

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

*Fourteenth Report — “Red Flags ... Red Faces: Corruption Risk in Public Procurement in Western Australia” —
Tabling*

MS M.M. QUIRK (Girrawheen) [10.08 am]: I present for tabling the fourteenth report of the Joint Standing Committee on the Corruption and Crime Commission titled “Red Flags ... Red Faces: Corruption Risk in Public Procurement in Western Australia” and submissions.

[See papers [3392](#) and [3393](#).]

Ms M.M. QUIRK: This report departs from the usual monitoring and oversight role of the Joint Standing Committee on the Corruption and Crime Commission. In November 2017, the committee 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. According to the terms of reference for this inquiry, the committee was to 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.

It is only with 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 2017, the Corruption and Crime Commission indicated to the committee that its strategic focus was on fraud, conflicts of interest, gifts and benefits, as opposed to corruption risks, in the public procurement process.

In February 2018, Mr John Langoulant, AO, released his report, “State Government Inquiry, Government Programs and Projects 2008–17”. This report contained a number of observations that current procurement practice and contract management for capital works was suboptimal. Following that, throughout 2019, the Corruption and Crime Commission released a number of reports that 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 public policy perspective. Accordingly, the committee extended its inquiry. We nevertheless remain mindful that some of the charges against individuals are still to be adjudicated.

The committee is aware that the Department of Finance is undertaking sector-wide procurement reforms. However, this was commenced soon after our inquiry began and has still not concluded. We were therefore unable to review it in the context of corruption risk. Similarly, new procurement legislation was introduced and second read yesterday. It is hoped that this bill will pass in this session of Parliament.

I am relieved that the rationale for passing new procurement laws and the explanatory memorandum of the bill align perfectly with the findings of the committee in this report. In particular, the introductory words to the explanatory memorandum note —

... the existing arrangements that govern procurement by the public sector in Western Australia are outdated, fragmented and insufficient to meet community expectations.

The current State Supply Commission Act 1991 serves a purpose, but it has not kept pace with innovation in procurement practice, and, crucially, is limited to governing goods and services procurement—it does not apply to works procurement.

...

The fragmented approach to procurement across government does not make it easy for suppliers, particularly local, small and medium enterprises, who may have to comply with different policies and practices

when supplying exactly the same item to different agencies. This only serves to create barriers for local participation, reduce competition and diminish value for money.

An inefficient and inconsistent approach to procurement also serves to heighten an environment where unscrupulous businesses, individuals or officials can seek to take advantage, at the public's expense. The circumstances brought to light by the Corruption and Crime Commission's report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service is a recent example of this. Regrettably even during a time of national crisis, there are dishonest parties, who would seek to take advantage of the public purse. The existing statutes do not adequately reflect community expectations on the integrity measures expected within public sector procurement.

Far from being prescient, the committee decided to inquire into public procurement and the risk of corruption in 2017 as it had been the focus of not only the Corruption and Crime Commission, but also many international organisations in recent years. Internationally, there is a growing recognition of the United Nations' sustainable development goals that corruption and 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 that corruption in public procurement is present only 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 in which the so-called "red flags" signalling corruption were clearly present in agencies for a considerable time. These were seemingly ignored or overlooked, to the consequent embarrassment of authorities when systemic corrupt practices were exposed. Not only was public money siphoned off to the detriment of key services like health and housing, but also a loss of morale of staff eventuated for those working in the agencies. Trust in the government was further eroded—all undesirable outcomes. Lack of training, inconsistent policies, patchy oversight mechanisms, little scrutiny for comparatively small value expenditures, widespread exemptions, limited internal audits and a lack of transparency were all factors that created the perfect storm in making corruption inevitable.

The report recommends that the government should move towards open contracting. Although now trite, Justice Brandeis's words "sunlight is the best disinfectant" are still apt. The more open a contracting process is for planning, tendering, awarding and fulfilling the contract, the greater the 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 greater engagement with stakeholders and, most importantly, minimises vulnerabilities to corruption.

