing in Australia*, accessed 29 October 2019, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing>. An interim report has been tabled by the federal committee.

238 Sandra van der Laan, ‘Inquiry can restrict auditors’ conflicts of interest’, *Australian Financial Review*, 4 September 2019, p 30.

Box 5.7: Commonwealth Parliamentary Inquiry: 'Regulation of Auditing in Australia'

The Parliamentary Joint Committee on Corporations and Financial Services is examining the regulation of auditing in Australia, with particular reference to:

1. the relationship between auditing and consulting services and potential conflicts of interests;
2. other potential conflicts of interests;
3. the level and effectiveness of competition in audit and related consulting services;
4. audit quality, including valuations of intangible assets;
5. matters arising from Australian and international reviews of auditing;
6. changes in the role of audit and the scope of audit products;
7. the role and effectiveness of audit in detecting and reporting fraud and misconduct;
8. the effectiveness and appropriateness of legislation, regulation and licensing;
9. the extent of regulatory relief provided by the Australian Securities and Investments Commission through instruments and waivers;
10. the adequacy and performance of regulatory, standards, disciplinary and other bodies;
11. the effectiveness of enforcement by regulators; and
12. any related matter.

Source:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing/Terms_of_Reference.

Conflicts of interest and the independence of auditors

Conflicts of interest persistently raised with the federal joint committee as potentially compromising auditor independence, and thereby negatively impacting audit quality, include the provision of non-audit services to the audited entity and the 'perceived closeness of the auditor with the audited entity, particularly that arising through long association.'²³⁹

The federal joint committee has expressed concern that the 'big four' firms have become corporate insiders, with the role of independent outsider scrutinising the accounts of major corporations becoming compromised.²⁴⁰ This Committee is concerned that the same issue applies to the relationship between the public sector in WA and the big firms that are regularly contracted to work for public sector entities.

OAG have a policy that if you are an OAG auditor, you cannot do any other work for that organisation. We had both Deloitte and EY make a commercial decision that, for a couple of hundred thousand dollars of engagement for OAG, it was ruling them out of a whole lot of other work.

- Mr Kevin Kirk, Public Transport Authority

239 Parliamentary Joint Committee on Corporations and Financial Services, *Regulation of Auditing in Australia*, February 2020, accessed 6 April 2020, para 4.5, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/RegulationofAuditing/Interim_Report/section?id=committees%2freportjnt%2f024330%2f72618>.

240 Peter Ryan, 'Auditors told to swallow some medicine in wake of bank scandals', *ABC News* (web-based), 29 October 2019, accessed 29 October 2019, <<https://www.abc.net.au/news/2019-10-29/auditors-told-to-swallow-some-medicine-in-wake-of-bank-scandals/11648758?section=business>>.

The OAG has addressed the potential for conflicts of interest with a policy that prevents companies tendering for OAG audits and then carrying out other work for clients.²⁴¹

The OAG publication *Transparency Report* details this policy:

Our contracts with the firms restrict the work they can undertake in any agency they audit on behalf of the Auditor General so that their independence and objectivity is not in question...Maintaining independence between our contract firms and the agencies they audit is critical for us.²⁴²

Until recently, there was no limit to the length of time that an external provider could be engaged to provide financial/audit services to a government entity. Evidence received by the Committee indicates that contracts have generally been for more than 2 years in length—usually somewhere between three and five years. Furthermore, longer terms of engagement are often facilitated by provisions allowing contracts to be extended for a further term. This can extend contracts out for as long as 15 years.

For example, the Public Transport Authority advised the Committee that they have a contract with KPMG for internal audit, which is up to its third five-year term. A contract for external audit is in place with RSM, which is in its third year.²⁴³

Recent changes to Treasurer's Instruction 1201 now require the regular rotation of external providers, limiting their engagement to three-year terms.²⁴⁴ This reform demonstrates an awareness within government that external providers now play a key role in delivering internal audit for public authorities. It is an important line of defence against corruption and its independence must be preserved.

Audit quality

The main issue identified by the Committee about quality of purchased audit services is the fact that resources are finite and agencies will necessarily prioritise front-line services over audit, integrity and risk. This means that the quality of audit is often not adequate in terms of corruption prevention, because the funds to purchase more audit hours, or a more comprehensive audit program, are simply not made available.

... the quality of auditing in Australia is appalling and could lead to the next Enron-style corporate collapse.

- Greg Medcraft, former ASIC Chairman

As noted earlier, outsourcing internal audit, as well as governance reviews and other governance functions, is often done because agencies do not have in-house access to the specialised skill-sets required.

241 For example, see comments made by Mr Kevin Kirk, Public Transport Authority, *Transcript of Evidence*, 17 September 2018, p. 11.

242 Office of the Auditor General, *Transparency Report*, Western Australia, March 2016, p. 12.

243 Mr Kevin Kirk, Executive Director Finance and Contracts, Public Transport Authority, *Transcript of Evidence*, 17 September 2018, p. 11.

244 Some critics say this could be too short. Division 5 Part 2M.4 of the *Corporations Act 2001* provides that an individual auditor or authorised audit company must not play a significant role in the audit of an entity for more than 5 successive financial years.

However, there is a risk that, even with a large amount of money spent, and the acumen possessed by external providers like the ‘big four’, these non-public service organisations may not have the corporate or sector knowledge required to make meaningful recommendations. Furthermore, a lack of corporate knowledge on behalf of external providers could also mean that it is easier for a public officer within the organisation to override controls and hide corruption.

While not an issue specifically investigated by the Committee in this inquiry, there is also ongoing reporting on issues around the quality of audit services delivered by external providers. The Australian Securities and Investments Commission (ASIC) is increasing its scrutiny of the big four firms, with ASIC’s senior executive leader for financial reporting and audit commenting publicly that the big four firms (Deloitte, EY, KPMG and PwC) need to do more to improve the quality of their work.²⁴⁵ The Committee notes the ongoing media coverage relating to class actions against the firms PwC, Deloitte and EY that are facing shareholder or investor class actions over the quality of their audits.²⁴⁶

Relying on external bodies to deliver internal governance functions

The Committee is of the view that agencies may be overly reliant on external providers to deliver corruption prevention and detection functions, and that there may be unrealistic expectations of these providers and what protections are delivered.

It is understandable for there to be a degree of complacency when audits and investigations are outsourced to a big four company with considerable expertise. Fraud or corruption may seem unlikely because an audit has been conducted and found nothing of concern.

However, the fraud uncovered in relation to the WA Trade Commissioner to Japan demonstrates the danger of such complacency.²⁴⁷ In June 2009 the Japan Trade office in Tokyo (which operated under the supervision of the Department of the Premier and Cabinet) was subject to internal audit carried out by an external provider. This audit did not raise any major risks or control weaknesses; however these were later clearly identified.²⁴⁸ It is possible that a false sense of security prevailed within the Department of the Premier and Cabinet, which is concerning, given that significant fraud was later discovered in the Tokyo office—a discovery brought about by machinery of government changes.

245 Edmund Tadros and Tom McIlroy, ‘ASIC to “name and shame” big four over audits’, *Australian Financial Review*, 7 August 2019, p 3.

246 Hannah Wootton, ‘Judge puts off PwC case until Deloitte ruling’, *Australian Financial Review*, 16 October 2019, p 28.

247 Corruption and Crime Commission, *Report on the WA Commissioner in Japan*, Western Australia, March 2019.

248 Public Sector Commission, *Governance Review of the Department of Premier and Cabinet*, report prepared by KPMG, Western Australia, August 2019, p. 2.

Finding 39

Agencies are increasingly outsourcing internal audit and investigative functions to consultancies, at a considerable financial cost. While useful in terms of accessing resources not available within public authorities, this must also be managed as a corruption risk, due to the large sums of money involved, and the potential for a lack of transparency and conflicts of interest which undermine independence.

Recommendation 6

The Committee encourages the relevant decision makers to watch the progress of the Commonwealth inquiry closely in order to integrate its findings into the procurement reform process.

Recommendation 7

The Department of Finance should consider, as part of its review of the state's procurement policy framework, the role played by companies that provide audit and financial services.

Organisational culture and behavioural drivers

If controls within the agency are not supported by organisational culture, then the effectiveness of those controls is limited and corruption risk is heightened.

Rules and procedures may govern practice, but when it comes to individuals and individual decisions, culture will determine how things get done.

- WA Public Sector Commission

The Auditor General said that it would have just taken one person within the Department of Housing to notice the fraudulent invoices, and for the alleged corruption to be uncovered. At issue here is culture and integrity—a question of culture and of people speaking up.²⁴⁹ It can be difficult for whistleblowers to speak up where there exists an entrenched culture of ignoring non-compliance and corrupt behaviour (see Chapter 7).

Outlined in Box 5.8 is the experience of the Victorian Department of Education and Training. Until serious corruption was uncovered within this agency by two IBAC investigations, the general attitude in the Victorian public sector was that serious corruption was not an issue in Victoria. However, in 2015, IBAC investigations and public hearings exposed revelations of corruption, which had been able to flourish for an extended period of time due to a workplace culture where people were bullied and were too scared to speak up and report wrongdoing. The agency secretary, Gill Callister, reflected that when such a culture prevails and corruption becomes a badly kept secret within an organisation, people do one of three things—they either leave the organisation, they

249 Radio interview on 6PR on 21 November 2019, accessed 21 November 2019, <<https://www.6pr.com.au/podcast/auditor-general-satisfied-office-did-what-it-could-in-lead-up-to-corruption-charges/>>.

become a part of the problem, or they avoid any confrontation and hope that they are not later implicated.²⁵⁰

Box 5.8: Victoria's Department of Education and Training – a culture which allowed corruption to flourish

Victoria's Independent Broad-based Anti-Corruption Commission (IBAC) began in 2012, with powers to investigate serious public service corruption.

At the time, the general attitude of agency secretaries was that IBAC would be overkill: serious corruption did not happen in Victoria, and existing systems, such as the Office of the Ombudsman, would be enough to detect anything untoward.

They were wrong.

In 2015, a few months after Ms Gill Callister started as secretary, IBAC's investigations and public hearings into the Department of Education and Training (DET) – Operation Ord and Operation Dunham – uncovered revelations of corruption, theft, and a workplace culture where people were bullied and scared to speak up.

Ms Callister said that the resulting media coverage left the department's reputation and morale in tatters.

"Many staff felt finally vindicated and able to tell their story but it was with anger and resentment it had taken so long. Staff who had been forced out of the department for not conforming to the culture or angering those in control were either called to give evidence or contacted their colleagues to debrief," she said.

"One of my most salutary reflections is that at the very same time we were discounting the need for an anti-corruption body back in 2010, this was going on in the department under our noses," she said.

"And my second reflection is that without the powers of IBAC much of the conduct would not have been uncovered."

IBAC found systemic issues that enabled the corruption to occur. One of the most damaging aspects of the corruption was that it was driven by senior executives in positions of power who exploited flaws in Victoria's school funding model for family and personal gain.

"We had a peer group of senior executives who for too long saw themselves above the rules," Ms Callister said.

"And because they were powerful, their disregard for accountability and ethical conduct had a ripple effect across the organisation."

Source: <https://www.anzsog.edu.au/resource-library/news-media/corruption-resistant-public-sector>.

Why does culture matter?

Culture matters, because failures in culture lead to breaches of integrity, which undermine community trust in government.

The importance of culture was recently examined by the South Australian ICAC, which investigated SA Health and reported on the troubling ambiguity surrounding key features of SA Health's operations. As a result, employees found wanting in integrity had been tempted to engage in improper conduct, and their conduct had been facilitated, tolerated, and even condoned by poor processes and governance.²⁵¹

250 Ms Gill Callister, guest speaker at the WA public sector integrity forum hosted by the CCC and PSC on 21 June 2019.

251 Independent Commissioner Against Corruption South Australia, *Troubling Ambiguity: Governance in SA Health*, South Australia, November 2019, p. 15.

Culture pervades every activity in an organisation, and impacts on the attitudes of staff and management as to how they do their jobs. Culture influences whether lip service is paid to compliance, accountability and integrity or whether these measures are genuinely implemented in the spirit intended.

Culture also influences whether staff feel it is their duty to report anomalies they may see, and whether they feel safe and supported in doing so. The SA ICAC observed that ‘the overall effect of an organisation that is culturally unwilling or frightened to report corruption is that it will become an organisation that learns to tolerate such conduct as part of its operations.’²⁵²

Recent events at the Department of Communities have highlighted exactly why culture matters—because breaches of integrity damage the trust that the public has in government. Director General Michelle Andrews acknowledged the impact of the alleged corruption on the WA community, particularly the people who rely on the services provided by the Department of Communities:

I want to acknowledge the people that we’re there to serve and how this has damaged them, made them angry, made them question us, lose trust in us...we’ve got a lot of work to do on that front.²⁵³

The other significant breach of trust is in relation to staff. Ms Andrews stated that this event had sent ‘shockwaves’ through the Department of Communities, and that for staff, ‘this event strikes at the heart of their values and they feel their integrity has been challenged and they are shattered by this.’²⁵⁴

Finding 40

Culture pervades every activity in an organisation, and impacts on the attitudes of staff and management as to how they do their jobs. Culture influences whether lip service is paid to compliance, accountability and integrity or whether these measures are genuinely implemented. If organisational culture does not support agency internal controls, corruption risk is heightened.

Standards are ... set through the attitudes espoused and behaviours demonstrated by those at the top of the organisation ... If the CEO or senior managers regularly disregard the organisation’s rules or do not respond to suspected wrongdoing, they cannot reasonably expect others to uphold the rules.

- Crime and Corruption Commission Queensland

252 Independent Commissioner Against Corruption South Australia, *Troubling Ambiguity: Governance in SA Health*, South Australia, November 2019, p. 15.

253 Frances Bell, ‘Corruption-accused civil servant Paul Whyte’s arrest a ‘moment of crisis’ that lost public trust’, *ABC News* (web-based), 4 December 2019, accessed 4 December 2019, <<https://www.abc.net.au/news/2019-12-04/paul-whyte-wa-corruption-accused-public-servant-lost-trust/11767012>>.

254 *ibid.*

Changing organisational culture

Following the discovery and investigation of significant corruption (see Box 5.8), the Victorian DET reformed its culture by taking a three-pronged approach,²⁵⁵ along the lines of the three lines of defence outlined in this chapter.

The first line was to support officers in acting with integrity and managing risk. For example, the agency established a Speak Up hotline for staff to report misconduct. This initiative led to a number of referrals to IBAC, the Ombudsman and Victoria Police, many of which were substantiated.

The second line was to strengthen functions that oversee and monitor risk, such as policies, governance and reporting systems. Finance operations, in particular, were a critical focus, as, in the past, this section had operated as a transactional function; for example, spending was not questioned if the amount spent was within delegation limits. Importantly, reforms to conflicts of interest management strengthened both the first and second lines of defence.

The third line of defence was improving risk management, and in particular, an independent and robust internal audit function. The agency's audit program was recently acknowledged by Victoria's Auditor-General for its standout performance.

255 ANZSOG, *How to build a corruption-resistant culture in the public sector*, 20 March 2019, accessed 5 February 2020, <<https://www.anzsog.edu.au/resource-library/news-media/corruption-resistant-public-sector>>.

Chapter 6

Conflicts of interest

Conflicts of interest are a particular corruption risk in WA. Corruption and Crime Commission investigations into procurement-related misconduct and corruption invariably find that a public officer had a significant conflict of interest.

WA is a relatively small community, with, in some cases, a limited supplier base. Effectively managing conflicts of interest is particularly difficult in an environment where everyone knows everyone else.

In and of themselves, conflicts may not be a big deal; but if they are not disclosed and then managed, their existence can facilitate corruption. Current practice in the WA public sector for managing conflicts of interest does not appear adequate.

Current practice is based on trust that people will ‘do the right thing’ and declare a conflict. A cultural shift is required. Better processes to manage declarations once they are made must be developed. Conflict of interest registers must be interrogated with the aim of discovering partial, misleading or missing declarations of conflicts.

Conflicts of interest are present in nearly all procurement-related investigations into corruption

Corruption and Crime Commission investigations into procurement-related misconduct and corruption invariably find that a public officer had a significant conflict of interest. These conflicts have resulted in serious wrong-doing by the public officer and others, leading to loss of public monies, loss of employment for the officers, and in some cases, criminal charges and prosecutions.

Conflicts of interest are a significant problem in other Australian jurisdictions too. The New South Wales Independent Commission Against Corruption (NSW ICAC) recently stated that ‘allegations relating to partiality and personal interests were the top two types of alleged conduct reported in the 2017 calendar year.’²⁵⁶ An examination of ICAC’s complaint data over the past five years identified procurement, disposals and partnerships

Conflicts of interest arise when there is a conflict between the performance of public duty and private, or personal, interests. Conflicts may involve personal, financial or political interests and may be actual, perceived or potential. It is not wrong for an employee to have a conflict of interest; what matters is how it is managed. Conflicts of interest become a problem when an employee’s private interests influence their decision making at work.

- Public Sector Commission

²⁵⁶ New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 32.

(usually hidden relationships between a supplier and a buyer) as areas 'often associated with issues of partiality and/or personal interests.'²⁵⁷

Conflicts often involve the provision of bribes in the form of gifts and hospitality. The giving of these knowingly creates a conflict of interest. The examples below indicate the nature and extent of the issue in WA.

The North Metropolitan Health Service

Conflicts of interest underpinned the misconduct at the North Metropolitan Health Service (NMHS), where contractors used gift-giving and hospitality as well as other benefits to 'build relationships' and therefore win contracts.

