

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

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



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 27 JUNE 2018**

Members

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

Hearing commenced at 10.15 am

Mrs STEPHANIE JANE BLACK

Acting Director General, examined:

Miss KATHRYN INGHAM

Director, Strategic Advisory Services, examined:

Mr RICHARD MANN

Executive Director, Strategic Projects, examined:

Mr ANTHONY HALBERG

Director, Policy and Procurement Services, examined:

The CHAIR: On behalf of the committee, I would like to thank you for agreeing to appear today. I am Margaret Quirk and I am the Chair of the committee. The other members of the committee who are present today are, on my left, Hon Alison Xamon, MLC, and to her left is Matthew Hughes, MLA, member for Kalamunda. It is important that you understand that any deliberate misleading of the committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you might say outside of today's proceedings. Hansard is recording these proceedings, so I emphasise that nodding or shaking your head does not translate very well to *Hansard*. I do not know if you have seen our terms of reference. Would any of you like to say anything generally before we get on to some specifics?

Mrs BLACK: Thank you for the opportunity to come and speak to you today. We have entered a submission, so I am sure you have seen that and understand the structure of how procurement works as far as the Department of Finance goes. We do lead procurement in goods and services across the sector. We have the State Supply Commission Act and policies. Most agencies have to undertake procurement in certain ways under those policies. There are probity and accountability policies and open and effective competition policies. For most agencies, every procurement that they do over \$250 000 is facilitated and guided by Government Procurement in the Department of Finance. On the works side, the Department of Finance has Strategic Projects, which does mainly high-value works, and Building Management and Works, which manages the lower-value works. The policies for Building Management and Works and Strategic Projects are department-centred, so other works agencies will act under their own legislation. We are prepared to answer any questions that you ask.

The CHAIR: Thank you. One of the things that is generally said about procurement is that many of those involved at an agency level in procurement do not have adequate training. I would like you to comment on that, if you would not mind.

Mrs BLACK: In goods and services, our government procurement business unit has an extensive capability-building training program. Kate runs that area, so I will get her to expand on that.

Miss INGHAM: Thank you, Steph. We are involved in delivering training to the whole sector, so to all the government buyers. It is free for them to attend. It is not mandated, but it is made available to all of them and we strongly influence each of the chief procurement officers to send their staff along. It ranges from just the intro to procurement and awareness about the policies, which includes

probity and their responsibilities, all the way through to contract management and more complex issues at the other end. A full gamut of training is provided to all buyers within WA agencies.

The CHAIR: But as you said, it is not mandatory.

Miss INGHAM: No, it is not mandatory.

Hon ALISON XAMON: Miss Ingham, are there any particular departments that you find routinely do not participate in that training; and, if so, could you name them?

Miss INGHAM: Off the top of my head, there are no government departments that jump out for me that do not routinely participate.

Mr M. HUGHES: So there is a broad acceptance of the need?

Miss INGHAM: Yes. It is more to do with the gap that happens with the turnover of staff; that is, the turnover of government buyers. There might be a period of time when a new person comes into the organisation and the training is not there at the start, and then eventually they come along. We have a fairly good take-up from all government agencies.

The CHAIR: What are the components of the training? How long is it? Maybe you can provide the committee with some curriculum or the modules that need to be done.

Miss INGHAM: It ranges. We have masterclasses on topical issues such as foreign exchange risk and things like that—those are for only an hour—all the way up to a fully accredited procurement vocational program, which is actually a formal qualification. Then in the middle we do some half-day workshops on probity and accountability and for those new to quotes. For activity under \$250 000, the agencies are responsible for doing that themselves now.

Mrs BLACK: Contract management.

Miss INGHAM: Yes. Conducting evaluations—all that kind of stuff is also included in that training.

The CHAIR: Do you think there is a risk, under the \$250 000 limit, that there is some cutting of corners?

Mrs BLACK: Under the policies, for procurement between \$50 000 and \$250 000 there are requirements for how you procure. Since we changed the limit from \$50 000 to \$250 000 two years ago, we have provided special training for how to manage procurement activity under \$250 000.

Mr M. HUGHES: So that is the ceiling—\$250 000. Are there any instances where that general policy does not apply?

Mrs BLACK: Yes. Main Roads, the Public Transport Authority and the Insurance Commission of WA do not have to adhere to the \$250 000 limit. The Department of Transport and Lotterywest have a \$1 million limit. For everything over \$1 million, those two agencies have to involve Government Procurement, but under \$1 million they do not have to. For all the other agencies, everything that they do over \$250 000 has to involve us.

The CHAIR: Kate, I think that you said that most agencies took these matters seriously. Maybe I verbalised you; maybe you did not say that. But there was some level of compliance or acceptance that these policies needed to be followed. Are there any that stand out as being a bit rogue or a bit maverick or less compliant than others?

Miss INGHAM: No, there are none that stand out specifically. What we do see quite commonly is that agencies leave themselves with minimum time to do sufficient planning, so they still comply with State Supply Commission policies in terms of the open and effective competition policy, which sets out the thresholds and how they have to go about procuring things, but they just do not give

themselves a lot of time to do some really good planning. But, again, there is no agency that stands out more than another in that space.

Mr M. HUGHES: Is it a tick exercise in terms of compliance?