A recurring theme during our consultations and hearings was the imperative to change organisational culture at the agency level to better prevent or minimise the 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. Initiatives that will assist in cultural and government 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 is also apparent that in some cases a false sense of security was gained by external audits that were commissioned by an agency—false because they tend to be of limited scope and 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 alternatives to regular internal audits and systems.

It is also best practice to change internal auditors after a period of years. It is understood that a recent Treasurer's direction has been issued to this effect. Similarly, audits by the Office of the Auditor General are about systemic weaknesses rather than focusing on individual transactions. Of concern to the committee was that not infrequently recommendations for improvement of such by the Auditor General were not implemented or even subsequently followed up. Despite this, no-one appears to take responsibility for this failure to act.

It is noteworthy that unlike most Auditor Generals worldwide, as a reaction to the Corruption and Crime Commission's findings, that office is now conferred with a forensic internal audit role that is focused on transactions. This is in addition to the more traditional function of external audit of systemic 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 circumscribed, and that requires trained personnel within 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 and procurement would never have come to light. That is certainly true for the explosive allegations highlighted by the Corruption and Crime Commission itself. As part of the reform of organisational culture, the committee considers that more needs to be done within agencies to encourage and support public interest disclosure. 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 embark on such a course of action only after their concerns are not actioned or taken seriously internally. This needs to change.

The committee also found that there are minimal consequences for public officers who demonstrate noncompliance with procurement policies or procedures. Likewise, gross incompetence leading to massive blowouts in procurement costs but short of proven corruption or personal gain does not necessarily attract sanctions or disciplinary action. Another way a public officer can avoid sanction for noncompliant conduct and procurement that is 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, and several courses of action need to be implemented to restrict the opportunity for corrupt practice. We recommend more education and training of potential tenderers on 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 and possibly enshrined in legislation. This would elevate the current tick-a-box cursory assurance to a more meaningful acknowledgment of what is expected. Personally—I joke not—I am taken with the values incorporated in the code of integrity enshrined in section 7 of the Punjab Transparency in Public Procurement Act, 2019. Once breached, a range of sanctions can be applied.

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 that is publicly accessible, or the imposition of conditions before the entity can again participate in tendering for government work. These conditions might include undertaking compliance programs or satisfying the certifying body that the entity has undergone organisational change to regain access. In some regimes, the right to exclude or debar is conviction based; in others, it follows an administrative determination. From a quick perusal of the bill, I understand that that is contemplated here. Either way, these are the kinds of deterrents that can prevent procurement corruption from occurring in the first place. It is considered that such matters should form an integral part of the new legislative framework under consideration. As I said, I note that the intention to fill out and provide detail to the new bill is to incorporate many of these issues within regulations.

There is much to reflect upon in this report. Its size may deter all but the most fervent from reading it; others have told me that they are waiting for the film! Nevertheless, we commend this report as an excellent reference. It canvasses key issues of corruption and procurement that are being debated globally, and targets areas for improvement in this state. The report will also form valuable background for members when the Procurement Bill is debated in Parliament in the near future. The report should be taken seriously if for no other reason, in the words of Bess Myerson, than that “the accomplice to the crime of corruption is frequently our own indifference”.

We appreciated the participation of witnesses at hearings, who were generous with their time and expertise, and, likewise, those who made written submissions—both 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, and, frankly, it was a hard slog.

I appreciate the commitment and engagement of committee members: the deputy chair, Hon Jim Chown, MLC; the member for Kalamunda, Matthew Hughes, MLA; and Hon Alison Xamon, MLC. The committee was ably and conscientiously supported by the secretariat, Ms Vanessa Beckingham, Ms Lucy Roberts and Ms Sylvia Wolf, and our previous secretariat staff, Ms Alison Sharpe until March 2019 and, briefly, Ms Marion Huntly in September and October 2018. I also appreciate the editorial finessing of the report by Clerk Assistant Liz Kerr.

I commend the report to the house and rejoice that the timing of its tabling is serendipitous. In the words of Anna Wintour —

It’s always about timing. If it’s too soon, no one understands; if it’s too late, everyone’s forgotten.