The CCC described how relationships between public officers and contractors are fostered and become conflicts of interest:

...the insidious nature of the conflict of interest that develops from allowing public officers to privately benefit is that a direct connection between a particular lunch date and a particular procurement decision is difficult to prove. The conflict of interest, once established in relation to a particular contractor, colours all decisions then made by the public officer.²⁵⁸

The private sector might view lunch as innocuous, simply hospitality and networking. What the NMHS matter showed was that, when carried out in relation to public sector procurement, this behaviour can quickly lead to serious misconduct. This can have serious consequences, as evidenced in the criminal convictions of a number of contractors in relation to the NMHS corruption.

Report on Corruption in Information Technology at Horizon Power

In this case it is alleged that a trusted public officer in a senior management role used his position to corruptly benefit his private business affairs, and those of his associates.²⁵⁹

It is alleged this officer 'corruptly and secretly' committed Horizon Power to making ongoing payments to a company which he owned and directed then used his position to falsely declare this company carried out work for Horizon Power.

It is also alleged the officer engaged his business partner to work at Horizon Power. For a number of years, the men 'conspired to purchase or otherwise gain control of a business entity that would then obtain work from Horizon Power.'²⁶⁰ The officer's wife was also implicated in that he engaged her as a contractor to perform a role so that he could pay

257 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 32.

258 Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, August 2018, p. 5.

259 Corruption and Crime Commission, *Report on Corruption in Information Technology at Horizon Power*, Western Australia, August 2018, p. 1.

260 *ibid.*

down credit card debt.²⁶¹ The CCC recommended charges be laid against the public officer and two associates.

Serious Misconduct in procurement of environmental services

In this case it is alleged that a public officer from the Department of Mines, Industry Regulation and Safety engaged in a romantic relationship with a contractor, and used her role to ensure his company obtained payments and confidential documents.²⁶² She did not declare her conflicts to her employer, and when questioned gave misleading information and concealed her personal relationship.²⁶³

This officer allowed her personal relationship and personal priorities to lead her into serious misconduct, damaging her own reputation and that of the consultancy she corruptly favoured.²⁶⁴ Charges have since been laid.

Report into how conflicts of interest undermine good governance – a report on the Chief Executive Officer of the Shire of Halls Creek

The CCC's Shire of Halls Creek report documents a case where the Chief Executive Officer was found to have shown a 'disregard for the rules,' and where 'he took short cuts to benefit himself.'²⁶⁵ The CCC investigation concluded that:

... conflicts of interest permeated every aspect of his decision-making: from the appointment of his partner to an employment position, to his own private business interests and the management of a Shire tender to replace the Executive's vehicles.²⁶⁶

While this case relates to local government, which is not the focus of the Committee in this report, it does illustrate an example where a conflict of interest unduly influences decisions made by a public officer.

Finding 41

Corruption and Crime Commission investigations into procurement-related misconduct and corruption invariably find that a public officer has a significant conflict of interest. These conflicts of interest have resulted in serious wrong-doing by the public officer and others, leading to loss of public monies, loss of employment for the officers, and in some cases, criminal charges and prosecutions.

²⁶¹ Corruption and Crime Commission, *Report on Corruption in Information Technology at Horizon Power*, Western Australia, August 2018, p. 1.

²⁶² Corruption and Crime Commission, *Serious misconduct in procurement of environmental services*, Western Australia, May 2019.

²⁶³ Corruption and Crime Commission, *Entanglements led to corruption*, media statement, 21 May 2019.

²⁶⁴ *ibid.*

²⁶⁵ Corruption and Crime Commission, *Report into how conflicts of interest undermine good governance – A report on the Chief Executive Officer of the Shire of Halls Creek*, Western Australia, August 2018, p. 1.

²⁶⁶ *ibid.*

Small communities mean conflicts are common

WA is a relatively small community, with, in some cases, a limited supplier base.²⁶⁷ Effectively managing conflicts of interest is particularly difficult in an environment where everyone knows everyone else. Case Study 6 below provides an example of this.²⁶⁸

In October 2018, the Committee attended the 18th International Anti-Corruption Conference, which was sponsored by Transparency International. The Committee met with experts from a range of organisations, which face their own challenges managing corruption risks and conflicts of interest. One workshop explored the challenges of managing conflicts of interest in very small isolated communities such as those in Greenland, Iceland and Estonia.

The panel discussed the need for legislative action to bolster transparency, for example by creating strict rules around lobbyists. In small communities, codes of conduct (and other rules and processes) should explicitly address dealings with family members. It was recognised that the extent to which people should be required to declare assets is an area fraught with difficulty.

There was discussion about small societies in which people stick together and the sense of betrayal when someone speaks out about corruption. It was suggested that ethical codes do not assist or increase social cohesion, and social norms about trust and relationships make managing conflicts of interest difficult.

Regional WA is particularly vulnerable to this type of risk. For example, the Committee took evidence from officers from the Building Management and Works (BMW) unit within the Department of Finance. BMW has regional offices for the purpose of delivering public sector works procurement in the regions. The Committee was told that these regional offices are beneficial in terms of allowing an understanding of the requirements of local communities and promoting opportunities for local businesses. However they also come with challenges for the management of conflicts of interest.²⁶⁹

The Director, Policy and Procurement Services at the Department of Finance discussed the kinds of conflicts that can arise:

In Building Management and Works ... we have specific additional requirements that apply in the regions [such as] conflict-of-interest steps in our low-value procurement to ensure that if our regional project managers, for example, happen to be a member of the tennis club or golf club where some of the suppliers are

267 For example, see comments made by Main Roads WA about the limited supplier base for the award of long-term maintenance contracts: Mr Peter Woronzow, Main Roads WA, *Transcript of Evidence*, 17 September 2018, p. 5.

268 While Case Study 6 is a local government example, the principles have application to this discussion—it could equally apply to a departmental office in a regional area.

269 Mr Anthony Halberg, Director, Policy and Procurement Services, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 14.

members, which will happen in small towns, that they are very up-front and they declare that and, where appropriate, they are removed from those processes.²⁷⁰

Case Study 6

Real life example provided by the Corruption and Crime Commission

Allegation: The CCC received an allegation that building maintenance staff at a local government were using their positions to benefit one contractor to the detriment of others.

Investigation: The CCC investigated and found no evidence to suggest that this was occurring or that any employee was receiving a financial benefit from the alleged favourable treatment.

However, a potential risk area was identified with a number of employees from across the local government, using the contractor for their own private jobs. Staff paid a fair price and did not receive discounts, but there is the potential for this behaviour to be viewed as a conflict of interest.

Many local and state governments use a range of contractors, and as the staff who manage the contracts have knowledge of their work, many would also use the contractors for personal work as well as providing the details of the contractors to other staff members when asked. Whether or not there could be a perceived conflict of interest is a grey area.

Outcome: To address the potential risk, the CCC has recommended the local government create a register for staff to record any private work done by a contractor who is also working for it.

Staff need to consider when engaging a contractor, for private work, who also works for their employer that they are not getting any unfair advantage due to their position. Also, that the employer is not being disadvantaged by the arrangement either.

The public is entitled to have confidence in the integrity of their officials and to know that their personal interests do not conflict with their public duties.

Finding 42

Western Australia is a relatively small community, with, in some cases, a limited supplier base. Effectively managing conflicts of interest is particularly difficult in small communities. In particular, public procurement in regional WA is susceptible to conflicts of interests being problematic.

²⁷⁰ Mr Anthony Halberg, Director, Policy and Procurement Services, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 14.

Public sector trends exacerbating risk

Secondary employment

Factors such as a rise in secondary employment and the expansion of the 'gig' economy create unique vulnerabilities for the public sector.

Secondary employment 'refers to paid work undertaken by staff outside their position with a public authority'²⁷¹ while short-term or freelance contract work is sometimes referred to as the 'gig economy'.²⁷²

The NSW ICAC reports that the abuse of secondary employment, which includes the misuse of information and resources, is a key form of corrupt conduct:²⁷³

The Public Sector Commission reported secondary employment is expected to grow in the next few years as it becomes more accessible with advances in technology, which potentially escalates the associated risks. Trust in government and perceptions of accountability could suffer if secondary employment is not appropriately managed.²⁷⁴

The PSC identified two main risks in relation to secondary employment: the potential misuse of public resources; and abuse of an officer's position due to an inappropriately managed conflict of interest.²⁷⁵

The PSC recommended that public authorities should reconsider the risks of secondary employment and review how they are managing secondary employment within their organisations. It made suggestions for better practice for the management of secondary employment, which focus on increased training and the use of auditing to identify where 'staff and management need more guidance and education on reporting (e.g. absence of approvals) and managing conflicts of interest.'²⁷⁶

...those working in the gig economy are likely to have little or no loyalty to their short-term government employers and so it may be harder to align their interests with the interests of their employer. They may also be constantly on the lookout for future work, adding to the risk associated with conflicts of interest and duty as they work for multiple employers simultaneously.

- New South Wales Independent Commission Against Corruption

Finding 43

Secondary employment is a corruption risk. It can lead to misuse of public resources, and the abuse of an officer's position due to an inappropriately managed conflict of interest.

271 Public Sector Commission, *Managing secondary employment risks in public authorities*, Western Australia, October 2017, p. 4.

272 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 14.

273 *ibid.*

274 Public Sector Commission, *Managing secondary employment risks in public authorities*, Western Australia, October 2017, p. 6.

275 *ibid.*

276 *ibid.*, p. 17.

Greater reliance on private sector to deliver services

Many public sector entities are becoming more reliant on the private sector to deliver core public services through delivery partner models, outsourcing and shared private/public sector risk-taking.²⁷⁷

As governments increasingly use external consultants and deliver services through outsourced models, they become more vulnerable to personal interests being placed above the public interest.

The Committee emphasises the need for agencies to consider the impact outsourcing has on corruption risk, and the need to consciously address that increased risk through the effective management of conflicts of interest. Agencies need to assess whether there are adequate skills within the organisation to regulate and monitor private entities performing public functions.

“If you have risky systems, you run the risk of corruption. And it’s likely to occur particularly in this day and age, when many of what were once traditional functions of government have been outsourced. I make no comment on the value or not of outsourcing—that is a government decision from time to time. But what it does leave is organisations which may be vulnerable, because your skills in delivering a particular service ... may be outsourced.”

- Hon John McKechnie QC, Corruption and Crime Commissioner

Case Study 7

Main Roads maintenance contracts and alleged conflicts of interest

In early 2018, a long-term ‘integrated service provider’ maintenance contractor of Main Roads WA was the subject of allegations published on the front page of *The West Australian* newspaper.

It was alleged that subcontracts were being awarded in exchange for personal and sexual favours. A company boss was reported to be having an affair with someone sub-contracted to manage the tendering process for more than \$50 million worth of maintenance and smaller construction projects.

This illustrates the vulnerability of maintenance contracts to corruption, a point made often by the CCC. When the private sector manages tenders on behalf of the public sector, all those involved should be aware of the level of probity required when spending public money.

Following the alleged incident, Main Roads WA conducted an investigation including a procurement probity controls audit through EY. At the time of provision of this information to the Committee, Main Roads WA was obtaining advice from the State Solicitors Office on implementing further controls on contractors in relation to their conduct.

Source: ‘Sex for Work Probe’ reported in *The Weekend West* (3 February 2018)

²⁷⁷ New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 34.

Finding 44

As governments move further towards delivering services through outsourced models, and to greater reliance on consultants from outside the public sector, they become more vulnerable to personal interests being placed above the public interest.

Agency management of conflicts of interest

Evidence suggests that agencies are not vigilant in managing conflicts of interest. The Committee learned that perceived conflicts of interest are managed through a self-reporting system of personal declaration. There is currently no audit process for conflicts of interest as it is viewed as an employee's individual responsibility.²⁷⁸

This area is a particular risk for corrupt practice in procurement. Current practice does not appear adequate or well-enforced and is based on trust that people will do the right thing.

Research in other jurisdictions also reports challenges with managing conflicts of interest. An investigation by the NSW Audit Office found that although agencies had a conflict-of-interest policy, most could strengthen their processes.

The failure to properly manage conflicts of interest was noted as a common governance deficiency, with identified gaps in areas such as poor training, incomplete or out-of-date registers and an absence of measures to identify missing disclosures. The Audit Office report also highlighted the failure of agency staff to disclose their interests as directors of private companies that dealt with the agency.²⁷⁹

The NSW ICAC reports some of the common problems related to managing conflicts of interest (see Table 6.1).

Requirement for agency codes of conduct

Under the *Public Sector Management Act 1994*, all WA public sector employees are required to comply with Commissioner's instructions, public sector standards, codes of ethics and any applicable code of conduct.²⁸⁰

The PSC Instruction *No. 8: Codes of conduct and integrity training*, requires every public sector body to develop, implement and promote a code of conduct, which addresses, amongst other things, conflicts of interest and gifts and benefits.²⁸¹

278 Submission 6, Community and Public Sector Union/Civil Service Association, p. 3.

279 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 32.

280 *Public Sector Management Act 1994*, s. 9.

281 Public Sector Commission, *Commissioner's Instruction No. 8: Codes of conduct and integrity training*, Western Australia, July 2012, p. 3.

Table 6.1: NSW ICAC: Common misconceptions and practices in the management of conflicts of interest²⁸²

Common misconceptions and practices
<p>The faux recusal</p> <p>This occurs when a conflicted public official is told (or offers) to remove themselves from a particular process or decision but nonetheless retains a significant unofficial role. That can include influencing the remaining decision-makers behind the scenes or misusing confidential information that is still available.</p>
<p>Disclosure, then nothing</p> <p>For minor conflicts of interest, it is often acceptable to simply document the disclosure and then take no further action. However, the Commission often sees this “disclose only” approach overused. This appears to happen because the manager: is busy or not experienced in dealing with conflicts of interest; is reluctant to take any action that suggests the discloser is not trusted; or interprets the disclosure as a sign of integrity and assumes the discloser is honest.</p>
<p>Equating disclosure with misconduct</p> <p>Staff and suppliers not acquainted with public sector conventions are more likely to believe that having a conflict of interest is tantamount to a form of misconduct. Alternatively, they may believe they will be removed from a project if they disclose a conflict.</p>
<p>Understated or delayed disclosure</p> <p>Investigations often uncover evidence that a conflict of interest has been completely concealed. However, sometimes a conflict will be disclosed, albeit in the form of a deliberate understatement. For example, this could involve describing: a close friend as an acquaintance; a current business partner as a former business partner; or an office holding in an organisation as a general membership.</p> <p>In other cases, the disclosure will simply lack the detail required to make a management.</p> <p>Similarly, delayed reporting of a personal interest can also erode public trust. For example, an officer working on a tender might know a family member is very interested in bidding for the work but say nothing until after the opening of the tenders. The delay gives the officer the <i>opportunity</i> to confer advantages on the family member.</p>
<p>Failure to recognise non-pecuniary conflicts</p> <p>Pecuniary interests – such as an investment, debts and income sources – are usually easy to conceptualise, and, in the corporate environment, the management of conflicts is generally confined to pecuniary interests. This means that non-pecuniary interests are sometimes misunderstood and under-disclosed.</p>
<p>Hidden in plain sight</p> <p>This happens when an officer makes a large number of disclosures to hide one particular conflict that is to their advantage. For example, a project manager might disclose a dozen or more entities they have worked with in the last year. However, one of these companies might belong to their son, who the project manager plans to use as a contractor. Upon seeing the lengthy disclosure, a supervisor is likely to infer the project manager is honest and thorough, when the opposite is true. A variation on this practice is to include a conflict of interest disclosure in the body of a much longer document or email.</p>
<p>Disclosed, but not the right people</p> <p>In order to achieve a degree of compliance, some officers will make their conflict of interest disclosure to the wrong person. Most of the time, disclosures need to be made to an officer’s manager and/or the person in charge of a relevant process (such as the head of the tender or recruitment panel). Instead, the officers make the disclosure to an acting manager, a colleague, an executive assistant or some other person who might be less likely to take action.</p>
<p>Rationalising non-disclosure on the basis it is “just a policy discussion”</p> <p>Discussions about policy are quite different from discussions about how to use an agency’s funds or powers. For example, it is easy to see how a team meeting about an agency’s ICT strategy differs from a decision to award a contract to a particular ICT company. However, if a relevant participant in the discussion has a known conflict of interest (for example, their spouse works at an ICT company that could supply services to the agency) the disclosure should not be delayed.</p>

Conflicts of interest registers – a system based on trust

Agencies appear to have either one or both types of two conflict of interest registers. The first of these is a general register applicable across all staff in an agency. The second type is a conflict of interest register specifically required for staff involved in a procurement process.

Self-reporting is fundamental to the current preventative frameworks.²⁸³ While the Department of Finance may be willing to trust that staff members are ‘honest’,²⁸⁴ the experience of the NMHS suggests that this is an exceptionally risky approach.

We do not do random checks of conflict-of-interest declarations. We just assume that people are honest.

- Department of Finance

For example, in the midst of the NMHS corruption, ‘in October 2015, the NMHS Works Procurement Working Group rolled out a form for recording verbal quotes for projects up to \$50,000. The form included an explicit section to record conflicts of interest.’²⁸⁵ However it was not embedded into the procurement culture and so was underutilised. None of the conflicts later exposed were declared as a result of this reform or any other process in place.

The Director General of the Department of Health, when reflecting on the significant fraud discovered at NMHS, acknowledged there should have been a more thorough examination of conflict of interest registers. However he noted that this may not have yielded any benefit as the perpetrators were corrupt and were unlikely to have made a declaration on the conflict of interest register.²⁸⁶

The Committee acknowledges this point. However, if departments interrogated the conflict of interest registers, rather than simply trusting that people are honest, there is some chance that partial, incomplete or misleading declarations could be identified and investigated.

Finding 45

Agencies are required to have a code of conduct which addresses conflicts of interest and gifts and benefits. Agencies examined by the Committee complied with this requirement; however, there are generally no compliance checks. A declaration is seen as an employee’s individual responsibility.

282 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 36.