Miss INGHAM: That is an interesting question.

Mr M. HUGHES: Is it, “We have to do this so we are doing it”? Is it that level of commitment?

Miss INGHAM: There is probably a component of that. I guess also for buyers, and particularly people who are new in this space, there is a bit of fear about getting things wrong, so they very much focus on what the black and white policy says to make sure they get that right.

Mr M. HUGHES: So where there is evidence of noncompliance, how is that treated?

Miss INGHAM: Interestingly enough, we have recently finished a round of State Supply Commission audits and had all those audit recommendations come back to the State Supply Commission. We did not find any major systematic issues of noncompliance; we just found minor issues that were all very easily fixable. In terms of major noncompliance, there is the opportunity for either someone within an agency or a supplier to actually complain to the State Supply Commission. I am talking about goods and services procurement, not works procurement. We have that independent body that actually does field those kinds of complaints and looks into the process that was followed and makes recommendations.

The CHAIR: In terms of best practice in terms of policies, how often are they updated?

Mrs BLACK: We have amended the policies on occasion. We changed the threshold from \$50 000 to \$250 000. We have amended policies in regard to Aboriginal procurement. We review the policies regularly.

Miss INGHAM: We have a schedule that we annually review these policies as part of a continuous improvement program that was implemented after our transformation reform program. As Steph has said, we have made some recent amendments to them. The policies themselves are fairly simplistic—generally one page—so they are easy for buyers to follow. We are in the process at the moment, as a result of the various reviews that have gone on, of looking at what procurement functional leadership might mean for us. Part of that will again be looking at the policy suite and making sure that they are fit for purpose in how this state goes about all its procurement activity across the board, including goods and services, works and community services.

The CHAIR: You talked about these audits not exposing any systemic problems. Was that random? How are they identified?

Miss INGHAM: That people needed to do an audit?

The CHAIR: Yes.

Miss INGHAM: When we shifted the threshold from \$50 000 to \$250 000, we acknowledged that while it was giving agencies more autonomy to do procurement, it also potentially increased the risk for government. We then increased the assurance process. We ask that all agencies, as part of their State Supply Commission partial exemptions, now have to do an annual audit and provide that audit back to the State Supply Commission.

The CHAIR: So it is an in-house audit?

Miss INGHAM: No, it is independent.

Mrs BLACK: They have to have an independent audit and we set out the terms for that audit.

Mr M. HUGHES: You mentioned partial exemption, so the compliance aspect is covered. Do you have any examples of where those exemptions have been revoked?

Mrs BLACK: No. It is in the regulations that we can revoke it, but we have not.

Mr M. HUGHES: You have found no reasons to do it?

Mrs BLACK: No. It has been considered.

Mr M. HUGHES: It has been considered? Was that specific to an agency or just as a general approach to things?

Mrs BLACK: We have reviewed the regulations, as we do with the policy, to see that they are still relevant.

Mr M. HUGHES: If we have a revocation power, for want of a better word, why is it there if it is not being used?

Mrs BLACK: Why is the regulation there? It is a penalty for agencies with major breaches. It is not the only one. If an agency breaches State Supply Commission policy, we could also force them to take one of our staff into their staff and to pay them to watch over them.

Mr M. HUGHES: What would constitute a major breach?

Mrs BLACK: Procurement over \$250 000 or poor practice.

Mr M. HUGHES: And there is no evidence of that?

Mrs BLACK: No.

The CHAIR: In the course of this process that is in place, are you aware of any examples where corruption has been identified and referred possibly to the CCC or someone else?

Mrs BLACK: In terms of our department, if we identified anything in another agency, we have a relationship with the CCC and we would forward that. Also within our own department, we do procure outside of Government Procurement—our corporate services runs a procurement section. They have let me know that since 2014–15, they have notified the CCC on six occasions of suspected serious misconduct by an employee of the Department of Finance. Of the six, two were related to procurement. Neither of those two allegations resulted in an adverse finding in relation to procurement. In our department we monitor our own procurement, and we do report if we need to.

[10.30 am]

The CHAIR: So that is done on an agency-to-agency basis?

Mrs BLACK: Yes.

The CHAIR: Although the allegations were not proven or no adverse findings were made, what was the nature of the allegations?

Mrs BLACK: I do not know offhand. I can take that question on notice.

The CHAIR: Thank you. In framing your guidelines, there has been a lot of work done internationally about minimising corruption risk in procurement—by the OECD, Transparency International and various other groups. How much cognisance do we take on this new focus on corruption and procurement? Have we significantly amended our policies since these discussions have been taking place?

Miss INGHAM: We have not significantly amended our policies due to that piece of work. As I said earlier, we are fairly likely to significantly amend our procurement framework as a result of the

reviews. One of the key parts of that is going to be about driving transparency, but we have not done it at this point.

The CHAIR: How much liaison do you have with your state and national counterparts?

Mrs BLACK: We are members of the Australasian Procurement and Construction Council. Our policy group does attend special interest group meetings and learns from other states. We help each other.

The CHAIR: From your experience, are there any agencies that you believe are possibly more vulnerable to corruption than others? Is it maybe those agencies that are exempt?

