

# **JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION**

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



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
WEDNESDAY, 12 JUNE 2019**

## **Members**

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

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**Hearing commenced at 10.19 am****Ms JODI CANT****Director General, Department of Finance, examined:****Mrs STEPHANIE JANE BLACK****Executive Director, Government Procurement, Department of Finance, examined:****Mr MARK BRYDEN****Director, Strategic Issues, Department of Finance, examined:****Mr PHIL HELBERG****Acting Deputy Director General, Building Management and Works, examined:****Mr ANDREW JOHN DAVY****Acting Director, Strategic Advisory Services, Government Procurement, Department of Finance, examined:**

**The CHAIR:** Good morning everyone. On behalf of the committee I would like to thank you for agreeing to appear before us today. I am Margaret Quirk and I am the Chair of the Joint Standing Committee on the Corruption and Crime Commission. I will introduce the other members of the committee: on my left is the Deputy Chair, Hon Jim Chown, MLC; to his left is 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 this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, the privilege does not apply to anything you might say outside of today's proceedings.

I would like to add that we note your letter advising that you may not be at liberty to disclose or discuss various matters because they relate to State Solicitor's advice and restricted matters under the Corruption, Crime and Misconduct Act 2003. We respectfully disagree with your position. It is a long-held view supported by eminent legal advice that the Parliament's power to compel evidence overrides legal professional privilege. I advise you that any evidence you give here is protected by parliamentary privilege. This means that anything you say cannot be used against you in any place outside of the Parliament. In addition, we have the capacity to take evidence in closed session, if to do so in public would create significant problems and would be in the public interest. Please introduce yourselves for the record.

**Ms Cant:** I am the Director General of the Department of Finance. Thanks very much for the opportunity to attend the committee. Obviously procurement in the public sector is of huge interest and obviously as functional leaders in the sector we are here to help in any way we can. I note that our ongoing discussion and answering questions for this committee has been going for some time, prior to me even starting at the Department of Finance. I will let my team introduce themselves.

**Mr Davy:** I am the acting director, Strategic Advisory Services, government procurement.

**The CHAIR:** Can you explain what that is exactly?

**Mr Davy:** Strategic Advisory services Basically contains three functions. One is the policy and practice and governance function, which looks after a lot of the procurement policy and practice for goods and services, commercial. Our Funding and Contracting Services looks after our social

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procurement initiatives and community services procurement practice. And then there is the capability development team, which is my normal role, which I run supporting capability development across the sector for goods and services procurement.

**The CHAIR:** Thank you.

**Mr Helberg:** I am the deputy director general of Building Management and Works. We are responsible for the delivery of government's non-residential building program as well as the management of government's office accommodation requirements. We also deliver maintenance programs on behalf of selected agencies.

**Mrs Black:** I am the executive director of government procurement. We lead the state in goods and services procurement. We oversee the State Supply Commission Act and the policies that fall under that act. We manage compliance policy and a number of other functions to assist and support agencies to procure.

**Mr Bryden:** I am the director of strategic issues. I am based in Phil Helberg's office in Building Management and Works. Whilst I work predominantly in Building Management and Works, I also work across strategic projects and assist Steph and her team with procurement issues as and when they arise.

**The CHAIR:** Can you give us an example of a strategic project?

**Mr Bryden:** Not necessarily a project, but an issue I was recently involved in was obviously the support for the Public Sector Commissioner's independent review of contracts.

**The CHAIR:** Director general, you did make a short opening statement. Do you want to expand on that?

**Ms Cant:** No, I think that is everything I need to say, with the exception that I respect the committee's view. Obviously we have had some advice from the State Solicitor around the confidentiality, so we will take the questions as we can.

**The CHAIR:** Maybe if we can expand on that momentarily so that we can manoeuvre our way around it to not cause any difficulties. What are the areas that seem to be problematical?