283 Submission 6, Community and Public Sector Union/Civil Service Association, p. 3.

284 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 10.

285 Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, August 2018, p. 51.

286 Dr David Russell-Weisz, Director General, Department of Health, *Transcript of Evidence*, 17 October 2018, p. 10.

Finding 46

The simple act of making a declaration is not a sufficient and adequate mechanism for managing a conflict. Effective conflict of interest management post-declaration is the true preventative measure. The Committee would like to see these registers being used as a proactive tool for investigating and managing conflicts.

Recommendation 8

All public sector employees with a remit that includes spending public money should be required to maintain a register of interests and associations. This should be in addition to specific declarations of actual or perceived conflicts of interest.

Effective management of conflicts of interest

A conflict in itself is not necessarily a problem—how it is managed is the true preventative measure, otherwise it is compliance for the sake of it.²⁸⁷

The level of good management appears to vary across agencies.²⁸⁸ There is some rigour in the processes applied by the Department of Finance, as the lead procurement agency. Department of Finance officers detailed how conflicts are managed that arise in the roles of large organisations contracted to provide services to the agency. This includes measures such as requiring bidders to demonstrate segregation of duties where there might be a conflict.²⁸⁹

People declare the conflict ... and think, “Well that’s the end of it. I’ve declared the conflict; I’ll now go ahead and do what I was going to do” rather than thinking, “Well, that’s just the first step; now I’ve got to work out how to manage it.” That ... is what is not often understood – it is the second stage of managing the conflict.

- Hon John McKechnie QC, Corruption and Crime Commissioner

Conflicts of interest management might include the following considerations identified by the NSW ICAC:

- The term “conflict” often seems to carry a pejorative meaning. Instead, staff may find it easier to disclose “associations” or “interests”.
- Importing strict ethical obligations into the terms of contracts and purchase orders. This can include penalties if the contractor fails to disclose conflicts of interest. Senior executives are required to maintain a register of relevant interests, relationships and associations. Not all influential officials are executives. Better practice is to extend similar disclosure requirements to others in high-risk roles.
- Giving staff specific examples of interests that need to be disclosed including liabilities, debts, property and the interests of close relatives.

287 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 17.

288 *ibid.*

289 Mr Richard Mann, Executive Director, Strategic Projects, Department of Finance, *Transcript of Evidence*, 27 June 2018, pp. 15-16.

- Providing staff with regular prompts to update their registers of interests, relationships and associations.
- Use of ICT permissions and audit controls to block, or at least record, attempts by a person to make decisions or access information that relate(s) to a conflict.²⁹⁰

Finally, there must be consequences when non-compliance occurs. As the Committee was advised:

If people do have conflicts of interest and they do not declare them and they are found out, what is the consequence? What happens? Are those people limited in some future activity? ... I cannot find any consequence...It needs to be made extremely clear that if you have a conflict, it must be declared. It must be declared to a senior manager ... Across an organisation the chief executive has the responsibility for creating the culture in their organisation that these things are important. You cannot just treat them summarily. That is what is occurring.²⁹¹

Agencies need to get serious about declarations; a cultural shift is required. One part of fulfilling this responsibility must be the development of better processes to manage declarations once they are made. A further step is to interrogate registers with the aim of discovering partial, misleading or missing declarations of conflict.

Finding 47

Agencies must interrogate conflict of interest registers to discover partial, misleading and missing declarations, in order to reduce vulnerability to corruption.

Recommendation 9

That the Premier, as Minister for Public Sector Management, take steps to ensure that public sector authorities are required to have in place a management plan which details how to handle a conflict of interest once it is declared. The management plan should detail clear and appropriate consequences for non-compliance.

A culture of reporting needs to be a focus

Under-reporting of conflicts indicates a cultural issue. The CCC views low rates of disclosure as a red flag for corruption, which tends to be a part of a larger cultural issue.²⁹²

The PSC's report on managing secondary employment identified that in any given year, two per cent of the public sector workforce request permission to hold a second job. Yet, 'around six per cent of employees have reported, in each of the last three years, seeing such practice in their division, branch or team.'²⁹³ While secondary employment is only one small

²⁹⁰ New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, New South Wales, December 2018, p. 37.

²⁹¹ Mr John Langoulant AO, Special Inquirer, *Transcript of Evidence*, 9 May 2018, p. 15.

²⁹² Mr Raymond Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 6.

²⁹³ Public Sector Commission, *Managing secondary employment risks in public authorities*, Western Australia, October 2017, p. 8.

subsection of possible conflicts of interest, it demonstrates the gap between the rate of declarations, and what may be the actual rate of such a conflict.

So, at an organisational level, some of those red flags would be just a poor tone at the top ... poor leadership, poor management. Low rates of disclosures of conflicts of interest is an indicator...

- Ray Warnes, Chief Executive, Corruption and Crime Commission

In a case where a staff member has failed to declare a conflict of interest (for any reason), it is then up to colleagues to report it. Agencies therefore have a strong interest in ensuring that all staff are well trained in managing conflicts of interest. This training should aid in raising awareness about an individual's own possible conflicts, and should educate public officers to speak out when colleagues do not identify conflicts to be managed.

The Auditor General emphasised that training should address culture with a view to equipping public officers with the skills to make good judgements and recognise public duty versus private interest, rather than just following a rules-based procedure without thinking about why.²⁹⁴

If declaring conflicts of interest is embedded into organisational culture, then it becomes more noticeable when non-compliance occurs.

Finding 48

If declaring conflicts of interest is embedded into organisational culture, then it becomes more noticeable when non-compliance occurs. It is incumbent on colleagues to notice when a conflict does not appear to have been declared and managed.

Training for public sector officers on conflicts of interest

Education and training in relation to procurement and ethical decision making is discussed in Chapter 5. The Committee recognises the effort put into training across the sector, however it remains concerned that training may not be as consistent or as effective as it could be.

With regards to the impact of training, the CCC investigation into the NMHS corruption found:

... a lack of understanding by the examined public officers as to the identification and management of conflicts of interest despite all three public officers having completed online training in Accountable and Ethical Decision Making. An inability to identify a conflict extended to a lack of awareness as to how an unmanaged conflict of interest can influence decision making.²⁹⁵

Research which examined the training provided to staff on declarations of secondary employment found:

²⁹⁴ Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 11.

²⁹⁵ Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, August 2018, p. 52.

The risks of secondary employment are generally covered at induction, albeit fleetingly...most employees are unlikely to be regularly reminded of, or specifically trained in, the importance of managing risks in the context of secondary employment. The AEDM [Accountable and Ethical Decision Making] program, which is mandatory for the public sector, offers an instructive example of comprehensive ethics training. However, it was unclear how often public sector employees are required to 'refresh' this training in the participating authorities.²⁹⁶

Finding 49

It must be the responsibility of each Director General, that training for public sector officers on conflict of interest management should address culture with a view to equipping public officers with the skills to make good judgements and to recognise public duty versus private interest, rather than just following a rules-based procedure without thinking about why.

Educating suppliers and contractors – conflict of interest declarations as part of procurement processes

There are a vast number of people in the private sector who do not understand what the rules are when it comes to engaging with the public sector and the expenditure of public money. A lack of awareness on behalf of the contractors caught up in the NMHS scandal was ultimately disastrous for those individuals who were eventually charged and prosecuted.

The Auditor General advised the Committee that a recommendation that is frequently included in audit reports is that agencies should 'identify conflicts of interest for contractors as well as internally.'²⁹⁷

Box 6.9: Best Practice in the Code of Practice for Procurement NSW Government

This code requires suppliers and others to maintain ethical business practices with breaches of the Code resulting in a range of sanctions. The NSW Procurement Board can impose sanctions on suppliers and findings of dishonest, unfair, unconscionable, corrupt or illegal conduct can have a range of consequences for individual suppliers, including exclusion from contracting opportunities with the Government.

Some agencies import strict ethical obligations into the terms of contracts and purchase orders. This can include penalties if the contractor fails to disclose conflicts of interest. Senior executives are required to maintain a register of relevant interests, relationships and associations. Not all influential officials are executives. Better practice is to extend similar disclosure requirements to others in high-risk roles.

Sources: Submission 4, Department of Transport, p. 11; Independent Commission Against Corruption, Corruption and integrity in the NSW public sector: an assessment of current trends and events, Government of New South Wales, Sydney, December 2018, p. 37

The Committee applauds an observed trend in efforts to educate supplier bases and require compliance with procedures such as declarations of conflicts of interest.²⁹⁸ This can involve requiring staff and/or contractors to make declarations of interest as a formal part of the

296 Public Sector Commission, *Managing secondary employment risks in public authorities*, Western Australia, October 2017, p. 13.

297 Submission 2, Office of the Auditor General, p. 1.

298 For example, see: Mr Mark Thompson, Chief Procurement Officer, Health Support Services, *Transcript of Evidence*, 15 May 2019, p. 17.

procurement process, which are then considered and managed as necessary. It can also include reporting behaviour that does not fit with expected standards.

As can be seen from Box 6.9, other jurisdictions are progressing codes of conduct for suppliers, with a focus on conflict of interest management.

Finding 50

Training and awareness-raising about what is required when doing business with government is important for suppliers and contractors, in order to identify and manage conflicts.

Chapter 7

Whistleblowers in the public sector

Tip-offs are the number one method of corruption detection. Whistleblowing is one type of tip-off, and is the most useful for investigative agencies such as the Corruption and Crime Commission.

An effective governance framework requires measures and processes in place to enable employees to raise allegations of corruption and misconduct without fear of reprisal. Organisational culture and agency integrity frameworks are key and can have a significant impact on whether or not an individual chooses to report misconduct.

Given the importance of whistleblowers to the integrity of procurement process, and the toll that speaking up takes on individuals, the Committee is of the view that better support should be in place for individuals who do come forward.

A dependence on whistleblowers

Several recent corruption scandals have been brought to light due to the actions of an employee or other individual making a report. The Corruption and Crime Commission (CCC) *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service* (August 2018) was a result of whistleblowing, where other control mechanisms had failed. In that case earlier indications within the organisation of control weaknesses

We are limited in the sense that we depend on allegations coming in. We assess them. We probably get the assessment wrong from time to time, and return things we should inspect, but we are ... to an extent, a reactive agency.

- Hon John McKechnie QC, Corruption and Crime Commissioner

"There were good people who put their hand up and said something. ... That requires personal judgement to be exercised on an individual basis..."

- Caroline Spencer, Auditor General, on the NMHS corruption scandal

were not acted upon, even although many warnings were given.²⁹⁹

Tip-offs are by far the most common method by which fraud and corruption are exposed. According to the CCC, approximately 47 per cent of detections of corruption come from tips from individuals involved in the process.³⁰⁰

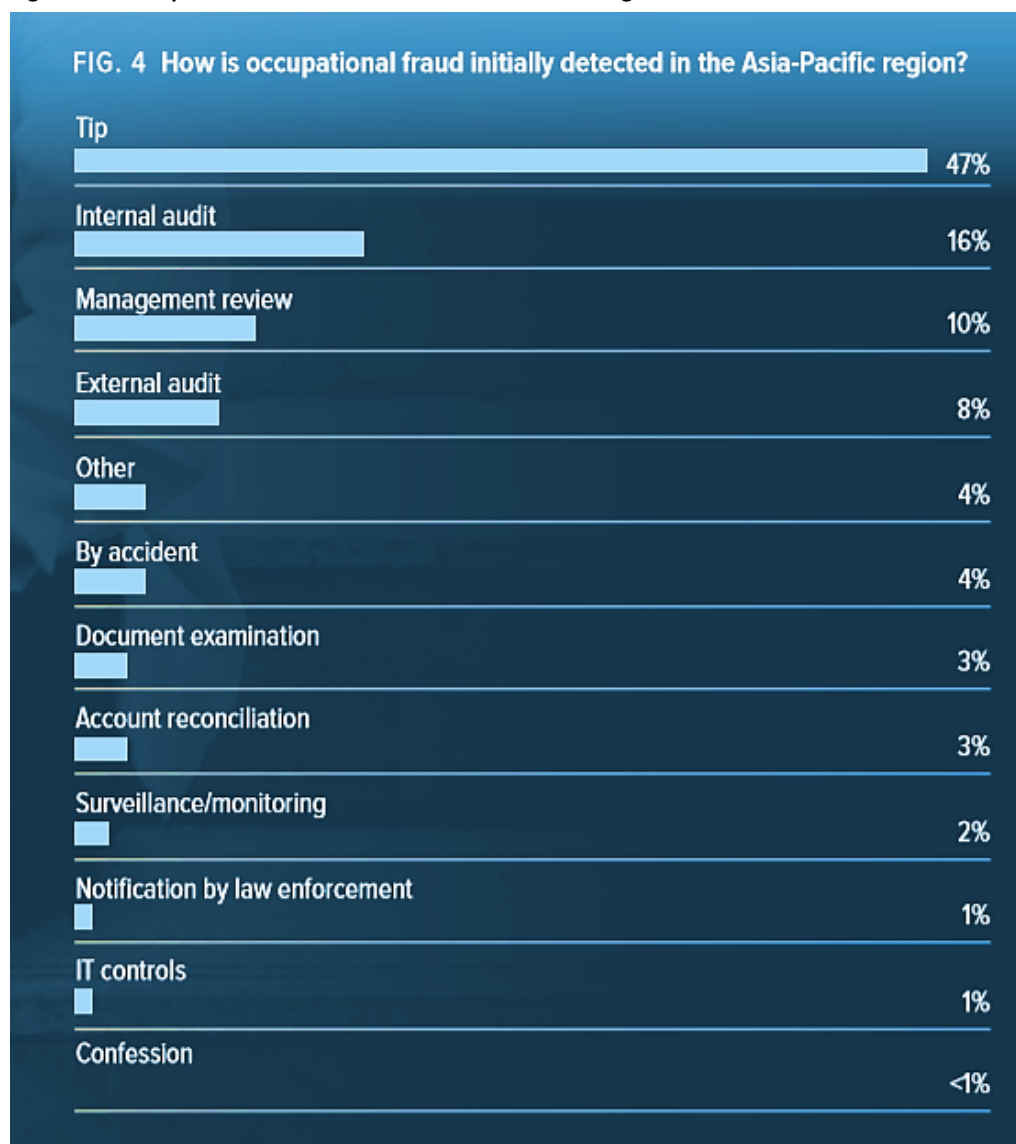
Other research confirms similar statistics. The NSW ICAC report that tip-offs account for 40 per cent of all detected occupational frauds; more than two-

299 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 6.

300 Mr Raymond Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 10; and Hon John McKechnie QC, Commissioner Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 11

and-a-half times higher than the next most effective detection method, internal audit, which the ICAC reports as finding 15 per cent of frauds.³⁰¹ Statistics reported by the Association of Certified Fraud Examiners show tips as being 47% of detections (see Figure 7.1).

Figure 7.1: Occupational fraud detection in the Asia-Pacific region³⁰²



Tips come from two sources:

- employees or former employees, i.e. whistleblowers
- outside parties, such as a member of the public or an unsuccessful bidder.

Figure 7.2 below provides some detail on tips and how they originate.

301 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public Sector: an assessment of current trends and events*, New South Wales, December 2018, p. 26.

302 Association of Certified Fraud Examiners, *Report to the Nations: 2018 Global Study on Occupational Fraud and Abuse*, ACFE, Austin, USA, 2018, p. 6.

Figure 7.2: Tips which uncover fraud³⁰³

Procurement misconduct is more likely to be reported from a member of the public or an unsuccessful bidder as opposed to a public sector officer. This highlights the complex nature of procurement that makes it difficult for corruption to be detected within the agency.³⁰⁴

It is clear that whistleblowing and other tip-offs are integral to the CCC being able to uncover and investigate corruption. The CCC has some ability to be proactive in identifying and investigating fraud and corruption. However, the work of the CCC is largely reactive and dependent on allegations being made, and information being provided, by insiders who suspect potential corruption by virtue of their position within an organisation.³⁰⁵

³⁰³ Association of Certified Fraud Examiners, *Report to the Nations: 2018 Global Study on Occupational Fraud and Abuse*, ACFE, Austin, USA, 2018, p. 7.

³⁰⁴ Submission 8, Corruption and Crime Commission, p. 2.

³⁰⁵ Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 11.

Whistleblowing is particularly important in uncovering corruption, particularly given the ability of a person inside the organisation to provide evidence to the investigating body. However, this becomes difficult when whistleblowers wish to remain anonymous as information becomes difficult to obtain.³⁰⁶ The desire for anonymity is understandable, given the personal cost often associated with whistleblowing. The cost of being a whistleblower is explored further later in this chapter.

Finding 51

The Corruption and Crime Commission is largely dependent on tip-offs to uncover and investigate corruption. Whistleblowing by a public officer or former public officer in particular, is important to the investigation of corruption in procurement.

What is whistleblowing?

The *Whistling While They Work* project defines whistleblowing as the ‘disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organisations that may be able to effect action.’³⁰⁷

As this definition reflects, the act of whistleblowing can cover a broad range of actions, from an employee reporting on a colleague through internal processes, or alerting an external integrity agency such as the CCC. It can also take the form of providing anonymous information to a journalist or on social media.

... the percentage of organisations with a whistleblowing hotline has increased from 32 per cent in 2013 to 61 per cent in 2017...this figure indicates hotlines are becoming more popular as a reporting mechanism.

- EY 2017 Asia Pacific Fraud Survey

Avenues for reporting

Would-be whistleblowers in Western Australia have a variety of avenues available to them to bring attention to a particular concern about corruption or misconduct in procurement. Options range from reporting to the CCC or Public Sector Commission (PSC), reporting within the agency, or going public.

Recent research shows that around 66 per cent of public officers will first report internally. Only 24 per cent will use external avenues if the wrongdoing is not addressed, or if they suffer adverse consequences from reporting internally. Around 3 per cent go straight to an external avenue.³⁰⁸

306 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 12.