Mrs BLACK: There are large agencies that have big procurement teams, so they have a lot of skill within their agencies. I cannot speak about Mains Roads or the Public Transport Authority because we do not oversee them in that way. From what we see about poor planning and their requests for exemptions and things, medium-sized and smaller agencies are probably more vulnerable, but smaller agencies do not procure very much.

Hon ALISON XAMON: My understanding is that in the past I think you have actually said that it is really because of a lack of expertise rather than because of an inherent bent towards corruption.

Miss INGHAM: Yes; it is just that they do not procure much so they do not have a resource sitting there that is really good at procurement when they need to procure. They just have to kind of navigate their way through the policy framework at the time that they need to buy something.

Mrs BLACK: And even though they are responsible for their own procurement up to \$250 000, we will help them. For a small agency, \$250 000 is a lot of money. If they are procuring something under \$250 000, they can ask for our advice.

Hon ALISON XAMON: You spoke about this having the independent oversight that is required and that the framework has been put together on your terms. How confident would you feel that that is robust enough to be able to capture any instances of corruption if they were occurring in those smaller agencies?

Mrs BLACK: The aim of the audit is to mitigate the risks around lower-value procurement and to have some oversight of compliance to policy. Our aim is to identify systemic issues arising out of those audits and provide the right education. We involve ourselves in their procurement if we find agencies are having trouble complying. As far as identification of procurement fraud or corruption, it would be difficult for us. We have measures in place to try to prevent it, so we have conflict-of-interest declarations, but agencies have committed fraud.

The CHAIR: In that context, the audits are really around compliance with the guidelines, value for money and whether there has been waste or inefficiency rather than corruption per se?

Miss INGHAM: Yes.

The CHAIR: Conflict of interest in a small jurisdiction like Western Australia is particularly problematical.

One of the things we have looked at in New South Wales, for example, is that the railways authority has a program where they train the tenderers in corruption issues, so that it is double-sided—it is not just telling the procurers how to act but also the people doing business with government. They have had really good outcomes out of doing that.

Mrs BLACK: In capital works, I will let Richard speak about this. Richard is overseeing some of the biggest projects in Western Australia, so I am sure he has got something to add to that.

Mr MANN: On our major projects where there is a question of scale, whilst procurement processes are very robust because of the scale of the project, obviously in value terms the risk is significant.

For all major projects we appoint a dedicated probity auditor. The probity auditor, certainly for all of our largest projects, always addresses the bidder field in our information sessions up-front and then we commence the procurement process. They make the probity conditions and terms that apply to the process very clear. They are very strongly written into our procurement documentation as well. We largely manage that risk through the appointment of the dedicated probity officer for that purpose. At that scale, it is in many respects easier to manage the process because the project warrants managing it through a dedicated team.

The CHAIR: What sort of training and background does a probity auditor have?

Mr MANN: We will select a probity auditor generally through the CUA panel. There are minimum requirements. Then we will select on the basis of capability and experience. They will need to be an accredited and certified probity auditor who is experienced as a practitioner in that field.

The CHAIR: Sorry; I am not familiar with probity auditors. Are they CPAs or some sort of variation of that, or do they have a legal background?

Mr MANN: They typically have an accounting or commercial background. There is a dedicated accreditation for probity auditors in Australia.

The CHAIR: Anything on that?

Mr M. HUGHES: If we are talking about capital works or public works procurement, have you any observations to make on the observations that Langoulant made? I think he made a comment that the framework for procurement in public works is complex and inconsistent.

Mr MANN: It could keep you going for three days.

Mr M. HUGHES: Issues have been identified. He also points to the lack of expertise and capability in procurement planning and contract management for works. What do we think about that? Is that a cause for concern?

Mr MANN: We provided feedback to that effect. Overall, we strongly endorse those comments and also draw attention to the fact that, in my area, we have spent 10 years in seeking to address that by the development of frameworks, processes and guidelines that introduce the level of rigour that is required to address that risk. The report acknowledges the potential for that framework to be more broadly applied across government, particularly for major capital works projects, for those reasons.

Mr M. HUGHES: The recommendation for a centralised approach—do you want to comment about that, and whether that is feasible or desirable?

Mr MANN: A general principle underpinning the government's reform program is the notion of using consolidating capability within the sector to apply it more efficiently and for agencies to work better together. I think it is not just procurement; as a general rule, it is essential that we use the capability that we have available in the public sector as well as we can. Procurement is a classic example. If we can consolidate good capability and then use that to propagate that capability and skill-up agencies across the sector, I think that is an obvious and very sensible strategy.

Mr M. HUGHES: Are there plans afoot for that?

Mr MANN: The Department of Finance is recognised as a functional leader in procurement, contract management and asset management, so the answer is yes. That is a recognised objective of the government's reform program.

Mr M. HUGHES: Is it at the forefront of your activity at the moment or is it something that you are going to get around to doing?

Mrs BLACK: We are very focused on that. I have to declare that I worked on the Langoulant inquiry. In terms of the recommendations of the inquiry and, to an extent, the service priority review, as Richard said, the Department of Finance will be the functional leader in procurement. In goods and services, we already are. As I said before, in works, other agencies conduct public works under their own acts. It is quite a fragmented system of policy and practice. There is a distinct lack of transparency in some agencies. Strategic Projects has a very robust approach to procurement and project management for major capital works. The suggestion by John Langoulant was that that approach and that methodology should be more broadly applied to other works agencies, such as Mains Roads, the Public Transport Authority and the Department of Housing. That is what we are working on—how the Department of Finance can lead that bringing together of the procurement function.