**Mr Bryden:** The areas primarily relate to any evidence that I might give, from two aspects: firstly, my role supporting the Public Sector Commissioner in the review of the contracts with the companies named in the CCC report into the North Metropolitan Health Service; and, secondly, quite separate from that, I am dealing with the temporary suspension and the review of that temporary suspension that was applied to those contractors. Those matters are ongoing and I am hesitant to say anything that might prejudice the state's interests or the interests of those parties.

**The CHAIR:** Thanks very much.

**Hon ALISON XAMON:** Of course, the committee is always able to take those questions in private session. Bearing in mind that we have different advice to the advice you have been given, I am curious to know whether that would be sufficient for your concerns?

**Mr Bryden:** It may be in relation to some of the questions you might have in relation to the Public Sector Commissioner's report. However, in relation to matters set out in my letter dated yesterday, my concern is not whether those issues are heard in public or private, but rather I may not be able to disclose those things to you at this point in time.

**The CHAIR:** Whose privilege is it to claim? Is it the department's? You talk about the government: Is it the Department of Health? Is it your department? Do you have separate legal advice? That is the

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issue. If it is a matter that we want to pursue we would need to know whose privilege it is and asked for it to be waived, if necessary. I do not think we need to do that, but I am just curious.

**Mr Bryden:** I am happy to take that on notice. My letter dated yesterday sets out that it is the state's legal advice and that any waiver would ordinarily go through my minister and then to the Attorney General. I am happy to do that if the committee would like.

**The CHAIR:** Can you just tell us, because this is not privileged, who the State Solicitor gave the advice to?

**Mr Bryden:** Myself.

**The CHAIR:** To you? All right; thank you.

**Mr M. HUGHES:** You sought the advice?

**Mr Bryden:** I sought the advice on behalf of the government.

**The CHAIR:** In relation to you giving evidence today?

**Mr Bryden:** The matters I am primarily claiming privilege in relation to are matters arising in relation to the temporary suspension of the contractors named in the CCC's report into North Metropolitan Health Service.

**The CHAIR:** Okay; is everyone happy on that aspect?

**Hon ALISON XAMON:** We may want to at least go into private session later.

**The CHAIR:** Yes. We have heard from other witnesses, and also from Mrs Black earlier, about the agency doing a whole-of-government review of procurement. I am interested to know what the catalyst for doing that was.

**Ms Cant:** For a start, the number of reviews. Steph, do you want to talk about that background?

**Mrs Black:** The department had identified that the management of procurement for capital works and the management of procurement for goods and services was vastly differently done and the Langoulant "Special Inquiry into Government Programs and Projects: Final Report" and the service priority review conducted by the government soon after the election both found that the fragmentation of the approaches was not functioning well and so the procurement reform became one of the top 20 priority reform projects in the public sector reform program. We are leading that project. It is our intention to enhance the way the state does procurement. We are working through that project. We have created an ethical procurement supplier pact and a number of other supporting documents. Those are out for public comment right now. We are also working towards our cabinet submission and potential legislation to bring procurement together so that the Department of Finance is the functional leader for all procurement, not just goods and services. We are working with the other works agencies to take on board their views on that. That project will progress through the next probably 12 to 18 months, depending on whether the legislation occurs or not.

**The CHAIR:** Earlier this year the minister made a brief ministerial statement talking about the so-called ethical procurement for government. It really is focused on supplier conduct. Can you explain as to why it is limited to that?

**Mrs Black:** It is not limited to supplier conduct. There are statements around the values of all procurement—the way procurement is done from the purchaser and the supplier. But a part of it is a pact for suppliers which sets out the government's expectations of their conduct. As I say, that is out for public comment right now. We have had feedback from a number of important stakeholders like the works agencies and unions and we are progressing that through to completion in the next

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couple of months. That will need to then be backed by a policy and compliance framework. It is not just for suppliers; it is for purchasers and suppliers.

[10.30 am]

**The CHAIR:** Are there any themes coming through in the submissions at this stage?

**Mrs Black:** No. So far there has been a general agreement that the approach is good. Before it went out to public comment, all of the stakeholders had their say and we have adjusted accordingly.