307 Peter Roberts, AJ Brown and Jane Olsen, *Whistling While They Work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU Press, Canberra, October 2011, p. 9.

308 AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019, p. 48.

This means if the agency doesn't get the response right, then the opportunity to unearth corruption could be missed. This then encourages corrupt behaviour to continue.

Public interest disclosures

Whistleblowers can make a Public Interest Disclosure (PID) under the *Public Interest Disclosure Act 2003* (PID Act). While these reports are separate to those made directly to the CCC, PSC or employing agency, they essentially report on similar things, such as improper or illegal conduct or misuse of public resources.³⁰⁹

This formalised process exists in Western Australia to encourage whistleblowing and to provide protection for both whistleblowers and those who are the subject of a disclosure.³¹⁰

All public authorities in Western Australia have responsibilities under the PID Act.³¹¹ The principal executive officer of each public authority must appoint a designated PID officer and provide protection from detrimental action to any employee who makes an appropriate disclosure of public interest information.³¹² In 2018 there were 625 PID officers across the sectors.³¹³

The PID Act also requires each public authority to advise the Public Sector Commissioner annually of the number of public interest disclosures received by the PID officer during the year, the result of any investigations arising, and other matters.³¹⁴

In 2016-17, nine out of 40 public interest disclosures were assessed as appropriate under the PID Act.³¹⁵ In the 2017-18 year there were 54 disclosures, of which 24 (44 per cent) were assessed as appropriate. The PSC suggests the increase may be attributed to better education strategies on disclosure.³¹⁶

309 A definition of 'public interest information' is found in the *Public Interest Disclosure Act 2003*, s. 3.

310 For a list of the ways in which protections are offered see:

Public Sector Commission, *Will I be protected?*, 21 September 2012, accessed 16 January 2019, <<https://publicsector.wa.gov.au/public-administration/oversight/public-interest-disclosures/information-about-making-disclosure/will-i-be-protected>>.

Public Sector Commission, *Information about making a disclosure*, 1 September 2017, accessed 9 July 2019, <<https://publicsector.wa.gov.au/public-administration/official-conduct-and-integrity/public-interest-disclosures/information-about-making-disclosure>>.

311 *Public Interest Disclosure Act 2003*, s. 3. The Act defines a public authority to include various state departments and organisations as established or defined with the *Public Sector Management Act 1994*, local governments and other bodies established for a public purpose under a written law, bodies established by the Governor or a Minister, or other bodies as set out in regulations.

312 Public Sector Commission, *Principal Executive Officer's roles and responsibilities*, 5 July 2016, accessed 9 July 2019, <<https://publicsector.wa.gov.au/public-administration/official-conduct-and-integrity/public-interest-disclosures/information-public-authorities/principal-executive-officers-roles-and-responsibilities>>.

313 Public Sector Commission, *State of the Sector: 2018*, Western Australia, November 2018, p. 15.

314 *Public Interest Disclosure Act 2003*, s. 23.

315 Public Sector Commission, *2017 State of the sectors*, Western Australia, October 2017, p. 27.

316 Public Sector Commission, *State of the Sector: 2018*, Western Australia, November 2018, p. 15 and p. 18.

Evidence suggests that the PID option is underutilised and that public sector officers have concerns about protections.

For example, Main Roads WA advised the Committee that, since its inception, it had not dealt with any formal disclosures made under the PID Act. The few that had been raised by informants with the agency's PID Officer 'were either assessed as not falling with the definition of "public interest information" ... and therefore not dealt with as a formal disclosure, or the informant chose not to proceed with the disclosure.'³¹⁷ The Committee questions why potential whistleblowers would choose not to proceed with a formal PID disclosure.

The CPSU/CSA advised that its members viewed making a disclosure under the PID Act as 'career limiting'³¹⁸ and noted a concern about a lack of protections offered by the Act, for example making a disclosure does not necessarily stop any disciplinary or substandard performance processes or actions that are unrelated to a disclosure.

In summary, CPSU/CSA members felt that the capacity to make anonymous disclosures under the PID Act are affected by three main considerations:

- a lack of protection offered to an anonymous discloser
- there is no avenue to enquire how the investigation is progressing
- the discloser may be inadvertently revealed by the ensuing investigation.³¹⁹

The CPSU/CSA consultation found that public servants considered it safer to make disclosures to a journalist so the issue could be investigated without management targeting the whistleblower through subtle means of detrimental action.³²⁰ The PSC conceded that although there are serious consequences in breaching protective provisions, their adequacy remains untested in any real form.³²¹

Issues have been raised around the financial cost and reputational damage associated with whistleblowing. It was recently noted that the law favours large employers over whistleblowers owing to the huge imbalance in legal resources.³²²

There was recognition amongst agencies giving evidence that any protections offered through formal mechanisms such as the PID Act must be reinforced with an organisational culture that actively and positively encourages employees to alert management to suspected corruption or fraud without fear of reprisal or discrimination. However, whether this

*The whistle-blower
always gets it in the neck.
Penalties for people trying
to ... harm whistleblowers
should be very high in
order to see a change in
the culture.*

- CPSU/CSA member

317 Submission 4, Department of Transport, Main Roads WA, Public Transport Authority, p. 11.

318 Submission 6, Community & Public Sector Union Civil Service Association, p. 12.

319 *ibid.*

320 *ibid.*

321 Submission 5, Public Sector Commission, p. 5.

322 Christopher Knaus, *Murdoch University sues whistleblower after comments on international students*, 11 October 2019, accessed 16 January 2019, <<https://www.theguardian.com/australia-news/2019/oct/11/murdoch-university-sues-whistleblower-after-comments-on-international-students>>.

sentiment translates into organisational culture is not clear. The Committee suspects that too often it does not.

Finding 52

The Public Interest Disclosure avenue of reporting is underutilised and public servants are reportedly not confident of the protections offered. Furthermore, the adequacy of protections under the *Public Interest Disclosure Act 2003* remain largely untested.

Encouraging whistleblowing

Why should agencies encourage whistleblowing?

Reasons executives must better manage and encourage whistleblowing within their organisation include:

- employee reporting is often the most effective way for senior management to become aware of problems
- complaints are more likely to be taken outside the organisation, potentially leading to greater conflict, embarrassment and cost
- public sector agencies are increasingly subject to specific statutory obligations to manage whistleblowing to a high standard, as part of their jurisdiction's public integrity systems.³²³

... few people who become aware of corrupt activity will report it. This could be for a range of reasons: perhaps the money wasted is seen as merely the 'government's' money rather than their own, there may be no easy way to report what they know, or a feeling that complaining is futile or could result in retaliation.

*- Transparency International
Curbing Corruption in Public
Procurement: A practical guide*

Agency executives provided some detail on the internal processes in place within their organisations to help staff members reporting concerns. Each spoke to the value of education and training, and expressed the attitude that they believe whistleblowing is actively encouraged within their organisations.³²⁴

While the Committee acknowledges this, it is aware of evidence that, in some cases, individuals do not report misconduct when they see it. Research shows that this is generally because they don't feel safe doing so, or that nothing will be done about it.³²⁵

³²³ Peter Roberts, AJ Brown and Jane Olsen, *Whistling While They Work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU Press, Canberra, October 2011, p. 9.

³²⁴ For example: Dr David Russell-Weisz, Director General, Department of Health, *Transcript of Evidence*, 15 May 2019, p. 5; and Mr Peter Woronzow, Managing Director, Main Roads WA, *Transcript of Evidence*, 8 May 2019, p. 17.

³²⁵ AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019.

The NSW ICAC reported in 2018 that of those who witnessed misconduct or wrongdoing in their workplace, 34 per cent did not report it.³²⁶ This is broadly consistent with other reported research, which pegs the non-reporting rate at around 30-50 per cent.³²⁷

An effective governance framework requires measures and processes in place to enable employees to raise allegations of corruption and misconduct without fear of reprisal.³²⁸ Organisational culture and agency integrity frameworks are key and can have a significant impact on whether or not an individual chooses to report misconduct. Prioritising integrity frameworks and cultural change initiatives can help to protect organisations from misconduct, fraud and corruption.

Integrity frameworks

This inquiry has emphasised the importance of agencies having frameworks in place that encourage and facilitate the reporting of wrongdoing. Due to the nature of the overlap whistleblowing can have with human resource issues, these two branches within an agency should communicate and have consistent policies.³²⁹

These roles in agencies should be properly resourced. Chapter 5 includes a discussion about resourcing of integrity units and internal audit functions.

The key philosophy is to promote a policy of if in doubt, report. *Whistling While They Work* research emphasises that it is better for organisations to receive too much information about wrongdoing than too little, too late.³³⁰

However, if agencies are going to encourage this philosophy, then those responsible must have the expertise and resources to adequately deal with reports. Neglecting to do this, or doing it badly, will discourage future reporting and can lead to damage for the individual and agency.

In particular, the initial case assessment and categorisation is key to correctly managing a potential whistleblowing matter.³³¹ This includes not writing allegations off before they are adequately explored. The Auditor General made the point that agencies need adequate mechanisms for investigating concerns that have been flagged, particularly those which seem more benign, in order to determine whether they have substance.³³²

326 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public Sector: an assessment of current trends and events*, New South Wales, December 2018, p. 26.

327 AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019, p. 5.

328 Submission 5, Public Sector Commission, p. 4.

329 AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019, p. 15.

330 Peter Roberts, AJ Brown and Jane Olsen, *Whistling While They Work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU Press, Canberra, October 2011, p. 11.

331 AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019, p. 15.

332 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 6.

Organisational culture

Organisational culture is also important. The Auditor General noted the benefit of having a culture in which people are enabled to speak up, and for people to speak up if they see others failing to act in the interests of their public duties.³³³

According to the Public Sector Commission's *State of the Sector* 2018 report, there is a strong link between agencies promoting ethical behaviour and the reporting of problematic behaviour.

For example, organisations with no procedures in place to support staff after making reports of suspected unethical behaviour received fewer reports of unethical behaviour overall. Further, the frequency with which employees were reminded of public interest disclosure procedures appeared to be directly related to the volume of public interest disclosures received.³³⁴

Conversely, research has identified a range of factors that may discourage individuals from reporting. The NSW ICAC observed that 'soft signals and behaviour' may influence employees not to report.³³⁵

Box 7.10: Common mistakes made by agencies when dealing with whistleblowers

- Not incorporating whistleblower protection measures into the investigation. For example, whistleblower management does not form part of the investigation plan (or there is no investigation plan) or the agency wrongly assumes its contracted investigator will comply with the Public Interest Disclosures Act.
- Failing to put someone in charge of liaising with the complainant in cases where there is no formal investigation.
- Inadvertently identifying the complainant in the course of the investigation or in the investigation report.
- Failing to protect complainants whose report may not meet the technical definition of a PID. Most staff will not be aware of the finer points of the [Public Interest Disclosure legislation] and will judge management on the fairness rather than the legality of their decisions.
- Assuming that, just because the Commission elects not to investigate a matter, the agency should take no further action. Agencies are usually free to undertake their own investigations, which should include an assessment of corruption prevention factors.

Source: New South Wales Independent Commission Against Corruption

Other management failures that discourage reporting, or that indicate the absence of an organisational commitment to whistleblowing, include:

- a culture of just get it done which encourages staff to cut corners or breach policy to achieve a quicker outcome
- convoluted or inconsistent policies that make it easier for employees to excuse non-compliant behaviour

333 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 5.

334 Public Sector Commission, *State of the Sector: 2018*, Western Australia, 29 November 2018, p. 17.

335 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public Sector: an assessment of current trends and events*, New South Wales, December 2018, p. 23.

- regular approval of documents and transactions, such as purchase orders or payments, without checking and cross-referencing
- allowing or perpetrating damage to the careers of staff members who make disclosures.³³⁶

Only a small subsection of reporting of misconduct is done through formal PID provisions, with the majority of reports made outside the protections provided by the PID Act. It is therefore important that organisational cultures support and protect those who do come forward. Furthermore, formal PID protections may be viewed with mistrust by public sector officers. Would-be whistleblowers will instead look to agency culture when deciding whether to report.

Finding 53

Organisational culture and integrity frameworks within an agency are key to encouraging reporting wrongdoing. Both of these things can have a significant impact on whether or not an individual chooses to make a report of misconduct.

The personal cost of whistleblowing

Whistleblowing can take a toll on an individual, regardless of which mechanism a whistleblower chooses to use to make their report. It takes considerable courage and integrity and requires individuals to risk their own career aspirations for little or no reward.

The Auditor General spoke to the Committee about this, and the need for people to feel that their disclosures will be taken seriously:

*I think our
whistleblower
legislation is good, but
I have rarely seen it
end well for a
whistleblower.*

*- Hon John McKechnie QC,
Corruption and Crime
Commissioner*

If people think that there will not be any action ... it is incredibly demoralising, and they will not go to the effort of [disclosing]. These are extreme cases of some allegations of fairly serious misconduct, some of which have been investigated and reported publicly, some of which are in progress.³³⁷

The *Whistling While They Work* research identified that support mechanisms for whistleblowers is an area that needs further attention. The project found that:

... organisations must accept their obligations to take reports seriously, respond appropriately and professionally (even if the outcome is no action), and support and protect persons who come forward with reports of wrongdoing. This last area was

336 New South Wales Independent Commission Against Corruption, *Corruption and integrity in the NSW public Sector: an assessment of current trends and events*, New South Wales, December 2018, pp. 23-25; and Peter Roberts, AJ Brown and Jane Olsen, *Whistling While They Work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU Press, Canberra, October 2011, p. 19.

337 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 10 April 2019, p. 6.

revealed by the research to be the element with which most organisations continue to struggle.³³⁸

Recent research found that mistreatment by management following a disclosure was a much worse problem than mistreatment by peers.³³⁹ There is evidence that the treatment worsens in direct relationship to the wrong-doer's seniority.³⁴⁰

Support for whistleblowers

Best practice in providing support to whistleblowers is to separate the role of investigator and supporter. Agency resourcing and organisational structure will at times make this difficult.

It is difficult to track the impact on individuals of being a whistleblower, as there is currently no central repository of information about them. Additionally, the understandable desire for anonymity amongst whistleblowers hampers the collection of data.

Given the importance of whistleblowers to the integrity of procurement process, and the toll that speaking up takes on individuals, the Committee is of the view that better support should be in place for individuals who do come forward. Furthermore, data should be collected on trends in misconduct and whistleblowing, and on the fate of whistleblowers over the longer term.

The *Whistling While They Work 2* project reports that the establishment of a central whistleblower protection authority (a 'one-stop-shop' for whistleblowers) is needed at the federal level in Australia, to cover both public and private sectors, 'to ensure organisations and persons who report wrongdoing have important institutional support.'³⁴¹ It should provide the following functions:

- A clearing house for whistleblowers bringing forward public interest disclosures.
- Advice and assistance to whistleblowers.
- Support and protect whistleblowers, including by investigating non-criminal reprisals in the public and private sectors and taking matters to the workplace tribunal or courts on behalf of whistleblowers or on the agency's own motion to remedy reprisals or detrimental outcomes.³⁴²

338 Peter Roberts, AJ Brown and Jane Olsen, *Whistling While They Work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU Press, Canberra, October 2011, p. 19.

339 AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019, p. 15.

340 *ibid.*, p. 18.

341 AJ Brown et al, *Clean as a whistle: a five step guide to better whistleblowing policy and practice in business and government*, Griffith University, Brisbane, 2019, p. 40.

342 *ibid.*, p. 41.

Some international jurisdictions have specialist whistleblowing agencies.³⁴³ In WA, support, advice, and data collection are fulfilled across agencies and in various ways, rather than by occurring through one single established unit.

Incentives for whistleblowers

In October 2018, the Committee travelled to Copenhagen, Denmark, to attend the 18th International Anti-Corruption Conference. While at the conference, the Committee met with the U4 Anti-Corruption Resource Centre, based in Norway. The U4 Centre advised that in some international jurisdictions, monetary incentives exist to encourage whistleblowers, with considerable success.

The False Claims Act in the United States was noted as an example. This legislation is one of few around the world where monetary incentives to blow the whistle are prescribed, formalising whistleblowing as a public-private partnership.

Commonwealth legislation relating to whistleblowers³⁴⁴ does not include provisions for monetary rewards to be given to whistleblowers. Nor are there any provisions for this in WA.

A Senate committee of the Australian federal parliament has examined the issue of incentives for whistleblowers in some detail. That committee's report included some suggestions for best practice criteria for legislation and recommendations for reform relating to whistleblower legislation, as well as examining whistleblower incentives.

Senate committee report

The Senate committee report noted that three previous committee inquiries did not support financial rewards or a bounty system in Australia, for various reasons. In 1989 the committee believed it was incompatible with the accepted principles and practices in Australian society.³⁴⁵ In 1994 it was recommended that a reward system should not be considered because its intent appears contrary to the development of appropriate ethical standards.³⁴⁶ Finally, in 2009 the committee concluded that agency heads should recognise whistleblowers within their organisations through their own existing rewards and recognition programs.³⁴⁷

343 Focusing only on the federal public sector regime, the *Whistling While They Work* research found that Australia was the only country studied that did not have an independent or specialist whistleblowing agency that either investigates retaliation or is able to assist whistleblowers with accessing remedies.

344 Commonwealth legislation relating to whistleblowing includes the *Public Interest Disclosure Act 2013*; *Corporations Act 2001*; *Fair Work (Registered Organisations) Act 2009*; *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.

345 House of Representatives Legal and Constitutional Affairs Committee, *Fair shares for all: Insider trading in Australia*, October 1989, p. 45, as cited in Parliament of Australia, Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections*, September 2017.

346 Senate Select Committee on Public Interest Disclosures, *In the Public Interest*, August 1994, pp. xiii-xxv and p. 228, as cited in Parliament of Australia, Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections*, September 2017.