Mr M. HUGHES: Does that require legislative change?

Mrs BLACK: Preferably, we would like to have a single procurement act, but it is recognised that that might be difficult to get through the upper house. We are working at the moment on changes in policy and practice. We will take guidance from our minister on the legislative aspect of that.

The CHAIR: Is that why there was some general amusement about that line of questioning—because you are trying to work with what is possible?

Miss INGHAM: Yes.

Mr MANN: The reality is that it is a highly complex piece of legislation. With all the will in the world, if we wait for that legislation and do not act, we are going to be potentially several years down the track without improvements. We cannot wait. We really need to push on.

The CHAIR: Is there anywhere in Australia that you think does it well?

Mrs BLACK: I think everyone is struggling with the same issues.

Mr MANN: There is a lot of variety in the structure and approach across jurisdictions. Look, it is largely about the scale of the organisation and the scale of work delivered, particularly in the capital works space, but there are very different approaches. Having said that, every jurisdiction to some extent does have a centralised approach to major project management.

The CHAIR: The ICT area seems to be particularly vexed. Is that because there is a lack of expertise within the departments' agencies that are dealing with the boffins, if you like, and they are easily conned—blinded by science, I suppose?

Mrs BLACK: That is one interpretation. Technology changes rapidly. We do have quite a lot of expertise in the procurement of ICT within the Department of Finance. We are assisting agencies. The GovNext-ICT program is where the public sector is moving to consumption as a service instead of owning infrastructure. It is a longish process. All agencies will need to procure from the common-use arrangement of those providers. We are assisting them to do that. Obviously, ICT projects have fallen over in the past. That is probably as much to do with poor project management and poor planning as it is with any procurement issues, so it is all joined up.

The CHAIR: There is a notorious case that you would be familiar with in terms of health.

Mrs BLACK: Fujitsu?

The CHAIR: At the end of the day, with the person involved in that procurement, I do not even think there were any sanctions. It was not deemed to be corrupt. I do not think there was any sanction.

Mrs BLACK: At least two people lost their jobs. Technically, the initial contract with Fujitsu was as it was. Part of the problem was that there were large variations to that contract that were just put in

place outside of delegated authority. Previously there was no mechanism for Government Procurement, as the overseer of the purchasing of services, to have any view of or transparency about what agencies were doing. When agencies procure over \$50 000 they enter their procurement into our Tenders WA system and they put in a value. Previously, they did not have to add in variations to that value or variations to the contract. As a result of the Fujitsu matter, we changed the policy. Now agencies that have variations over \$50 000 have to enter the variations into our Tenders WA system. We review that so that we can identify if there are large variations to contracts occurring. We have put some measures in place to identify that.

[10.45 am]

The CHAIR: A number of tenders are closed or a number of agencies get exemptions for having to go through the tender process. Have you any views on whether that should be rare or —

Mrs BLACK: It should be rare because mostly exemptions occur from poor planning because they run out of time. I have some information here—I can dig it out if you want me to—about the number of exemptions that have been applied for. We do not always support them. The policy is that if an agency applies for an exemption or they ask us if we support an exemption, even if we do not support it, they can still do it. That is the policy. If we say, “Not supported”, most agencies will not go ahead if we say we are not supporting it, but they are entitled to.

The CHAIR: That seems to me to be a real area of risk.

Miss INGHAM: It is very rare for an agency or 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. We push back quite hard on exemptions, to be honest. The reality is that when they come in because it is due to poor planning, it is an opportunity for us to educate agencies because there is a bit of a misunderstanding that you can do an exemption and therefore that is your whole process done. You actually still need to enter into a formal contract, so they often do not save any time. The time it takes them to come up with a justification for an exemption could have been an opportunity to test the market. That is often what we end up doing. We have been known to make exemptions quite conditional in terms of, “Don’t come back to us again just because you’ve got poor planning. We will not be accepting this”, or we go above and escalate our concerns to their accountable authority.

The CHAIR: I take it that when you say “poor planning”, it is just leaving it until the eleventh hour.

Miss INGHAM: Yes, they have not given themselves enough time to go to market.

Mr M. HUGHES: It is poor planning—no other way of describing it.

Miss INGHAM: It is poor planning and potentially poor contract management. They are just not looking far enough ahead to see when they have got contracts expiring.

Mr M. HUGHES: Effectively, by default, they are defaulting to the current supplier of services, particularly.

Miss INGHAM: Yes, and as a result of this practice happening, we are currently in the process of looking at working with agencies to help them develop forward procurement plans so that they can start to see what their expiry profiles look like and give themselves adequate time to start planning well in advance.

Mr M. HUGHES: It would also be the nature of the contracts too—I do not know, two plus two plus one, or something of that kind of contract.

Miss INGHAM: It can be that and it can be also challenging for agencies when their budgetary process does not confirm that they have funds for a new contract until quite close to the expiry of their contract, which is a reality.

Mrs BLACK: I must have seen that list somewhere else. If you need it, we can provide how many exemptions were requested, how many were supported and how many we did not support. We can provide that.

The CHAIR: And again, closed tenders, that is also an issue, is it not?