**The CHAIR:** What is the document they are commenting on?

**Mrs Black:** It is an ethical procurement statement and a supplier pact.

**The CHAIR:** Pact or pact?

**Mrs Black:** Pact.

**Mr Bryden:** It is quite a high-level policy document. It sets out primarily expectations with respect to conduct. It is high level at this point with the intention that we would drill that down over time and articulate at a more granular level what that means in practice.

**The CHAIR:** Were people sought to make comment or was it advertised publicly?

**Mrs Black:** Yes, initially we had a stakeholder communication plan and we identified important stakeholders who needed to be individually consulted and that included some central government agencies, some works government agencies and unions and some of the industry groups, so we have consulted those people. Their feedback has been taken on board, and now it has gone out for open public comment.

**Hon ALISON XAMON:** In those consultations, did you receive any objections or were any concerns raised?

**Mrs Black:** There was some tweaking. Some of the groups have wanted to make things stronger or weaker.

**Hon ALISON XAMON:** Who wanted to make it weaker?

**Mrs Black:** I did not do the consultation myself. When I say "weaker", probably not weaker, but more tweak the words so it was flexible enough for everyone to manage. You will be able to see the document.

**Hon ALISON XAMON:** You have just described it as being high level. I am always very curious when you are talking about effectively high-level principles that anyone would want to tweak that, unless they are going to make it stronger.

**Mr Bryden:** Sorry to interrupt, but I think the feedback that has been received through the workshops is how is this going to translate into practice? The questions come when you look at the high-level principles and how might that be monitored. I think the feedback we have received is that that might be difficult to put into practice should that not be included.

**Mr M. HUGHES:** Have you drawn on any other jurisdictions with respect to the way in which the model that you intend to put into place in WA is refined?

**Mrs Black:** A search was done into all Australian jurisdictions and some of them have similar frameworks and some of those do not. Some have a supplier code of conduct only, and some have more broad principle-based conduct principles and some are very specific about the supplier code of conduct.

**The CHAIR:** Is there any jurisdiction that you think does it well?

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**Mrs Black:** We are hoping we will do it well. They all do it differently. It is not one-size-fits-all. We have taken their ideas but we have also put into place the beginnings of a framework that will meet the requirements of the government, as was explained to us.

**The CHAIR:** If we could get a copy of the material that was sent out, that would be fantastic.

**Hon ALISON XAMON:** You said it is publicly available now anyway?

**Mrs Black:** Yes, but we will send you the link.

**Mr M. HUGHES:** Do you have a target commencement date?

**Mrs Black:** Once we get the public comment back and assess that, the supplier pact and the high-level principles have to go to cabinet and then they will be published as soon as cabinet approves. We will have already commenced work on the underlying policy and compliance framework around that. That starts in July.

**Mr M. HUGHES:** Of this year—or next year?

**Mrs Black:** No, it starts this year.

**The CHAIR:** I think it has been mentioned that there may well be legislative changes that need to be made—to which legislation?

**Mrs Black:** The ethical procurement framework is just part of the overall procurement reform program. We are working towards requesting legislation to have a single procurement act that covers goods, services and works and allows agencies to have their own autonomy, so we do not have to purchase for them; they can still run their businesses but that there is a central policy function and central advice function, education, for all types of procurement and compliance.

**The CHAIR:** One of the central issues we have come across is the lack of training within agencies of people who are skilled in good procurement practice. Do you contemplate an ongoing role for the Department of Finance in ensuring that if the agencies are going to have autonomy, there are enough people who know what they are doing within those agencies?

**Mrs Black:** Currently in goods and services we do have a training unit and we train agencies in the procurement of goods and services. If agencies are procuring anything above \$250 000, they have to involve our department and get support and assistance from our people, unless they have an exemption for that. We provide education on things like contract management, procurement under \$250 000 and a number of other areas. Andrew Davy runs that area. We are always working to upskill. We use the information that we get from our compliance framework through audits and things to identify areas other than our standard areas like contract management that need addressing. I would envisage, and we would envisage, that after procurement reform when we are functionally leading works as well as goods and services that we would expand our education to include works-type contracts; the management of works-type contracts and the management of procurement for works.