347 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Whistleblower protection: a comprehensive scheme for the Commonwealth public sector*, February 2009, p. 86, as cited in Parliament of Australia, Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections*, September 2017.

There were strong arguments presented to the Senate committee both for, and against, the implementation of a rewards system in Australia. The committee report noted that a rewards system might motivate whistleblowers to come forward with high quality information that would be otherwise difficult to obtain.³⁴⁸

The report also acknowledged the primary reason submitters did not support a rewards system in Australia was the focus on a US-style bounty system, which provides uncapped rewards to whistleblowers, giving rise to concerns that this provides unethical incentives to report. To combat this issue, the committee considered a cap on rewards being paid to whistleblowers. In addition, the amount to be paid would be determined by the value of information disclosed and weighed against a number of criteria, to mitigate against perceived negative consequences of the US system. The report recommended that a prescribed law enforcement agency could give a whistleblower a 'reward' when a penalty against a wrongdoer was imposed by a court, in accordance with legislated parameters.³⁴⁹

Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

In 2017 the Australian Government introduced the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017*, which incorporated a significant number of the recommendations made by the Senate committee. However, it did not include the introduction of a rewards system, or the introduction of a Whistleblower Protection Authority. This legislation is now in force as the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*.³⁵⁰

The Government response to the Senate committee report was tabled in April 2019, after the new legislation was implemented by the Government. The Government supported a post implementation review of whistleblower protections to provide an opportunity to assess the merit and cost case of a rewards scheme, once the present reforms have had a reasonable time to operate and further information is available.³⁵¹

Conclusion on incentives

The CCC, and the WA public sector more broadly, is heavily reliant on whistleblowers to provide vital information in relation to misconduct. Currently there are few incentives and many possible negative consequences associated with being a whistleblower.

It has been argued that a rewards system may help balance the risks, costs and benefits involved for whistleblowers. This could lead to increased whistleblowing rates, which could deter misconduct in the future and help to recover public funds.

Placing a cap on the rewards being provided to whistleblowers may also help minimise some of the perceived negative consequences of the US style rewards system. The challenge is to

348 Parliament of Australia, Parliamentary Joint Committee on Corporations and Financial Services, *Whistleblower Protections*, September 2017.

349 *ibid.*

350 *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*, (Commonwealth).

351 Australian Government, *Australian Government response to the Parliamentary Joint Committee on Corporations and Financial Services report into Whistleblowers Protections in the corporate, public and not-for-profit sectors*, April 2019, p. 15.

establish incentives which increase the net benefits for whistleblowers without increasing opportunistic behaviour.³⁵²

352 K Sawyer, *Lincoln's Law: An Analysis of an Australian False Claims Act*, School of Historical and Philosophical Studies, University of Melbourne, Melbourne, 6 September 2011.

Chapter 8

Sanctions for corruption – are they enough?

Sanctions should function to condemn wrongdoing, to prevent instances of reoffending and to discourage others from undertaking similar actions.

Broadly speaking, the public expectation around findings of misconduct is that where criminal behaviour has occurred, the end result will be convictions for the people involved. There is often a disparity between an opinion of misconduct and a successful prosecution. Two key issues are the differences in standards of proof and the difficulties concerning admissible evidence.

Other sanctions include internal disciplinary practices; loss of employment; the prosecution of public officers and contractors; and banning contractors from supplying goods and services to government.

Effective sanctions

Prevention needs to be the primary approach to avoiding corruption in the public sector. Once wrongdoing has been detected and established, effective sanctioning is essential to deterring future corrupt behaviour.

The Organisation for Economic Co-operation and Development (OECD) report *Preventing Corruption in Public Procurement* highlights that proportional sanctions, following the detection of criminal behaviour, can act as an effective deterrent to engaging in corrupt behaviour.³⁵³

Sanctions should function to condemn wrongdoing, to prevent instances of reoffending and to discourage others from undertaking similar actions. In WA, mechanisms exist that are intended to provide proportional sanctions in instances where poor practice and misconduct are uncovered, including: internal disciplinary practices; loss of employment; the prosecution of public officers and contractors; and banning contractors from supplying goods and services to government. However, at times individuals have engaged in poor practice or misconduct with little or no consequence.

The Committee recognises formal sanctions involving criminal, civil or administrative penalties are not the only negative consequences faced by those found to have undertaken misconduct. For example, the Corruption and Crime Commission (CCC) can and has exercised discretion to publicly name individuals without a court determination having been reached about allegations of criminal behaviour. The Committee remains wary of this practice because of the significant reputational damage that results for individuals who are named in the public space.

353 OECD, *Preventing Corruption in Public Procurement*, 2016, p. 24.

The Committee has considered examples of proportional sanctions applied in WA, some of which are included below, and asks the question—are they enough?

Types of sanctions

Sanctions can be imposed as a result of investigations by the CCC and/or the Public Sector Commission, and include criminal charges, or disciplinary actions under the *Public Sector Management Act 1994* for example, a reprimand, reduction in salary or dismissal.

Sanctions for incompetence or non-compliance with policy and procedures

Sanctions for individuals for non-compliance or incompetence when dealing with policy and procedures appear minimal. Special Inquirer John Langoulant stressed that there are few consequences for poor behaviour in the public sector. Conversely, there is no reward for good behaviour.³⁵⁴

Case Study 8

2019 CCC report into serious misconduct in the procurement of environmental services

The CCC investigation and report of serious misconduct by a former employee of the Department of Mines, Industry Regulation and Safety (the Department), is an example of where there appears to have been no sanction or disciplinary action taken against the person involved.

The CCC report named the public officer and outlined how she became involved in a romantic relationship with the director of a company that was supplying services to the Department. The company was also identified.

The Commission formed the opinion that the public officer had engaged in serious misconduct by corruptly using her position to ensure that her partner's company obtained payments from the Department and by disclosing information to the company that was confidential to the Department.³⁵⁵

The CCC found that while still employed with the Department, the public officer had become actively involved in the management of the supplying company through an 'unofficial arrangement'.³⁵⁶

Ultimately, the public officer gave 30 days' notice of termination of employment and now works for the supplying company that benefitted from the her actions.³⁵⁷ The company in question no longer undertakes work for the Department.³⁵⁸

354 Mr John Langoulant AO, Special Inquirer, Inquiry into Government Programs and Projects, *Transcript of Evidence*, 9 May 2018, pp. 13-14.

355 Corruption and Crime Commission, *Serious misconduct in procurement of environmental services*, Western Australia, May 2019, pp. 35-36.

356 *ibid.*, p. 4.

357 *ibid.*, p. 7.

358 *ibid.*, p. 4.

A lack of consequence can give rise to a culture where there is no incentive for employees to comply with policies. Langoulant identified that chief executives have the responsibility for creating a culture where compliance with policies is treated as important, which Langoulant says is currently not occurring.³⁵⁹

Chief executives and directors general are accountable for the expenditure of public money and this needs to be reflected in their contracts. If poor procurement activities occur in organisations and this is shown by audit or by circumstance and discovery 'then the chief executive has to have a consequence. They cannot just be allowed to continue'.³⁶⁰

Case Studies 8 and 9 highlight some of the difficulties in pursuing disciplinary action or a sanction against an employee alleged to have engaged in misconduct, once they cease employment with an agency. This is an issue of concern to the Committee, when evidence suggests there may be an emerging trend of public sector employees moving to other employers when their questionable conduct comes to light. It should be noted however, that the former officer the subject of Case Study 8 has been charged with a string of corruption related offences (in April 2020).

Other jurisdictions across Australia face similar challenges. The New South Wales ICAC reported that it is relatively common for public officers to resign once they become aware of a potential investigation:

Often, this happens before the official can be interviewed or given a chance to respond to the evidence, which means an adverse finding may never be made or recorded. So, while agencies cannot practically refuse to accept an employee's resignation, an incomplete investigation or disciplinary process makes it much easier for the person to obtain future public sector employment where they can engage in the same misconduct.³⁶¹

The ICAC recommends that in cases where it is not possible to complete the investigation, agencies record that the employee resigned before any potentially adverse findings could be made. Factual information about the circumstances can then be provided in response to a service history check.³⁶²

359 Mr John Langoulant AO, Special Inquirer, Inquiry into Government Programs and Projects, *Transcript of Evidence*, 9 May 2018, p. 15.

360 *ibid.*, p. 8.

361 NSW Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: An assessment of current trends and events*, New South Wales, December 2018, p. 48.

362 *ibid.*

Case Study 9

Real life example provided by the Corruption and Crime Commission

Allegation: An agency reported an allegation that an employee offered a monetary bribe to another member of staff. The offer of a bribe could amount to the criminal offence of bribery of a public officer pursuant to the Criminal Code s 82 which is punishable by imprisonment for seven years.

Background: In late 2018, an employee was seen offering a \$500 bribe to her colleague for the referral of an individual to her husband's company, a registered provider with the agency. The witness raised the incident with the agency, who then notified the Commission. The agency also contacted the WA Police Force and informed them of the alleged offence.

Assessment: Based on the information available to the Commission, there was sufficient evidence to form a reasonable suspicion of serious misconduct in the circumstances; that is, bribing a public officer. The Commission considered that the agency was capable of conducting an appropriate investigation and resolving the matter to a proper standard. It referred the matter to the agency for action with a requirement to report on outcome.

Outcome: The agency informed the Commission that the employee had resigned to join her husband's company prior to the allegations being put to her. While the agency took no further action in relation to this matter, it may still be of interest to the WA Police Force.

The ICAC notes also the more serious practice of failing to properly deal with proven serious misconduct, when a fair and thorough investigation process has been completed and adverse findings have been made, including:

- Allowing an employee to resign, or take a redundancy, when there is sufficient evidence to dismiss them.
- Failing to advise the Commission or the police because the employee has already left the agency.
- Transferring the employee to another department or unit instead of disciplining them (and in some cases, not briefing the new manager about the reason for the transfer).
- Signing a non-disclosure agreement that prevents the agency from discussing the employee's conduct.
- Allowing a former employee with a history of misconduct to be re-employed at the agency (or a related agency in the same cluster). Alternatively, a former employee might return to the agency as a contractor or subcontractor.³⁶³

The ICAC supports the use of 'do-not-rehire' registers, provided that they are maintained in accordance with procedural fairness and that confidential information is secured.³⁶⁴

³⁶³ NSW Independent Commission Against Corruption, *Corruption and integrity in the NSW public sector: An assessment of current trends and events*, New South Wales, December 2018, pp. 48-49.

³⁶⁴ *ibid.*, p. 49.

Finding 54

There are minimal consequences for public officers who demonstrate non-compliance with policies and procedures or incompetence.

Finding 55

Chief executives and directors general need to be accountable for the expenditure of public money and this accountability needs to be embedded into their key performance indicators.

Finding 56

There are limitations in the application of sanctions for misconduct once the officer has ceased employment with the public sector.

Other negative consequences – reputation

Case Study 8 raises the issue of public condemnation through the CCC's public naming of people in its reports, rather than through the courts or a relevant disciplinary authority. The CCC stated in its report that the reputations of the officer and the company are 'and should be diminished'³⁶⁵ as a result of their conduct.

The CCC's decision to publicly name individuals in its reports has significant reputational impacts. The CCC has indicated to the Committee that it now pursues a policy of being more circumspect in this practice.

This issue is especially concerning to the Committee, when considering that there are examples where the CCC has named an individual and no charges have then been laid against that person and other circumstances where somebody has been named and then ultimately found not guilty by a court.

The Parliamentary Inspector of the Corruption and Crime Commission (Parliamentary Inspector) identifies this issue has been raised with him by a number of people and is a matter that he has under active consideration.³⁶⁶

During a hearing, the Committee invited Commissioner McKechnie to address concerns about the practice, recognising the harmful impacts that this can have. The Commissioner told the Committee that:

You will see often in reports that we do not name people; sometimes we do. It is a difficult issue always to decide because I am very conscious that we are not a court and we are intruding on people's reputations. Even though there is no legal

365 Corruption and Crime Commission, *Serious misconduct in procurement of environmental services*, Western Australia, May 2019, p. 35.

366 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2018-19*, Western Australia, 2019, p. 11.

consequence to an opinion, it has significant reputational harm. That is uppermost in my mind at all times.³⁶⁷

The Parliamentary Inspector notes the CCC diligently complies with the need to offer a disclaimer stating that where the CCC may offer an opinion of the existence of serious misconduct, this opinion is not to be taken as a finding of fact.³⁶⁸ However, the Parliamentary Inspector also questions whether this disclaimer is itself satisfactory given that effectively the damage is done.³⁶⁹

The Parliamentary Inspector noted that Australian jurisdictions take different positions in relation to this practice and it is a topic that creates division.

Although some stakeholders remain concerned about this practice, others take the view that the naming process may have general benefits that should be accepted as being available, with little concern for the damage to reputation.³⁷⁰

The Committee remains cautious of this practice and will continue to closely observe the use of the CCC's discretion in publicly naming individuals in its reports.

Criminal charges

Where CCC opinions of misconduct do lead to sanctions, in the most serious cases such sanctions may involve criminal charges. Case Study 9 above is an example where, even although the officer resigned before disciplinary action could be taken, criminal charges may still be pursued.

A recent example is the case of the North Metropolitan Health Service (NMHS) where a CCC investigation uncovered acts of corruption and bribery. The CCC released a report in August 2018 that named three public officers and eleven contractors, making a number of recommendations for prosecution.

The WA Police then launched an investigation into matters at NMHS and in 2019 media reports indicated that five contractors had been charged with offences relating to corruption and bribery.³⁷¹

The Commission ... [makes] the cautionary statement that for it to express an opinion of the existence of serious misconduct ... is not to be taken as a finding of fact. However, the efficacy of that statement to protect the persons concerned from what has been aptly described as collateral or reputational damage is open to question.

*- Hon Michael Murray AM QC,
Parliamentary Inspector of the
Corruption and Crime Commission*

367 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 16 October 2019, p. 11.

368 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2018-19*, Western Australia, 2019, p. 11.

369 *ibid.*

370 *ibid.*

371 Rebecca Trigger, 'Five charged over corruption, bribery at WA's North Metropolitan Health Service after CCC investigation', *ABC News* (web-based), 1 August 2019, accessed 11 December 2019, <

The five contractors, who all pleaded guilty to various offences concerning bribery and corrupt behaviour, are awaiting a sentencing hearing in the District Court scheduled for 2020. Charges were also later laid against the former public sector employees named in the CCC report.

The NMHS case provides an example of where a number of the CCC's opinions of misconduct have been acted upon to pursue sanctions. However, this isn't always the case. Authorities may give CCC recommendations their consideration, but are not required to pursue them. Even where relevant authorities may be compelled to take up the CCC's recommendations, the prosecution of such matters can also carry difficulties.

The difficulty in the prosecution of fraud

One of the public's expectations concerning findings of misconduct, is that in cases where criminal behaviour is said to have occurred, the end result will be criminal charges and convictions for those who have undertaken wrongdoing.

During a hearing with the Commissioner, the Committee identified that there seems to be a discrepancy between the CCC's opinions of misconduct and the expected outcome of successful prosecutions. The Commissioner addressed two key issues posing difficulty to addressing this expectation gap—the differences in standards of proof and the difficulties of securing admissible evidence.

A difference in standards of proof – balance of probabilities versus beyond reasonable doubt

Although there is no prescribed standard of proof that the Commissioner is required to consider before expressing an opinion of misconduct, the Commissioner forms an opinion of misconduct having regard to the balance of probabilities.³⁷²

This is a different standard of proof to that required by prosecutors, who must satisfy beyond reasonable doubt that misconduct has been carried out. Although the Commissioner expresses his caution in arriving at a finding of serious misconduct, the standard of proof applied is still not as high as the criminal standard that is applied by prosecutors. At times, this contributes to differences in determinations of misconduct.

<https://www.abc.net.au/news/2019-08-01/fraud-corruption-charges-brought-against-contractors-wa-health/11375952>.

372 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 16 October 2019, p. 10.

When confessions cannot be used as evidence

The second issue identified as contributing to the expectation gap surrounding the prosecution, concerns evidence that cannot be taken into account as part of criminal proceedings.

The CCC does not prosecute criminal matters itself but makes recommendations to relevant authorities concerning prosecution and supplies briefs of evidence for authorities to consider when deciding whether or not to prosecute.

The Commissioner provided an account of how a person might admit to the CCC that they have undertaken actions that constitute misconduct. This confession might then inform the Commissioner in establishing an opinion that the person has undertaken misconduct. However, this admission of wrongdoing cannot be used as evidence as part of a police investigation or prosecution of the person:

...it is a fundamental principle, known as the companion principle in criminal law, that a person is not obliged to convict themselves, to incriminate themselves, to give evidence against themselves. That fundamental principle can be, and has been, altered by statute so that witnesses before the commission are obliged to answer questions and cannot refuse to answer on the grounds that the question may incriminate them. The balance that the legislature has struck with that is that anything said in a commission is not admissible in evidence against a person.³⁷³

Accepting such a scenario as the necessary cost of ensuring a fair legal process, also contributes at times to the difficulty in prosecuting somebody about whom the CCC has formed an adverse opinion.

Relationship between WA Police and the Corruption and Crime Commission

Over recent years the CCC and WA Police have worked cooperatively on a number of matters including a joint investigation into corruption at Horizon Power and the investigation into corruption within the North Metropolitan Health Service (NMHS). In the NMHS investigation, the CCC gave WA Police access to all of their information once the police commenced an investigation of the matter. The CCC advised that there was a group of WA Police officers stationed within the Commission while they gathered material and evidence.³⁷⁴

In 2018, the Commissioner commented that the CCC had not handled its relationship with the police as well as it could have, and identified the need to work effectively together in

I may form a view of misconduct because the person has come in and said, "Yes, I did it." It goes for prosecution and then, of course, they exercise their right of silence and say nothing, and there is not sufficient evidence.