Miss INGHAM: Restricted—those are rare and they are generally for things that you would probably want to be restricted like—I am trying to think of something that happens in the Western Australia police space that you would not want any —

Mr MANN: Highly specialised equipment.

The CHAIR: Listening devices of something that people do not want to —

Miss INGHAM: Yes.

Mr M. HUGHES: I have a general question about the construction of contracts. An observation has been made to me by a supplier of services to Main Roads about a situation where the initial contracts were done on a cost-plus basis and certain specifications were made in relation to the nature of equipment that would be used. The winning tender is on the basis of—are able on the cost-plus basis for that amount of equipment for that specific purpose, and then when the next contract is written it becomes very specific to the capabilities of a particular supplier to carry out that activity. What do you think about that as an observation?

Mrs BLACK: That is probably something Richard could answer.

Mr MANN: Without understanding the context, it is difficult. If they are talking, for example, about alliance contracts where certain organisations, through being successful in alliance contracts, become very difficult to outbid using the same model —

Mr M. HUGHES: Correct, you hit on it.

Mr MANN: Having said that, the selection process for the major Main Roads alliances are, to the best of my knowledge, open processes. They are not restricted in terms of who the bidders might be, but it is a reality that if one entity becomes highly experienced and proficient at that particular model, they are clearly going to have an advantage when bidding for the next job under a similar procurement model.

The CHAIR: Things like conflict of interest are really hard to nail down. Can you point to any policies or processes which might assist in identifying them?

Mrs BLACK: For all procurement that we are involved in, there are conflict-of-interest declarations for evaluation payments.

The CHAIR: But that is basically someone signing off —

Mrs BLACK: As you are aware, there have been agencies that have signed those conflict-of-interest declarations as having no conflicts where they do clearly have conflicts.

The CHAIR: But does that have the effect if it transpires that yes, there was a conflict of interest, that it voids the contract or is there some major sanction in people not being honest in their declarations?

Miss INGHAM: We have not seen a situation where there has been someone that has had such a major conflict of interest that you would revisit a breach in the actual contract. The reality is that

once a contract is awarded, it is a binding contract. They have to fill in these declarations of confidentiality and conflict of interest —

The CHAIR: Not necessarily if that is a fundamental term in the contract that there is no conflict of interest. That can be the grounds on which to void it, I would have thought.

Miss INGHAM: Yes. I guess the reality is that we have not had a situation where that has happened to see what the legal challenge would actually be. I cannot comment on one being overturned for that reason.

The CHAIR: Again, probably a gift register, and this is an area where there is a tendency to invite people that might have a role in decision-making to a box at the footy or a dinner or whatever. Do you think people are scrupulous enough about declaring those gifts? I think that a lot of the time people do not perceive them as gifts.

Mrs BLACK: That is a department-by-department policy. I can only speak for the Department of Finance. Our policy is extremely strict. We do follow-up and we do keep a register and the director general does review that register regularly. The director general has to sign off on certain levels of gifts and hospitality. In our department, we do not have an inordinate use of either, especially because our department is responsible for so much procurement. It is quite important that we do not —

Mr MANN: We take an exemplar approach.

Mrs BLACK: Yes. I think that anecdotally there are departments who have a lot of hospitality shown to them.

The CHAIR: Anecdotally, which departments would they be?

Mrs BLACK: City of Perth—I do not know.

Mr MANN: Health.

Mrs BLACK: The doctors get a lot of trips away from pharmaceutical companies.

Mr MANN: That has been the subject of a CCC report.

Hon ALISON XAMON: It has been documented Australia-wide as well.

The CHAIR: Just the sheer quantum of the contracts involved is a problem.

Mr MANN: And the nature as well. Not necessarily singling out an agency, but it is a specialised field which requires input from technical specialists who are not necessarily procurement experts, and I think that is a recipe for risk.

The CHAIR: For example, police go and look at the helicopter working in wherever it is made—Austria—or the IT equipment or something. I think there is a bit of that that goes on—travel overseas to look at something in situ.

Mrs BLACK: That is probably paid for by the state though rather than the provider.

The CHAIR: I think Perth is a small town. I think people run into each other at the boatshed or whatever. A major problem here is that people seem to know each other and have networks. I am concerned, for example, that that health contract went over to the Public Sector Commission. How much in-depth research is there about potential conflicts or who knew who and all of that?

Mrs BLACK: If we identify something that we think is suspicious, we will report it. We do not do random checks of conflict-of-interest declarations. We just assume that people are honest.

The CHAIR: Obviously, the Langoult commission made certain recommendations in terms of finance. I suspect it has resource implications and there are obviously constraints at the moment.

In an ideal world, what sort of level of resources would you need to do the job as thoroughly as Langoulant recommended?

Mrs BLACK: In order for us to become a functional leader in procurement, and that means involving works and leading works procurement in a similar way that we do with goods and services, and in order to provide the level of education and capability building in works procurement that we do in goods and services procurement, and to have the level of oversight and the requirement for transparency that we believe is necessary, at the moment what we really need is a team to put that framework together. We were just discussing yesterday how we are going to resource that. That then requires a project plan and a business case, which will identify what resources we would need to run that in a business-as-usual sense as well.

Mr MANN: Recognising the realities in the current fiscal environment, the prospect of getting a significant additional team is going to be difficult and so it is going to need to be substantially managed within the existing resources.