**The CHAIR:** In an agency like Health, for example, with recent findings from the CCC, will it inform you as to what level of autonomy Health should continue to have or is there no intention to centrally manage it until it has demonstrated to have enshrined those better practices?

**Mrs Black:** The thing with the health issues is that that was works and we do not have any jurisdiction or any control over what agencies do when they procure for works. We cannot do that. If we found that Health had not procured well in goods and services, we could take certain steps under the State Supply Commission Act to change their partial exemption threshold or to ensure that they have the right people in place. Our auditing has not revealed any significant procurement practice issues in goods and services in any part of Health.

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**The CHAIR:** As I understand it, from what you were saying, in terms of the framework that has been developed, that is only in relation to goods and services, is it?

**Mrs Black:** No. Currently we only have leadership of goods and services. The framework we are developing will see us have the leadership in works as well, which means that we will then be able to check on compliance and practice in all agencies for their works procurement as well as their goods and services, as we can now.

[10.40 am]

**The CHAIR:** We have heard evidence from the Public Sector Commission that from time to time they were getting in external contractors such as KPMG, auditors, or whomever, to effectively run their algorithms across the systems to audit particular issues, but it seems to be done randomly. Is there any proposal to have a more integrated system where there can be a better level of auditing through IT systems?

**Mrs Black:** We are developing business intelligence all the time in procurement. At the moment, we have developed some business intelligence reports that allow us to see, for instance, the level of variations to contracts that are occurring, the amount that is being spent with different suppliers, the rates that those suppliers are charging different agencies—you would be surprised at the range—and a number of other analyses, allowing us to have analysis of expenditure in goods and services. There is still more work to be done, but that is the beginning of our detection framework across the whole of government. But each agency would be able to, and should, implement its own detection frameworks for identifying corruption or poor practice. Within our own agency, we are implementing just for the Department of Finance some measures to better detect anomalies in the way that we purchase things.

**The CHAIR:** Effectively, we could have as many systems or approaches as there are agencies. How is this framework going to integrate the practices?

**Mrs Black:** In procurement, we will take a whole-of-government approach for goods and services and works, eventually. For procurement, we do look at —

**Hon JIM CHOWN:** When you say “whole-of-government approach”, will that include the Public Transport Authority and Main Roads?

**Mrs Black:** In terms of the variations and the review of analysis, yes, their data comes through our Tenders WA system. Most of their data comes through our Tenders WA system, and if they purchase from CUAs —

**Hon JIM CHOWN:** Do they have their own public works policies for procurement?

**Mrs Black:** That is right. We do not have any authority over —

**Hon JIM CHOWN:** It is not a whole-of-government approach, then?

**Mrs Black:** The data is whole-of-government.

**Hon JIM CHOWN:** What about the process for procurement?

**Mrs Black:** In terms of goods and services, Main Roads and the Public Transport Authority are required to adhere to the State Supply Commission Act and its policies. But where I said previously that any agency that purchases anything over \$250 000 has to involve us, the Public Transport Authority and Main Roads do not have to involve us. They both have exemptions.

**Hon JIM CHOWN:** How does Finance feel about that exemption, director?

**Mrs Black:** That is historical. I cannot find any record of why that decision was made. That was a long, long time ago.

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**Hon JIM CHOWN:** That was not the question. In procurement for the state, how does Finance feel about these exemptions —

**Mrs Black:** We would like to see transparency.

**Hon JIM CHOWN:** If I could finish.

**Mrs Black:** I am sorry.

**Hon JIM CHOWN:** I will start again. How does Finance feel about these exemptions that are currently traditional in PTA and Main Roads in the whole-of-government procurement process? You were looking at this in a considerable manner, except you have these exemptions. Director, what do you think? Should those exemptions be removed so that Finance has the ability to have oversight from a whole-of-government approach in regard to procurement across all agencies?