*- Hon John McKechnie QC,
Corruption and Crime
Commissioner*

373 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 17.

374 *ibid.*, p. 14.

pursuing matters of corruption. The Commissioner advised he had been in discussions with the Commissioner of Police to better develop the relationship between the parties.³⁷⁵ The Commissioner told the Committee that the CCC was trying to ensure a much more synchronised approach with WA Police in the future.³⁷⁶

The CCC and WA Police recently announced a joint investigation in relation to charges laid against the former Deputy Director General of the Department of Communities, and two other people who are not public sector employees, concerning allegations of corruption at the Department of Communities.

The Committee emphasises that especially in light of the scale and significance of recent matters under investigation, it is essential that the CCC and WA Police maintain an effective working relationship to enable cooperative and concurrent investigations and support achieving timely determinations by the courts.

Potential for prejudice

Tied into the issue of reputational damage is a concern about potential prejudice that can arise if charges are laid against a named individual and they become the subject of court proceedings.

In deciding the best way to progress an investigation with WA Police, the CCC must take potential court proceedings and the public reception of its investigatory reports into consideration. The CCC must consider the resultant reports being available in the public space, when charges have been laid against a person and there are court proceedings on foot. If a person pleads not guilty to the charges, a CCC report might give rise to potential prejudice in the passage of court proceedings. This is an issue the Commissioner says is a consistent consideration.

...one of the most difficult questions as commissioner is: which way to go? As I think I have said before, being a former prosecutor, my first instinct is always to go to court. A report has the undoubted potential to prejudice a trial, although there are matters to be taken into account. As against that, there is always going to be a delay in prosecutions, even if they work with us. From the beginning, there will be a delay. So what I weigh up is the public interest in knowing about it sooner rather than later, notwithstanding the undoubted potential for prejudice, which in many cases can be cured. If there is a plea of guilty, as we have had following several of our reports, that takes care of the prejudice. So it is a constant issue.³⁷⁷

375 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 10 October 2018, p. 14.

376 *ibid.*

377 *ibid.*, pp. 14-15.

Debarment regimes

Exclusion, suspension and debarment are emerging as useful tools in fighting corruption in procurement. That is, the exclusion of contractors that have committed certain types of wrongs in the past, or who pose unacceptable performance or reputational risks.³⁷⁸

Exclusion regimes may compel suppliers to play by the rules or face being sidelined. Excluding suppliers that have previously demonstrated a lack of integrity can offer an element of deterrence to encourage suppliers to engage in line with public sector expectations.

Western Australia does not have a formally instituted debarment regime and the exclusion of contractors supplying to the public sector is discretionary.

In the case of the NMHS, the suspension of contractors was a valuable avenue to remove the risk associated with other agencies engaging the contractors, five of whom have pleaded guilty to criminal charges. Ten out of the 11 contractors named in the CCC report were suspended, preventing them from supplying to government agencies for periods of time between just over one year and up to five years.³⁷⁹ This outcome also fulfils an important deterrence function and sends the message that the behaviour demonstrated by these suppliers will not be accepted within the public sector.

The NMHS case is an example of imposing suspensions against contractors of whom the CCC had formed an opinion of misconduct, but who ultimately did not have charges laid against them. This case should be looked at in considering the level of discretion that should be built into any debarment regime proposed for Western Australia.

The Department of Finance advised the Committee that it is developing a supplier debarment regime as part of the second phase of the Ethical Procurement Framework (see Chapter 5). As a part of this process, a discussion paper was provided to the major procuring agencies for feedback. This feedback shaped the development of the draft debarment regime. Currently the regime is the subject of a Cabinet Submission and, depending on the outcome of that, the Department of Finance is planning its release for public comment.³⁸⁰

The Department of Finance advised the Committee that in drafting a debarment regime it considered various international jurisdictions including the European Union, Canada, United State of America and the World Bank. The Department of Finance advised that the

378 Although UNCAC does not specifically cite debarment as an anti-corruption tool, the *Legislative Guide for the Implementation of the United Nations Convention* (2006, p113 (para 338)), notes that States parties should implement appropriate measures, such as debarment, to encourage compliance with UNCAC's anti-corruption requirements.

379 Tenders WA, *Government suspension of contractors named in CCC Report*, 19 September 2019, accessed 19 December 2019, <<https://www.tenders.wa.gov.au/watenders/news/browse.do?CSRFNONCE=399AEADB7B82E5EB83D2170DA012CB9C&id=408&action=browse#408>>.

380 Ms Kathryn Ingham, Director, Strategic Advisory Services, Department of Finance, email, 21 January 2020.

debarment regime is likely to draw strongly on aspects of the Canadian and American models.³⁸¹

Debarment regimes in Canada and America are well-established. However the mapping and comparison of different sorts of regimes and the understanding of their effectiveness is still an emerging discipline and best practice in this area is still being defined.³⁸² Australia does not currently have a government-wide exclusion mechanism.³⁸³

In considering international examples and the appropriate debarment or exclusion regime, decisions need to be made as to whether such sanctions can be applied administratively or upon conviction. Likewise, what are the grounds for such action? These vary between jurisdictions but may include bribery, fraud, failure to comply with statutory obligations to employees, tax evasion, bid rigging and collusion. The question could be asked, should there be the capacity for the debarment to be for a specified period or permanently?

Finding 57

Exclusion regimes are emerging as useful tools in removing risks associated with governments engaging suppliers that have undertaken certain types of wrongdoing or demonstrated unacceptable performance.

381 Ms Jodi Cant, Director General, Department of Finance, letter, 26 June 2019, p. 4.

382 The World Bank, *A Global View of Debarment: Understanding Exclusion Systems Around the World*, April 2019.

383 *ibid.*, p. 2.

Chapter 9

Completing the picture – a sector wide approach

The Western Australian public sector is generally reactive, rather than proactive, in its approach to corruption. When fraud or corruption is identified in the public sector, governance reviews and other investigations are often commenced to find out what went wrong. Reforms are often swiftly enacted which aim to ensure that weaknesses in governance and oversight are addressed.

There is a cost to acting after the fact. It is time for agencies and the public sector as a whole to be on the front foot.

Integrity strategies are part of the new best practice approach to corruption prevention. This type of approach is increasingly being seen as more effective than reactive responses, such as generating more rules and regulations.

The Public Sector Commission has released an integrity strategy for public authorities which aims to embed integrity into organisational systems, controls, culture, and in also in individuals' actions.

In addition to reforms at an agency level, a sector-wide approach is required. The Organisation for Economic Co-operation and Development model is a useful blueprint for a public integrity strategy that shifts the focus from *ad hoc* policy to cultivating a culture of integrity across society.

The public sector is reactive rather than proactive

The Western Australian public sector is generally reactive, rather than proactive, in its approach to corruption.

Reforms are often swiftly enacted (even before the full extent of the issues are known) and aim to ensure that weaknesses in governance and oversight are addressed.

While this approach is sometimes necessary in order to stem the corruption and address urgent matters, there are also risks involved in this reactive approach.

Discovering what went wrong

When an instance of fraud or corruption is identified in the public sector, narrowly focussed governance reviews and/or other forensic investigations are usually put in motion in order to find out what went wrong.

Traditional responses to fighting corruption based on the creation of more rules, overly rigid compliance regimes and tougher enforcement have been of limited effectiveness.

- The OECD

Following the publication of the Corruption and Crime Commission (CCC) *Report into bribery and corruption in maintenance contracts within North Metropolitan Health Service*, the Public Sector Commissioner resolved to conduct a governance review.³⁸⁴ This review was aimed at identifying the failures of governance and administrative systems within WA Health that contributed to the corruption reported on by the CCC.³⁸⁵

KPMG was commissioned as the external provider, reporting back to the Public Sector Commission (PSC) and the Minister for Health. The review made 16 recommendations to the Department of Health and NMHS to address the shortcomings found in their governance arrangements.

Similar actions were taken following the release of the CCC report on the WA Trade Commissioner to Japan.³⁸⁶ In this case no less than three reviews were established to examine different aspects of the situation and what went wrong. These were; a governance review of the Department of the Premier and Cabinet;³⁸⁷ an internal audit of the international trade and investment offices for the Department of Jobs, Tourism, Science and Innovation;³⁸⁸ and an independent review commissioned by the Director General of the Department of Jobs, Tourism, Science, and Innovation.³⁸⁹

Of these three reviews, the first two were more tightly focussed on governance arrangements, and what had gone wrong. The third was a broader policy review of all of the overseas offices and the policy objectives of their existence and operations.

The corruption scandal with the most far reaching reaction has been the revelations around the alleged corruption within the Housing Authority and the Department of Communities. In the aftermath of this exposure the Public Sector Commissioner commissioned EY to undertake a review into the governance, legal and administrative systems at the Housing Authority, and, where relevant, the Department of Communities. Systems are being

384 Section 24B(1) of the *Public Sector Management Act 1994* provides that, 'The Commissioner may on his or her own initiative conduct a review in respect of part or all of the functions, management or operations of one or more public sector bodies.' And in accordance with the prevention and education function provided for in section 45A of the *Corruption, Crime and Misconduct Act 2003*.

385 Public Sector Commission, *Governance Review – North Metropolitan Health Service & Department of Health; Terms of Reference*, Western Australia, 25 September 2018.

386 Corruption and Crime Commission, *Report on the WA Commissioner in Japan*, Western Australia, 12 March 2019.

387 Commissioned by the Public Sector Commission and carried out by KPMG. This review examined the adequacy of the governance arrangements within Department of Premier and Cabinet in administering expense claims, other entitlements and asset management in the WA Government's Overseas Offices of London, Tokyo and Dubai between 2008 and 2017. See KPMG, *Public Sector Commission: Governance Review of the Department of the Premier and Cabinet*, Western Australia, August 2019.

388 Carried out by KPMG, this audit assessed the adequacy, efficiency and effectiveness of the internal controls and compliance with policy of expenses covering the last six years, remuneration, entitlements and travel of all Commissioners and Agents General over the last ten years, and the overall fraud and corruption control environment, relating to the DJTSI overseas offices. See KPMG, *Internal audit of the international trade and investment offices: Department of Jobs, Tourism, Science and Innovation*, Western Australia, October 2019.

389 This review examined the state's international offices and associated support and oversight arrangements. The review was carried out by three independent reviewers with expertise in public administration, governance and trade and investment, and was supported by a secretariat within JTSI. See Overseas Trade and Investment Offices Review Panel, *Western Australia's Overseas Trade and Investment Offices Review*, Western Australia, October 2019.

examined in light of the way in which they may have ‘contributed to the circumstances giving rise to a senior public servant being charged with official corruption.’³⁹⁰

The review will also assess the integrity systems and controls at the Department of Communities, and identify measures that should be implemented across the sector. The PSC has announced that the contract is valid until 31 May 2020. The reporting timeframes may be extended depending on the criminal investigation by WA Police and the CCC.³⁹¹

Responding to corruption

Reforms are often swiftly enacted following a corruption scandal which aim to ensure that weaknesses in governance are addressed.

For example, following the allegations of corruption at the Housing Authority and Department of Communities, the government announced that a number of measures would be immediately implemented. These focussed on internal governance and audit arrangements across the public sector, including in Government Trading Enterprises.³⁹²

When the public sector is shaken by corruption scandals, it does not ‘take long for agencies to settle back into thinking that everything is okay within their jurisdiction.’

- QLD Crime and Corruption Commission

In addition, structural changes to the functions of the Housing Authority, within the Department of Communities, are being progressed. The reforms ‘will take time and require legislative amendments, and will have a financial impact on the State Budget.’³⁹³

The problem with *ad hoc* reform is that it is often done in haste without due consideration for how it fits into the overarching framework. Adding more layers of rules, policy and approvals may be necessary, but more often changing culture is the key to mitigating corruption.³⁹⁴

If the culture of an organisation does not change, in time, practice reverts back to the old established way of doing things. For procurement, this may mean reverting back to practices such as cutting corners in the award of contracts, neglecting to declare and manage conflicts of interest, and failing to maintain the correct documentation and records.

390 Hon. Mark McGowan MLA, Premier and Hon. Ben Wyatt MLA, Treasurer, *Stronger financial accountability controls for WA public sector*, media statement, 25 November 2019.

391 Public Sector Commission, *EY to undertake Housing Authority Review*, 4 December 2019, accessed 18 December 2019, <<https://publicsector.wa.gov.au/news-events/news/ey-undertake-housing-authority-review>>.

392 Hon. Mark McGowan MLA, Premier and Hon. Ben Wyatt MLA, Treasurer, *Stronger financial accountability controls for WA public sector*, media statement, 25 November 2019. These reforms include mandating that agencies have an audit committee that is independently chaired by a person external to the agency, requiring the regular rotation of accounting firms conducting internal audits and clarifying segregation of duties in payment authorisation. See Chapter 5 for more detail.

393 *ibid.* A Steering Committee will progress changes whereby social housing and other non-commercial functions will remain with the department, while land development and related commercial functions will be merged with DevelopmentWA - the newly merged entity comprising of LandCorp and the Metropolitan Redevelopment Authority.

394 Integrity forum hosted by the CCC and PSC on 21 June 2019.

For example the 2018 CCC report on alleged corruption at the NMHS describes a culture embedded in the health sector, if not the wider public sector, in which using public resources for private benefit was largely acceptable.³⁹⁵ This was in spite of various investigations and reforms over the years.

The cost of acting after the fact

There are inherent costs in reacting to, rather than preventing, corruption. Most obvious is the monetary cost. Not only does this include the money lost through corruption itself (discussed in Chapter 2) but also the cost of reacting to the corruption, by way of governance reviews, audits and reports.

An ounce of prevention is worth a pound of cure.

- old adage

For example, KPMG was paid \$228,504 by the Public Sector Commission to carry out the review into governance at the NMHS and WA Health.³⁹⁶

The governance review of the Housing Authority is subject to a contract valid until 31 May 2020, to the value of \$242,440.³⁹⁷ The reporting timeframes may be extended, presumably adding more cost.

As noted in Chapters 2 and 5, there are also non-monetary costs associated with public procurement corruption scandals. These include the negative impact on morale within, and effectiveness of, public sector organisations. These scandals discredit the public sector, leading to a diminution of public trust in its institutions and officers.

Public integrity refers to the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector.

- OECD Recommendation of the Council on Public Integrity

Public sector integrity: from *ad hoc* response to integrated approach

Integrity strategies are part of modern best practice approaches to preventing corruption. This type of preventative approach is increasingly being seen as more effective than reactive responses which include generating more rules and regulations.³⁹⁸

It is clear that a sector-wide approach is required in WA, in addition to agency-level improvements. A useful model is the Organisation for Economic Co-operation and

³⁹⁵ Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, Western Australia, August 2018, pp. 53-55.

³⁹⁶ Government of Western Australia, *Report on Consultants Engaged by Government; for the six months ended 30 June 2019*, Western Australia, November 2019, p. 7.

³⁹⁷ Public Sector Commission, *EY to undertake Housing Authority Review*, 4 December 2019, accessed 18 December 2019, <<https://publicsector.wa.gov.au/news-events/news/ey-undertake-housing-authority-review>>.

³⁹⁸ OECD, *Public Integrity*, accessed 20 January 2020, <<https://anticorruption-integrity.oecd.org/Explore/Topics/public-integrity.html>>.

Development (OECD) blueprint for a public integrity strategy.³⁹⁹ This model shifts the focus from *ad hoc* policy to cultivating a culture of integrity across society.⁴⁰⁰

The OECD model is built on 3 pillars: system, culture and accountability.

Finding 58

A sector-wide approach to corruption prevention is required in Western Australia, in addition to agency-level improvements. A useful model is the OECD blueprint for a public integrity strategy. This model shifts the focus from *ad hoc* policy to cultivating a culture of integrity across society, and is built on the three pillars of system, culture and accountability.

System – the systems in place reduce opportunity for corruption

The WA public sector requires system-wide improvements to reduce opportunity for corruption. It also requires reform to ensure a more functional and integrated approach, so that roles and responsibilities are clear and there are no gaps in oversight. Rather than everybody thinking somebody else is doing it, there is clarity about what is done and by whom.

Finding 59

The Western Australian public sector requires system-wide improvements to reduce opportunity for corruption. It also requires reform to ensure a more functional and integrated approach, so that roles and responsibilities are clear and there are no gaps in oversight.

In terms of the prevention of corruption in procurement, the legislative and policy framework for procurement should exhibit these characteristics. For example, standards and rules should be consistently applied across the sector as far as is practicable and reflected in agency activities. Currently, the fragmented, complex and difficult to navigate procurement framework in WA does not exhibit such consistency. As discussed in Chapter 3, this creates uncertainty, engenders a culture of non-compliance, and heightens corruption risk. Also noted is the way in which the fragmented nature of procurement legislation and policy can unintentionally impose competing requirements and unanticipated outcomes, counter to best practice for preventing corruption in public procurement.

The Committee has identified a need for system-wide implementation of a procurement framework that prioritises corruption prevention and detection. Procurement frameworks across Australian jurisdictions generally place more emphasis on value for money (with some thought on anti-corruption as an additional consideration).

399 OECD Recommendation of the Council on Public Integrity. See <http://www.oecd.org/gov/ethics/recommendation-public-integrity/>.

400 OECD, *Public Integrity*, accessed 20 January 2020, < <https://anticorruption-integrity.oecd.org/Explore/Topics/public-integrity.html>>.

Finding 60

The Committee has identified a need for system-wide implementation of a procurement framework that prioritises corruption prevention and detection. Procurement frameworks across Australian jurisdictions generally place more emphasis on value for money (with some thought on anti-corruption as an additional consideration).