The CHAIR: Although potentially it could save money, so it is a question of someone having the resources to actually identify the potential savings.

Mr MANN: It will be a balance and, as I suggested earlier, almost certainly involving collaboration and cooperation with other agencies so that we can bring in perhaps interagency teams to assist us. But it will be, no doubt, a balance. There will be some additional resources, you would expect, to deliver on that investment because, as you point out, savings and the better outcomes are a result.

The CHAIR: Can we just talk about Tenders WA in particular? What is the relationship between Finance and the State Supply Commission, is it, or Tenders WA?

Mrs BLACK: The State Supply Commission is within the Department of Finance and Tenders WA is the system owned by finance that collects all the tender information.

The CHAIR: Are there departments that are not going through Tenders WA; and, if not, why not?

[11.00 am]

Miss INGHAM: As part of all the departments that are covered by the State Supply Commission Act, when they are issued a partial exemption, it has some very clear conditions. One of them is that they award everything onto Tenders WA. Are there departments that are not putting things on Tenders WA? We did have a bit of a chat about this yesterday. There is a data entry issue—garbage in, garbage out—and a time lag from the time that you award a contract to when you actually put it onto Tenders WA. But it is actually in that partial exemption that makes it very clear that they do need to put things on Tenders WA.

Mrs BLACK: That is in goods and services.

Mr M. HUGHES: So it is in there, but who monitors it?

Mrs BLACK: We do.

Miss INGHAM: We use Tenders WA to do a variety of reporting, and often when we verify that—like the “Who buys what and how” report—we will take that from Tenders WA and send that out to agencies and they will go, “Hang on a minute; there are a few things missing there. We need to get them onto Tenders WA.” So it is that. It is not that we necessarily go, “You haven’t got everything on Tenders WA”, because we do not actually know what else they have done because they may not have involved us or put it on Tenders WA. It is more that they then realise that they have not. There are a couple of additional policies or priorities for government going on at the moment around the WA industry participation strategy and the Aboriginal procurement policy, which are pointing agencies towards the use of Tenders WA. The Aboriginal procurement policy actually incentivises

them to use it in terms of: “If you don’t put it up there, it can’t contribute to your achievement of targets and you’ll get whacked over the head for not achieving your targets.” There are a few other things going on that are trying to incentivise that take-up of Tenders WA.

The CHAIR: Are there agencies other than those that have the exemption that are not using it?

Miss INGHAM: Not to the best of my knowledge. In fact, we have agencies that do not have to use it that are using it.

Mrs BLACK: But in works, do all agencies —

Miss INGHAM: No, they are not all using it.

Mrs BLACK: They are not, so they do not in works. It is not a requirement.

Mr M. HUGHES: How long does the documentation stay on the system? Are the documents that are uploaded, effectively, ever removed once the tender process is completed?

Miss INGHAM: I would have to take that question on notice. It would only be the case in terms of—this is testing my IT knowledge—storage. It would be more that they are archived and could be made available if they were asked for, but I would need to check how long they are actually up there.

Mrs BLACK: Just to clarify the previous point, the requirement to enter contract information into Tenders WA is only for goods and services. Our business units—Strategic Projects and BMW—do use Tenders WA for their works, but other agencies are not required to.

The CHAIR: Why is there a distinction? I do not understand that.

Mrs BLACK: Because they work under their own acts. If we are to be functional leaders in all procurement and if we are to get better information and use it to analyse and provide advice, support, education and policy to the whole of government, then we will probably end up advocating for agencies, but we do not want them to have to do double entry. We will need to work with them on what they currently do and how —

The CHAIR: No, but potentially it could all come under Tenders WA, could it not?

Miss INGHAM: Yes, potentially.

The CHAIR: The other area that I have always thought is a bit rubbery and elastic is consultancies. Now, again, why are you laughing, Kate?

Miss INGHAM: I am just curious to know where you are going with this question.

The CHAIR: That does not seem to have the same rigour that attaches to maybe goods per se. Are they more likely to be informally awarded or not under Tenders WA? I just do not ever seem to see a lot of them on the site.

Mrs BLACK: If it is high value, they have to go to open tender. If it is one of our agencies, they have to put it on. If it is a government agency it is required under our act to enter it into Tenders WA, they do. In the Langoulant inquiry we have looked at some consulting procurement undertaken by Synergy and Western Power and they were not subject to the same level of rigour and they were not transparent.

The CHAIR: I am thinking of consultants that are really in lieu of FTE in the public sector. They seem to be completely under the radar.

Miss INGHAM: Interestingly, consultancies are still a service. They are covered by the State Supply Commission Act as a service. As we mentioned before, you have the open and effective competition policy, which sets out the thresholds at which you need to do certain things when you are procuring. Interestingly, we have a number of common-use arrangements that cover service-based contracts.

Government agencies are required to buy off those in line with the buyer's guide, so there is some flexibility. The whole point of creating an aggregated agreement is that there are flexibilities and it is simpler to buy from. You might find that you are not seeing heaps of them on Tenders WA because they are buying through those common-use arrangement in an appropriate way, and there is a bit of checking that goes on with that and random audits.

The CHAIR: But then it is no longer being reported to the Parliament as consultants either. There is actually a bit of a vacuum and a lack of transparency in that area.

Mrs BLACK: The definition of "consultants" for Parliament does miss quite a few types of consultants—that is the first thing. In the main, consultants will be used for specific pieces of work. In terms of your comment about FTE, there has been a growing use of temporary personnel CUA by agencies, which really is what we are calling a hidden work force, because it does not get reported in FTE and it does not get reported in salary budgeting. Health spent somewhere between \$10 million and \$13 million a year for the last three or four years and the Department of Mines, Industry Regulation and Safety has spent nearly as much or as much as Health in that time, and it is a small agency. That is something that we are really focused on. We have been asked by our minister to work with Labour Relations, the Public Sector Commission and Treasury to put measures into place to better control that and to reduce—temporary personnel CUA has its use. It is a legitimate service for temporary needs in agencies, but some agencies have had the same temporary personnel in place for 14 years.

Hon ALISON XAMON: Yes, it is outrageous.

The CHAIR: And also if there is a limit put on recruitment, again in an agency —

Mrs BLACK: To get around salary caps and FTE caps that we have had in the past, it would seem that some agencies —

Mr M. HUGHES: It is a workaround. That is all there is to it.

Mrs BLACK: But we are putting measures into place to make agencies more accountable.

The CHAIR: One of the others issues then is—and I always think of the Karnet prison contract—the disaggregation of the contract so that it falls within the limits, so they effectively purchase one cow at a time or whatever. Again, does just the guideline or the directive that contracts under a certain limit are exempt not encourage some sharp practice such as that?

Mrs BLACK: I will let Richard or Tony talk about specifically the prisons, but I will say this: there are some risks with disaggregating contracts, but if you talk to the Minister for Small Business, disaggregating contracts gives opportunities to small business. We have to balance out of the needs and objectives of government in everything that we do. Who is working on prison?

Mr MANN: The question relates to the supply of services rather than necessarily prisons. I think you have given the answer. At the end of the day, it really is about planning and fitness for purpose.

The CHAIR: In that case, it was just straight-out dishonesty, frankly.

Mr MANN: Yes.

The CHAIR: Mr Halberg, you look like you are chafing at the bit to say something.

Mr HALBERG: No, not at all.

Mrs BLACK: Tony works in Building Management and Works. Building Management and Works looks after government office accommodation and maintenance across the government buildings. Building Management and Works does a lot of procurement in the regions, which has its own challenges.

The CHAIR: Perhaps if you could maybe just generally tell us what some of those challenges are.

Mr HALBERG: It will be useful for me to explain Building Management and Works' role. We are responsible for the state's non-residential building program up to about \$100 million in terms of capital works projects. As Stephanie has already indicated, we have a number of business lines, so we do capital works projects, we do maintenance programs and we do government office accommodation. It is really important to understand that we deliver service to client agencies. An agency holds the budget and we deliver services. In terms of the work that we do in the regions, we have staff in the regional offices. We think that is very useful for understanding the local communities and making local businesses more aware of the opportunities, but obviously in smaller regional towns, it can be very challenging in terms of conflicts of interest, for example, which we have touched on already, and also just the smaller supplier base. In Building Management and Works, and I can only talk about our procedures, we have specific additional requirements that apply in the regions. For instance, we have additional 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 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. The other challenge with regional towns is the local businesses are often fairly limited. Bringing someone from out of town to provide, for example, an urgent breakdown repair perhaps on a prison facility that might be in out of the way is very difficult, so value for money and ensuring that the supply chain is aware of up-coming opportunities and putting in place very effective panels and frame works that allow you to procure quickly but in a transparent way, are really important in the country areas.

The CHAIR: One of the things that comes up from time to time is ex-employees and even ex-ministers, for example, having certain intellectual property or knowledge, and then going out to the private sector and being involved in the procurement process. That seems to me to have a fair amount of risk involved with it. Are there any measures that need to be put in there or do other jurisdictions have measures in that context?

Mrs BLACK: I have observed people who were government employees who are now or have been brought back as consultants to government. In Health IT that happened a lot. I do not know if it is happening now. It did happen a lot a few years ago. Are there others?

The CHAIR: I was actually thinking of the other way around. I was actually talking about people who go out of government and work in the private sector.

Mrs BLACK: Yes, that is what I am saying. They are ex-government employees who have been brought back as consultants.

The CHAIR: No. I was talking about ex-government employees who maybe are involved in a tender. They have effectively got insider knowledge and get the tender and then they might actually even get variations, knowing that they have put a low bid in after the event.

Hon ALISON XAMON: And, importantly, the Chair is also asking about former ministers who may have that knowledge and then are in the position to be able to —

The CHAIR: I think there is a fantastic example at the federal level of the Minister for Trade, I think, and basically then procuring a big contract with the knowledge that he acquired as a minister.

Hon ALISON XAMON: By way of comment, we do know that other jurisdictions have been looking at wanting to place bans, for example, on particularly former ministers for a period of time being able to operate in particular areas once they have no longer got their seat. Those are the sorts of remedies that are potentially being contemplated in other jurisdictions. I wonder if you have any

comment about that. It is broader than just looking at elected representatives; it is also looking at people who held senior roles within government departments and who were able to utilise their information to interfere with those procurement processes.