Chapter 4 summarises key evidence received by the Committee and makes comment on aspects of the current procurement framework requiring improvement in order to curb corruption. Areas for reform are grouped into four main principles—transparency, accountability, oversight and effective competition.

Accountability and oversight mechanisms which are external to agencies have been diminished in recent years. For example, accountable authorities are not always prioritising the implementation of recommendations by central agencies, such as the Office of the Auditor General (OAG).

***Central agencies
'must be reinstated as
whole-of-government
policy makers,
decision makers,
influencers, educators
and leaders'***

*- John Langoulant AO,
Special Inquirer*

The addition of a forensic audit function to the OAG in WA is outlined in Chapter 5. As noted, this is a first within Australasian Auditor General offices, and will fill a gap in oversight within the anti-corruption framework. It is arguable that conferral of this non-standard role for the OAG is a concession that internal audit practices within the public sector were inadequate to the extent it facilitated corruption.

Some best practice literature on preventing corruption in public procurement suggests implementation of an independent oversight body to monitor and report on public procurement. For example, the United Nations Office on Drugs and Crime (UNODC)⁴⁰¹ suggests that states explore the establishment of either an independent agency or commission for the organisation and execution of public procurement procedures. Such a body would have executive or monitoring responsibilities for a wide range of procurement activities.

In reality, this model doesn't exist in any Australian jurisdiction. In WA, like other jurisdictions, procurement and oversight functions are spread across various government agencies and integrity bodies. This can lead to gaps in oversight and accountability.

A large number of procurement-specific functions are carried out by Department of Finance. It has a dual role in that it oversees compliance and also provides guidance, support, tools, and education to public authorities. Some functions are fulfilled by quasi-independent bodies administered by (or housed within) the Department of Finance. For example, the State Tender Review Committee and State Supply Commission.⁴⁰²

401 Such a model is recommended by the UNODC in its Technical Guide to the United Nations Convention Against Corruption.

402 Submission 3A, Department of Finance, p. 5.

Other functions which are more generalised aspects of public sector activities, such as training, investigating and reporting on misconduct, are undertaken by integrity bodies such as the PSC or CCC.

Culture – changing culture to make corruption unacceptable

The Committee received a great deal of evidence about the importance of organisational culture in fighting corruption. A brief discussion is included in Chapter 5.

The observations can be applied to the whole sector. The public sector as a whole must work towards entrenching a culture where corruption is not only unacceptable, but also actively prevented. A corollary to this is a private sector that is well informed of obligations when dealing with the public sector.

Training and education is key to changing culture. Training for public sector officers on conflict of interest management should address culture with a view to equipping public officers with the skills to make good judgements and to recognise public duty versus private interest, rather than just following a rules-based procedure without thinking about why.

The Committee notes improvements taking place in improving training across the sector (see Chapter 5). It will watch with interest the work of the Public Sector Commissioner and the Department of Finance as new training initiatives are rolled out as part of the ongoing public sector reform.

A culture that protects whistleblowers is also key (see Chapter 7). Recent corruption investigations exposed by the CCC, which have rocked the WA public sector, have been as a result of whistleblowing. This is encouraging, as it means that there are people who felt safe to speak out. However, the committee identifies that there is still work needed in this area.⁴⁰³

Accountability – making people accountable for their actions

Public officers and contractors need to be accountable for their actions.

Accountability needs to be enforced at every level. Chapter 5 details the lines of defence an agency should employ for good governance. Internal controls within agencies should keep public officers accountable. A strong internal audit function is key to accountability in agencies. Directors general and other agency heads then should be held to account for the effectiveness of these internal controls and the overall financial management of the agency.

Finding 61

Internal controls within agencies should keep public officers accountable and a strong internal audit function is key to accountability. Directors general and other agency heads then should be held to account for the effectiveness of these functions and the overall financial management of the agency.

403 From January 1 2020 ASX listed companies are required to have whistleblower regimes in place. In enhancing existing PID practice in the public sector it may be beneficial to examine how the private sector intends to manage such individuals.

Recommendation 10

The Premier should direct the Public Sector Commissioner to investigate how directors general and other agency heads could be held to account for the effectiveness of internal controls, the internal audit function and the overall financial management of their agency.

In cases of corruption discovered in agencies, internal factors are identified which point to a lack of effective oversight of and accountability for decisions, with little or no corporate visibility of procurement activity and expenditure across the organisation.

Legislation introduced into the Parliament in February 2020 as a response to the findings and recommendations of recent reviews aims to enhance accountability of directors general and chief executives.⁴⁰⁴

The proposed amendments appear to strengthen what is expected of accountable authorities with regard to managing internal controls and financial delegations within agencies. The emphasis is on record keeping and financial reporting, proper roles and responsibilities, and compliance with Treasurer's Instructions.

Finding 62

The Financial Legislation Amendment Bill 2020 appears to strengthen what is expected of accountable authorities with regard to managing internal controls and financial delegations within agencies. The emphasis is on record keeping and financial reporting, proper roles and responsibilities, and compliance with Treasurer's Instructions.

Associated recommendations provide that any breach of the requirements by an accountable authority '... may invoke the disciplinary provisions of the *Public Sector Management Act 1994*.'⁴⁰⁵ Although the Bill doesn't explicitly address these disciplinary provisions, presumably sanctions could be applied to accountable authorities through such mechanisms.

It is not clear whether reforms are planned for improving the performance assessments of chief executive officers and other agency heads, in line with the findings and recommendations of the Langoulant review.⁴⁰⁶

According to information available online, the PSC is trialling a new delivery and performance management approach for CEOs that is currently being undertaken with

404 The Financial Legislation Amendment Bill 2020 proposes amendments to section 53 of the *Financial Management Act 2006* (the Act) that insert additional functions of accountable authorities as a response to reviews such as the Service Priority Review and the Special Inquiry into Government Programs and Projects.

405 The 2014 Review of the Financial Management Act (2006) made a number of recommendations concerned with improving the operation and effectiveness of the Act, a number of which have been incorporated into the Bill. Department of Treasury, *Review of the Financial Amendment Act (2006)*, Western Australia, December 2017, p.2.

406 For further information about recommendations see: Department of the Premier and Cabinet, *Working Together: One public sector delivering for WA, Service Priority Review, Final Report to the Western Australian Government*, Western Australia, October 2017, p.24.

directors general.⁴⁰⁷ However, there is little detail available about whether or how this new performance management approach will improve accountability for directors general.

In addition, public sector officers must be accountable, not just to the agency, but to the wider public sector. A regime across the public sector that enables agencies to flag individuals who have ceased employment in circumstances where poor practice or corrupt behaviour have been demonstrated, can assist in preventing those former employees from reobtaining employment without sufficient scrutiny of their past actions (see Chapter 8).

Third parties doing business with government also need to be held accountable. Exclusion regimes are emerging as useful tools in removing risks associated with governments engaging suppliers that have undertaken certain types of wrongdoing or demonstrated unacceptable performance (see Chapter 8).

Finally, sanctions must be effective, fair and consistent (see Chapter 8).

Improving integrity in public authorities

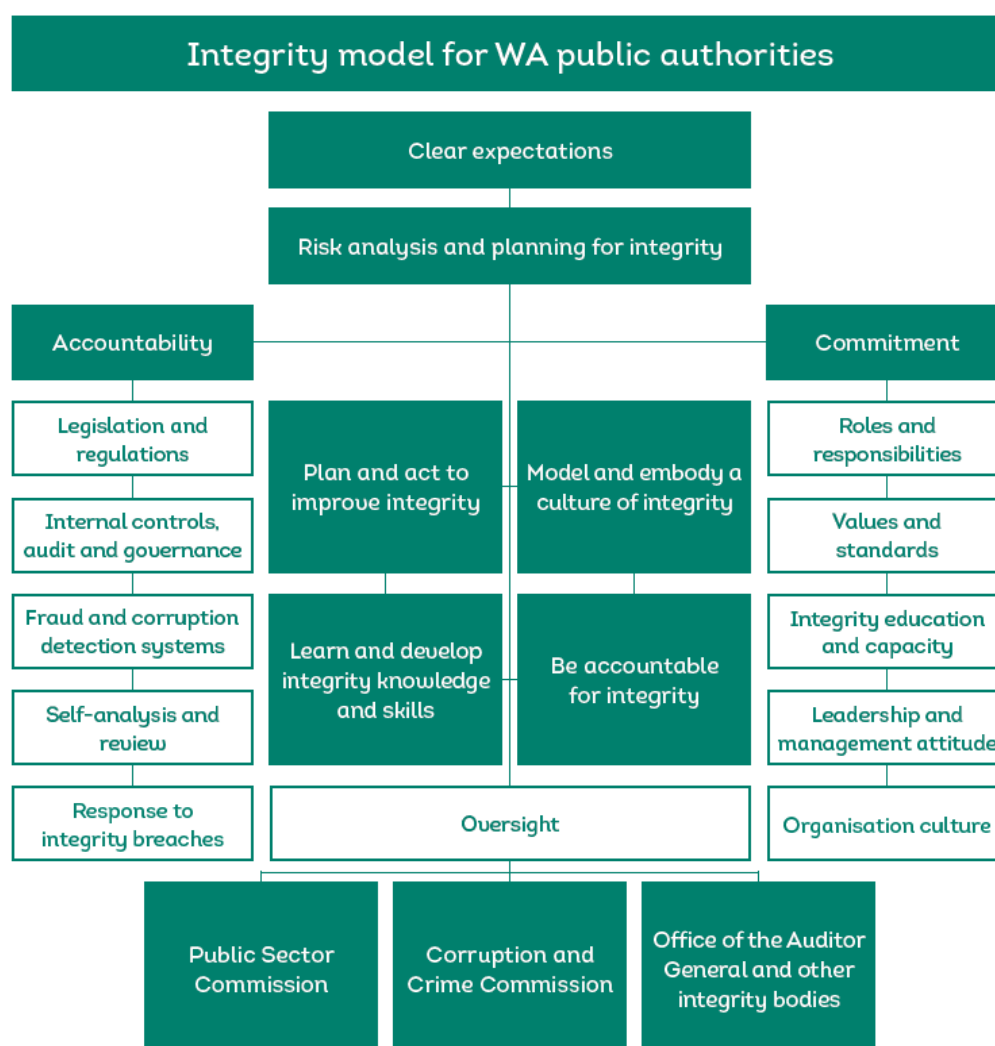
The strategy identifies four key improvement areas, and suggests actions and controls to promote integrity and help prevent misconduct and corruption. These are:

- plan and act to improve integrity: effective governance systems and frameworks are established
- model and embody a culture of integrity: a culture of integrity exists and is reinforced and communicated by leaders
- learn and develop integrity knowledge and skills: individual and authority integrity knowledge, skills and competence are grown
- be accountable for integrity: prevention, detection and response to integrity matters are everyone's personal and professional responsibilities.⁴⁰⁸

407 This information was found at <https://www.wa.gov.au/government/public-sector-reform/roadmap-reform/leadership/high-performing-ceos>. Accessed on 3 February 2020.

408 Public Sector Commission, *Integrity Strategy for WA Public Authorities 2020-2023*, Western Australia, December 2019, p. 6.

Figure 9.1: An integrity model for public authorities



The role of the Public Sector Commission

As the author of integrity strategy for agencies, the PSC was informed by data collected as part of its annual survey program and recent examples of misconduct and corruption. The work of other Australian and international jurisdictions and stakeholder consultation was also given consideration.⁴⁰⁹

It carried out this work as a part of its misconduct prevention and education function mandated under the *Corruption, Crime and Misconduct Act 2003*.⁴¹⁰

In addressing ongoing education for public authorities about prioritising integrity, actions have been built into the strategy to support continued engagement between PSC and public authorities.

⁴⁰⁹ Mr Dan Volaric, Executive Director Strategic Initiatives and Liaison, Public Sector Commission, email, 23 January 2020, p. 1.

⁴¹⁰ *ibid.* p. 3.

PSC has made a commitment to establish and maintain an Integrity Practitioners' Group to work collaboratively with public authorities to promote and implement the strategy and help develop supporting resources, products and tools as part of the integrity framework. This will not replace the Public Sector Commissioner's ongoing collaboration with other integrity bodies such as the Corruption and Crime Commissioner and the Auditor General (see Box 9.11).⁴¹¹

Box 9.11: Integrity Practitioners' Group

Establishing the Integrity Practitioners' Group (IPG) relates to the PSC's strategic action item 3.1 Share and Collaborate of the Integrity Strategy. The group is not dissimilar to those established in other jurisdictions. For example, the Integrity Community of Practice Group established by the Victorian Public Sector Commission.

The IPG is being established in recognition of the importance of consultation and collaboration to assist in promoting integrity and preventing misconduct. With this in mind, the IPG will assist the PSC by contributing to the development and design of initiatives arising from the Integrity Strategy, contributing to the identification and exploration of solutions to integrity issues and to contribute to the development of products, programs and tools which will assist public authorities to promote integrity and prevent misconduct. The IPG will be a key PSC consultation mechanism for integrity promotion and misconduct prevention initiatives.

The IPG will have up to 19 members and comprise a mix of officers from public authorities: local government; state public sector agencies; government trading enterprises and public universities.

Source: Information provided by the Public Sector Commissioner on 4 March 2020.

The PSC advised that in 2020, its focus will be on the development and delivery of tools and training to assist public authorities improve agency integrity and capacity in relation to the detection and prevention of misconduct and corruption. These include:

- an integrity framework
- an integrity data dashboard
- redevelopment of the existing online misconduct reporting tool
- development of a tool to assist authorities to assess the maturity of their integrity approach.⁴¹²

Other activities planned in support of this include:

- education and training activities, including 'community of practice' sessions, advisory and consultancy services, and review functions
- a campaign related to the acceptance of gifts, benefits and hospitality
- an integrity forum to be hosted with the CCC in June 2020.⁴¹³

The Committee commends this focus and anticipates witnessing an expansion of activity on behalf of the PSC in fulfilling its misconduct prevention and education function. Agency

⁴¹¹ Mr Dan Volaric, Executive Director Strategic Initiatives and Liaison, Public Sector Commission, email, 23 January 2020, p. 2; and Ms Sharyn O'Neill, Commissioner, Public Sector Commission, letter, 3 March 2020, pp. 1-2.

⁴¹² Ms Sharyn O'Neill, Commissioner, Public Sector Commission, letter, 3 March 2020, p. 2.

⁴¹³ *ibid.*

heads are encouraged to avail themselves, and their officers, of this increased support from the PSC.

The role of public authorities

Accountable authorities are ultimately responsible for the integrity of the agency's procurement processes. Currently, integrity and risk frameworks within agencies are inconsistently applied and not prioritised, which has a direct impact on corruption risk in procurement. Often integrity units, internal audit and investigative functions are fragmented and/or under-resourced. This PSC initiative provides an opportunity for accountable authorities to rectify this.

The PSC's integrity strategy aims to achieve more than just compliance; it aims to ensure that integrity is embedded into systems, controls, culture and attitude, and in accountabilities and responses. An 'Integrity Snapshot Tool' has been designed by PSC to assist public authorities to assess their integrity efforts and identify areas for improvement.⁴¹⁴

All public sector Chief Executive Officers have confirmed to the PSC their commitment to implementing the strategy.⁴¹⁵ Departmental heads must be held to this commitment and should be answerable for the implementation of the strategy.⁴¹⁶ The Committee however remains concerned that there is a lack of expedition in the implementation of this strategy sector-wide. A commitment by agencies to implementation must be supported by a firm timetable.

Recommendation 11

That the Premier direct the Public Sector Commissioner to monitor implementation of the *Integrity Strategy for WA Public Authorities 2020-2023*. The quality and timeliness of implementation should be made the subject of performance agreements for all directors general. The strategy should be reported on annually to the Parliament.



MS M.M. QUIRK, MLA
CHAIR

414 Public Sector Commission, *Integrity Strategy for WA Public Authorities 2020-2023*, Western Australia, December 2019.

415 Mr Dan Volaric, Executive Director Strategic Initiatives and Liaison, Public Sector Commission, email, 24 January 2020.

416 The importance of holding agency heads to account for reform arising out of corruption events has been highlighted by the Crime and Corruption Commission Queensland, *Fraud and Corruption Control: Best Practice Guide*, Queensland, March 2018, p. 85.