Mr MANN: A terrible idea.

The CHAIR: Why?

Mr MANN: Because I am going to be in that position next week!

The CHAIR: Do you?

Mrs BLACK: Richard leaves on Friday. He is joining a consulting firm.

[11.15 am]

Miss INGHAM: We have not looked at it. I would be curious as to how you make that legal, because you are starting to go into the anti-competitive space and the side effect of someone working in the public sector.

Hon ALISON XAMON: Law firms have been doing it for years.

Miss INGHAM: Yes, I am just curious. I am not saying it cannot be done.

Hon ALISON XAMON: It is well and truly able to be done legally.

Miss INGHAM: Yes. I just do not know how one does it, and we have not looked at it, so I do not know that we are in a position to comment on that.

Mr MANN: It is commonplace in the private sector. The contract I am about to sign will require that if I leave that organisation, I will not be able to work for a competitor for a defined period of time.

Hon ALISON XAMON: That is right; it is common practice.

Mr MANN: In some of our procurement processes we do similar things. For example, if we have advisers on site, bidders will be prohibited from engaging them so that it maintains a level playing field. So there are some mechanisms that are already used to that effect, but I cannot think of an example where we have ever put a limit on someone leaving the sector.

Hon ALISON XAMON: Is that contractually defined, that limitation?

Mr MANN: Yes, that is part of the terms and conditions of the tender process.

Hon ALISON XAMON: How is that monitored?

Mr MANN: Because all of the bidders must nominate their teams.

Hon ALISON XAMON: Right, they have to specifically name them?

Mr MANN: Yes, and their key consultants and subcontractors will almost always require our approval, so obviously we will not approve anyone to be engaged if —

Mr M. HUGHES: So it only works in relation to that particular project, but if a firm has another project that that person is not related to —

Mr MANN: And the conflict can be appropriately managed, yes.

Mr M. HUGHES: Well, that is what I am saying. It can be managed because they are not involved in that project, even though they would be involved in the firm.

Mr MANN: Let me give you a practical example of a typical conflict that we might need to manage. Let us say, for example, one of the major accounting firms engaged as an adviser in a particular field may be a financial auditor to one of the bidders and, strictly, may not be able to be engaged by that bidder, or may not be able to be part of the process. But if they can demonstrate that their audit

division is sufficiently firewalled from their commercial advisory division, and they can show us—as organisations typically do—that they have sufficient probity measures in place to maintain the separation and deal with the conflict of interest, then we will apply a practical approach and we will go forward. If we are not satisfied with those measures then we may require the bidder to use someone else, or, indeed, we use someone else.

The CHAIR: Can you remind me what the rationale is for, say, Transport or Main Roads being outside the oversight?

Mrs BLACK: There are two aspects to this. There is history: when the act was created, Main Roads, the Public Transport Authority and the Insurance Commission of Western Australia were exempt. I am not sure what happened with Lotterywest having a high threshold of \$1 million, but when we did our transformation program in the Department of Finance we put in place an accreditation process where if a department can show us that they meet certain criteria in terms of the expertise of procurement within their department, we would consider lifting their threshold. Only one department has applied for that—the Department of Transport—and after a while they met all of our requirements so we have lifted their threshold to \$20 million. It was \$1 million initially.

The CHAIR: But what was the rationale of the original act?

Miss INGHAM: If we go back to that, there is actually an absence of updated guidance to inform us as to why they made that actual decision. If we look at the discussion at the time in Parliament, the general purpose of the act was to better coordinate the purchasing policies across government, so this is the establishment of the State Supply Commission Act, which is when those agencies were given a total exemption. The total exemptions that were currently held by agencies were largely historical at the time, and no new exemptions have actually been issued since the establishment of the State Supply Commission Act, and Parliament was fairly clear at the time, when you look at the notes, that they were of the view that it was unlikely that any further total exemptions would be provided. But the notes did not actually explain clearly why those three agencies were given those as part of the establishment. Sorry, I cannot provide you with greater insight.

The CHAIR: That is interesting. So the Department of Transport has demonstrated that they have —

Mrs BLACK: The Department of Transport is separate. Even though they are all under the same portfolio, the Department of Transport demonstrated that it has quite a large procurement team with a lot of expertise, so we have given them a threshold of \$20 million.

The CHAIR: Would there be any enthusiasm about bringing everyone back into the fold?

Mr M. HUGHES: Well, not back in. They were never in the fold.

The CHAIR: Bring them into the fold, thank you very much, subject to resources?

Mrs BLACK: It would be good in terms of transparency and the understanding or having access to information.

The CHAIR: Do you think that is what Langoulant was hinting at?

Mrs BLACK: Yes, and the GTEs are the same.

The CHAIR: All right. This is an ongoing inquiry. Other agencies are going to come in and say, “Finance has said this and that”, so it is likely we are going to have to get you back, or, alternatively if you are happy to respond to questions by way of correspondence with the committee.

There were a couple of issues that we raised on which you were going to give us some more information. I think one was the nature of the allegations of matters that were referred to the CCC on procurement. We understand there were no adverse findings, but what rang some bells. Also, to

have a look at the agencies that have not had anyone in training for a particular amount of time, the various training components and how often they are provided.

Mrs BLACK: There was the exemptions as well.

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

Hearing concluded at 11.22 am