Appendix One

Committee's functions and powers

By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 15 June 2017.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- c) carry out any other functions conferred on the Committee under the *Corruption, Crime and Misconduct Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council

Appendix Two

Submissions received

No.	Name	Position	Organisation
1.	Mr Jeff Miller	Chief Executive Officer (WA)	Civil Contractors Federation WA
2.	Mr Colin Murphy	Auditor General	Office of the Auditor General
3.	Ms Anne Nolan	Director General	Department of Finance
3A.	Ms Jodi Cant	Director General	Department of Finance
4.	Mr Richard Sellers	Director General, Department of Transport	Department of Transport
5.	Mr Mal Wauchope AO	Public Sector Commissioner	Public Sector Commission
6.	Ms Toni Walkington	Branch Secretary	Community and Public Sector Union Civil Service Association of WA
7.	Ms Sharyn O'Neill	Director General	Department of Education
8.	Mr Ray Warnes	Chief Executive	Corruption and Crime Commission
9.	Ms Christine Tonkin	Procurement Practitioner	N/A
9A.	Ms Christine Tonkin	Procurement Practitioner	N/A
9B.	Ms Christine Tonkin	Procurement Practitioner	N/A
10.	Mr Richard Sellers	Director General, Department of Transport	Public Transport Authority

Appendix Three

Public hearings

Date	Name	Position	Organisation
9 May 2018	Mr John Langoulant AO	Special Inquirer, Inquiry into Government Programs and Projects	N/A
27 June 2018	Ms Stephanie Black	Acting Director General	Department of Finance
	Ms Kathryn Ingham	Director, Strategic Advisory Services	
	Mr Richard Mann	Executive Director, Strategic Projects	
	Mr Anthony Halberg	Director, Policy and Procurement Services	
17 September 2018	Ms Nina Lyhne	Acting Director General	Department of Transport
	Mr Steve Beyer	Acting Managing Director	
	Mr Craig Shepherd	Director, Procurement and Fleet Management	
	Ms Natasha Thomas	Budget Management Director	
17 September 2018	Ms Nina Lyhne	Acting Director General, Department of Transport	Department of Transport and Public Transport Authority
	Mr Mark Burgess	Managing Director, Public Transport Authority	
	Mr Kevin Kirk	Executive Director Finance and Contracts, Public Transport Authority	
10 October 2018	Hon John McKechnie QC	Commissioner	Corruption and Crime Commission
	Mr Ray Warnes	Chief Executive	
	Ms Kirsten Nelson	Acting Director Assessment and Strategy Development	
17 October 2018	Dr David Russell-Weisz	Director General	Department of Health
	Mr Rob Toms	Chief Executive, Health Support Services	
	Mr Mark Thompson	Chief Procurement Officer, Health Support Services	

Appendix Three

	Mr Leon McIvor	Acting Assistant Director General, Strategy and Governance	
7 November 2018	Ms Sharyn O'Neill	Public Sector Commissioner	Public Sector Commission
	Mr Lindsay Warner	Executive Director, Workforce Performance and Renewal	
	Mr Eamon Ryan	Executive Director, Conduct and Compliance	
	Ms Tamara Findlay	Assistant Director, Sector Performance and Reporting	
26 November 2018	Ms Christine Tonkin	Procurement Practitioner	N/A
20 March 2019	Ms Sharyn O'Neill	Public Sector Commissioner	Public Sector Commission
	Mr Eamon Ryan	Executive Director, Integrity and Risk	
	Mr Lindsay Warner	Acting Executive Director, Policy and Data Analytics	
	Ms Melissa Travers	Legal Officer	
3 April 2019	Mr Ross Emerson	Private Citizen	N/A
10 April 2019	Ms Caroline Spencer	Auditor General	Office of the Auditor General
	Ms Sandra Labuschagne	Deputy Auditor General	
	Mr Jason Beeley	Assistant Auditor General	
8 May 2019	Mr Richard Sellers	Commissioner of Main Roads	Main Roads WA
	Mr Peter Woronzow	Managing Director	
	Mr Philip D'Souza	Acting Executive Director, Finance and Commercial Services	
15 May 2019	Dr Russell-Weisz	Director General	Department of Health
	Dr Robyn Lawrence	Chief Executive, North Metropolitan Health Service	
	Ms Liz Macleod	Chief Executive, East Metropolitan Health Service	
	Mr Mark Thompson	Chief Procurement Officer, Health Support Services	

	Ms Angie Spaziani	Director, System Wide Integrity Services	
	Dr Andrew Robertson	Chief Health Officer and Assistant Director General, Public and Aboriginal Health	
12 June 2019	Ms Jodi Cant	Director General	Department of Finance
	Mr Andrew Davy	Acting Director Strategic Advisory Services	
	Ms Stephanie Black	Executive Director, Government Procurement	
	Mr Mark Bryden	Director, Strategic Issues	
	Mr Phil Helberg	Acting Deputy Director General, Building Management and Works	
23 October 2019	Ms Cassandra Ahearne	Deputy Chair	State Tender Review Committee
	Ms Susanne Harris	Committee Member	
	Ms Beata Bialozor-Kurtis	Committee Member	
	Ms Angela Corbett	Committee Member	
	Mr Keith Van Dongen	Committee Member	
	Mr Liam Carren	Committee Member	
	Mr Mark Thompson	Committee Member	
	Ms Kathryn Abbott	Executive Support and Policy and Practice Adviser	

Briefings

Date	Name	Position	Organisation
17 September 2018	Hon John McKechnie QC	Commissioner	Corruption and Crime Commission
	Mr Ray Warnes	Chief Executive	
	Ms Wendy Endebrock-Brown	Director, Legal Services	
	Mr David Robinson	Director, Operations	
22-26 October 2018 (meetings held at the 18 th IACC conference, Copenhagen, Denmark)	Ms Elodie Beth	Program Advisor Governance and Peacebuilding Team in Bangkok	UNDP
	Mr Arne Strand	Director	U4 Anti-Corruption Resource Centre
	Mr Aled Williams	Senior Advisor	
	Mr David Jackson	Senior Advisor	
	Ms Sofie Schutte	Senior Advisor	
	Ms Kendra Dupuy	Senior Advisor	
	Mr Fredrik Eriksson	Senior Advisor	
	Ms Monica Kirya	Senior Advisor	
	Ms Jessica Schultz	Senior Advisor	
	Ms Carol Guthrie	Head of OECD Washington Centre	Organisation for Economic Cooperation and Development (OECD)
	Ms Silvia Terrón	Public Affairs Manager, Civil Society and Parliamentary Liaison, Public Affairs and Communications Director	
	Ms Candice Welsch	Chief, Implementation Support Section Corruption and Economic Crime Branch	United Nations Office on Drugs and Crime (UNODC)
	Ms May Miller-Dawkins	Consultant	Open Contracting
	Ms Serena Lily-White	Chief Executive Officer (TI Australia)	Transparency International
25 October 2019	Mr Peter Skaarup	Committee Chair	Legal Affairs Committee Danish Parliament
	Mr Peter Kofod	Committee member	
	Ms Ketty Gammelgaard	Committee Secretary	
	Mr Martin Ryding Rosenkilde	Advisor in Legal Affairs	

	Ms Amalie Andreasen	Committee Assistant	
25 October 2019	Mr Klaus Frandsen	Vice Chairman	Public Accounts Committee Danish Parliament
	Mr Frank Aaen	Committee member	
	Ms Gitte Korff	Head of Secretariat	
	Mr Morten Brædstrup-Holm	Deputy Head of Secretariat	
28 March 2019	Hon John McKechnie QC	Commissioner	Corruption and Crime Commission
	Mr Ray Warnes	Chief Executive	
	Ms Wendy Endebrock-Brown	Director, Legal Services	
	Mr David Robinson	Director, Operations	
	Mr Warren Cattell	Deputy Director Operational Support	
	Mr Jon Tuttle	Deputy Director Investigations	

Appendix Four

Glossary

Accountable authority	The officer responsible for purchasing undertaken by a public authority. This is usually the Director General, Chief Executive Officer or their delegate.
Agency	An agency means a department or SES organisation (the latter are specified in Schedule 2 of the PSM Act). (PSMA)
Bona fide sole source of supply	A situation where it has been clearly established that only one supplier can supply the requirement. This can be established either through a periodic test of the market or consultation with appropriate industry bodies, manufacturers and other sources of expertise.
Common Use Arrangement	A whole-of-government contract arrangement, established for use by all public authorities.
Contract management plan	A plan containing all the pertinent information about how the contract is to be managed and which identifies and addresses all relevant issues through the life of the contract.
Corruption	Misconduct that tends to show a deliberate intent for an improper purpose and motivation. It may involve misconduct such as: the deliberate failure to perform the functions of office properly; the exercise of a power or duty for an improper purpose; or dishonesty.
General government sector	As a subset of the wider public sector, this term denotes all the government entities and non-profit institutions that are controlled and largely financed by government (it notably excludes GTEs, local governments, TAFEs and universities).
Goods	Subsection 60 (1) of the <i>Sale of Goods Act (1895)</i> , sets out that goods include all objects capable of being owned as personal property, other than things in action and money.
Government Trading Enterprise (GTE)	A colloquial term used to describe public authorities that derive their prime source of revenue from the sale of goods and services in a commercial environment.
Misconduct	<p>Misconduct under the <i>Corruption, Crime and Misconduct Act 2003</i> generally occurs when a public officer abuses authority for personal gain, causes detriment to another person or acts contrary to the public interest.</p> <p>The Corruption and Crime Commission (CCC) deals with allegations concerning serious misconduct by public officers in Western Australia. Reports that involve minor misconduct are dealt with by the Public Sector Commission (PSC).</p>

Public authority	<p>This term has application to all bodies with a public purpose and function, and applies to the following:</p> <ul style="list-style-type: none"> • a department or organisation as established or defined under the <i>Public Sector Management Act 1994</i> • local governments and other bodies established for a public purpose under a written law [for example, authority, board, corporation, commission, council, committee] • bodies established by the Governor or a Minister • other bodies as set out in regulations. • GTEs • Universities and TAFEs
Public officer	<p>The term public officer is defined in section 3 of the <i>Corruption, Crime and Misconduct Act 2003</i> by reference to the definition in section 1 of The Criminal Code.</p> <p>Public officers include state government employees, police officers and employees, members of government boards or committees, members of parliament, local government elected members and employees, all employees of public universities, employees of government trading enterprises and some volunteers.</p>
Public sector	<p>The Public Sector Management Act 1994 takes a narrow definition of the public sector, and includes agencies, ministerial offices and non-SES organisations.</p> <p>At its widest definition, the public sector includes government agencies, statutory authorities, government trading enterprises (GTEs), public universities, TAFEs and local government authorities.</p> <p>The latter is assumed for the purposes of this report.</p>
Public service	<p>Section 34 of the <i>Public Sector Management Act 1994</i> sets out that the Public Service is constituted by departments and SES organisations.</p>
Procurement	<p>The entire process for obtaining all class of resources (human, material, facilities and services). It can include planning, design, standards determination, specification writing, preparation of quotation and tender documentation, selection of suppliers, financing, contract administration, disposals and other related functions.</p>
Procurement plan	<p>A project management tool that provides a framework for procurement. The procurement plan outlines the key issues that both determine and impact the procurement strategy and method adopted.</p>
Services	<p>The whole of the services, tasks, work and requisites to be supplied, rendered, provided or performed by a contractor under a contract and any variations provided for by the contract, and includes all and any products, materials, plant, machinery or equipment supplied, provided or used by the contractor in performance of the contract.</p>

Appendix Five

The procurement framework in Western Australia – General government sector

Public procurement frameworks

Public procurement is taken to mean procurement by all bodies, entities and organisations across the wider public sector. A wide variety of governance arrangements currently apply to procurement processes sector-wide.

There are four main frameworks within which procurement takes place. These frameworks sit within the wider context of whole-of-government policy and legislation, which has application to procurement in some way, and to varying degrees.

The four main policy and legislative frameworks identified by the Committee are those which generally apply to the following sectors in undertaking public procurement:

- the general government sector
- government trading enterprises
- public universities and TAFEs
- local government authorities.

Procurement in the general government sector

Procurement in the general government sector is split into two categories:

- **goods and services** used by government in projects and day-to-day operations
- services used by government in the construction of infrastructure, known as **works**.

Both these categories have a framework within which there are statutes, whole-of-government policies and procedures that apply. Agencies then apply their own internal policies and procedures to procurement, in accordance with these. Agencies are also required to comply with a range of other high-level instructions and policies which impact upon procurement.

Although a significant number of agencies are subject to the policy requirements of the State Supply Commission (SSC) and fall within the remit of the Department of Finance, there are statutory bodies, boards and committees that sit outside this framework.⁴¹⁷

Goods and services

The Department of Finance administers the central framework for the procurement of goods and services. To a lesser extent it has a role in the procurement of capital works across the public sector.

⁴¹⁷ Mr John Langoulant AO, Special Inquirer, Inquiry into Government Programs and Projects, *Transcript of Evidence*, 9 May 2018, pp. 3-4.

State Supply Commission

The Department of Finance has a Government Procurement business unit which administers the SSC.⁴¹⁸ The SSC assists public authorities in procuring goods and services and creates supply policy.

The SSC was established in the early 1990s by the *State Supply Commission Act 1991* (SSC Act) to regulate the procurement of goods and services by government, primarily through the formulation of whole-of-government supply policy in line with the requirements of the SSC Act.

In 2009 the SSC was merged with the Department of Finance, which now leads the ‘whole-of-government’ approach to the procurement of goods and services, overseeing compliance with the SSC Act and administering supply policy.

The activities carried out by The Department of Finance’s Government Procurement unit include:⁴¹⁹

- facilitating tender processes for goods and services
- establishing and managing whole-of-government Common Use Arrangements (CUAs)
- assisting agencies to procure community services
- providing technical solutions, such as Tenders WA, which aim to assist with transparent tendering
- providing policy and practical support and training to the sector.

Delegations and exemptions under the State Supply Commission Act

The SSC is able to delegate its power to carry out purchasing and contracting to public authorities, and grants partial exemptions to enable them to arrange supply and undertake the procurement of goods and services necessary for their operations.

Most public authorities can undertake individual autonomous procurement activities up to the value of \$250,000 without involving Government Procurement. Certain agencies may be granted higher autonomous purchasing thresholds; for example, the Department of Transport has a partial exemption of \$20 million. The high threshold for this agency is said to be due to the fact that it has demonstrated to the Department of Finance ‘that it has quite a large procurement team with a lot of expertise.’⁴²⁰

Agencies are granted partial exemptions on the basis that they maintain particular internal controls over procurement. They should:

- maintain a delegations register of officers who have authority to act on behalf of the agency in its goods and services purchasing

418 In reality, the State Supply Commission has no staff of its own—it is wholly administered by Department of Finance officers.

419 Department of Premier and Cabinet, *Service Priority Review: Background Paper: Procurement of Goods and Services*, Western Australia, 2017, p. 2.

420 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 27 June 2018, p2 and p16.

- maintain an exemptions, approval, awarded contract and variation register
- maintain a purchasing manual
- have adequate and appropriately skilled resourcing for the procurement function, including contract management
- cooperate with the SSC in reviewing supplier complaints
- conduct a procurement audit annually, or once every two years.⁴²¹

Three agencies have total exemptions—Main Roads WA, the Insurance Commission of WA and the Public Transport Authority of WA.

Under the SSC Act, the authority to procure resides with the accountable authority, usually the Director General, Chief Executive Officer or a delegate.

The Department of Finance is issued with a delegation under the SSC Act that allows it to develop and manage CUAs and to purchase goods and services on behalf of public authorities. While 'the procurement process is facilitated by [the Department of] Finance, responsibility for the purchase remains with the Accountable Authority.'⁴²² That is, the agency is ultimately responsible.

The policy framework for goods and services procurement

In the general government sector processes for the procurement of goods and services are prescribed by policy, which is established under the SSC Act. Public authorities are required to comply with SSC policies, which the Department of Finance annually reviews and amends as the need arises.⁴²³

There are seven SSC procurement policies:

- Open and Effective Competition
- Value for Money
- Probity and Accountability
- Sustainable Procurement
- Procurement Planning, Evaluation Reports and Contract Management
- Common Use Arrangements
- Disposal of Goods.

Capital works

The *Public Works Act 1902* defines public works as any works constructed, or intended to be constructed, by or under the control of the Crown, or Government of Western Australia.

421 Submission 1, Department of Finance [to the Public Accounts Committee's inquiry into public sector contract management practices], p. 2.

422 Department of Finance, *Procurement Practice Guide: A Guide to Products and Services Contracting, for Public Authorities*, Western Australia, April 2019, p. 4.

423 Ms Kathryn Ingham, Director Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 3.

This term is often used interchangeably with the term ‘capital works’ which, in the context of government, refers to buildings, transport infrastructure, and structural improvements.

Procurement for works is not centrally led. Rather, it is primarily conducted under specific works legislation at an agency level, as follows:

- the Department of Finance’s Building Management and Works, and Strategic Projects business units procure capital works under the *Public Works Act 1902*
- other ‘works’ agencies (e.g. Main Roads WA) procure works under their own legislation.⁴²⁴

Department of Finance works procurement

The Department of Finance procures works through two business units—Strategic Projects for high value works and Building Management and Works (BMW) for lower value projects. The Department of Finance’s asset management role is ‘limited to non-residential buildings.’⁴²⁵

The policies applying to procurement by BMW, and Strategic Projects are ‘department-centred’ and so do not necessarily apply to other agencies procuring works under their own legislation.⁴²⁶

Department of Finance’s works policies mirror the goods and services policies of the same name:

- Open and Effective Competition
- Value for Money
- Probity and Accountability.

BMW is responsible for the state’s non-residential building program and delivers services to client agencies. This means that works are procured from the agency’s budget but are delivered by the Department of Finance.

The Strategic Projects unit implements high value capital works projects considered to be of significant importance to the State. This unit is responsible for the planning and delivery of major non-residential buildings, on the basis of cost, uniqueness, complexity and risk profile, as directed by the Expenditure Review Committee.

Line agency works procurement

Departments with the power to procure their own works are not generally subject to centrally imposed policy directives (the Buy Local Policy being one exception). Such agencies include:

- Public Transport Authority

424 Submission 3, Department of Finance, 13 March 2018, p. 2.

425 Submission 3, Department of Finance, p. 4.

426 Ms Stephanie Black, Acting Director General, Department of Finance, *Transcript of Evidence*, 27 June 2018, p. 1.

The procurement framework in Western Australia – General government sector

- Main Roads WA
- Department of Transport
- Department of Planning, Lands and Heritage
- Department of Biodiversity, Conservation and Attractions
- Department of Health
- Some statutory authorities (such as the Metropolitan Redevelopment Authority)
- Venues West
- Metropolitan Cemeteries Board.

The Department of Finance does not keep a register of public sector bodies which procure works under enabling legislation.⁴²⁷

Civil Contractors Federation Western Australia advised the Committee that ‘the key infrastructure procurement agencies (each with an annual spend exceeding \$500 million) are Main Roads WA, Public Transport Authority, Water Corporation and Western Power’ (the latter two being GTEs and outside of the scope of this inquiry).⁴²⁸

427 Mr Anthony Halberg, Director, Policy and Procurement Services, Department of Finance, Email, 13 August 2019.

428 Submission 1, Civil Contractors Federation Western Australian, p. 1.