**Ms Cant:** From my perspective —

**Hon JIM CHOWN:** Yes, you are the director. I would be happy to hear your perspective.

**Ms Cant:** Thank you. From my perspective, I think the less anomalies and exemptions there are allows for more transparency and accountability. However, I would like to say that without a really clear understanding as to the impacts there may be on those agencies—so it is a matter of discussion with agencies as well, but, absolutely, from a baseline perspective, I would think the more that is transparent and uses the same government system is better practice.

**Hon JIM CHOWN:** Are these discussions underway?

**Ms Cant:** The discussions are not underway as far as I am aware, but I will say, as we go through the procurement reform, these things have been raised. There are not discussions looking at how we immediately take this away, but it has been raised through the procurement reform. One of the things we have done on the back of that is to form a works council to get those works agencies together. That is quite a new thing; I think it has met once or twice.

**Mr Helberg:** Three times.

**Ms Cant:** We chair that, really to get all of the works agencies around the table and to have a discussion about what best practice looks like in government.

**Hon ALISON XAMON:** Can you give me a bit more information about this works council? How large is it? Who is effectively —

**Mr Helberg:** I might be able to answer that. It involves the larger works agencies and includes the GTEs, so Western Power, Water Corporation, Main Roads, the PTA, Communities—I think I have covered them all. They represent about 80 to 90 per cent of the spend in terms of works delivery. We have met three times, and procurement reform has been top of the agenda for the first three meetings. Overall, the views around the table have been quite positive. We are about to enter into a consultation phase of some of the detail and how we see that play out in the work space. We have also established a subgroup that reports to the council that looks specifically at procurement reform, and that will involve the same agency. They are looking at the nuts and bolts, and how it is going to actively work, and that will feed into the works agency council.

**Hon ALISON XAMON:** To confirm, the Department of Finance is taking the lead on that, and you are the lead agency?

**Mr Helberg:** Yes.

**Ms Cant:** Yes, and we chair it.

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**The CHAIR:** We are in a bit of a bind here, because we will probably be reporting to Parliament later in the year. Given that the process seems to be proceeding at glacial speed, how can we have any confidence to say, “Look, it’s all sorted, the Department of Finance has it in hand”? Does anyone have any suggestions as to how we can confidently assert that?

**Ms Cant:** All sorted by the end of the year? No, I would not think you could say that. But it is well on the way, and while I recognise progress may not be as fast as anybody wants it, including us, it is a big issue across the sector. It involves many stakeholders. There are many opinions, and we are committed to having the best system when we come out the other end, recognising that if we go for legislative change, we will get one opportunity, so it is important to do it right.

**The CHAIR:** From what I gather—Mrs Black might have misinterpreted my question—you are proceeding looking at goods and services first and implementing that, and then later, subsequently, works. It is not all going to be done at the same time, from what earlier answers seem to suggest?

**Mr Bryden:** Perhaps if I can clarify. The proposal primarily that we are developing up is that Finance has almost an equivalent role in the workspace to what it has in the goods and services space. Part of the reason for the introduction of a consolidated piece of legislation as recommended by John Langoulant is to give some legislative basis to some policies that might be set across the entire state government, or general sector agencies yet to be defined, which applied all forms of procurement. The intention is certainly to bring in works from a policy perspective. Clearly, that needs some basis.

**The CHAIR:** Sequentially, it sounds as though it is coming after the goods and services stuff has been sorted, or it is it all being done concurrently?

**Mrs Black:** It is all concurrent. The legislation that we are moving towards involves goods and services and works.

**Mr M. HUGHES:** When you say “almost a similar role”, why is it “almost”? What does “almost” mean?

**Mr Bryden:** We are yet to land a definitive view as to the scope of the legislation. That is a matter for consultation and for government to decide. We will consider the options and put those to government, consistent with the recommendations.

[10.50 am]

**Mr M. HUGHES:** Working around existing interests in this space?

**Mr Bryden:** Not necessarily. When you look at procurement policies and procurement legislation, when you look at, for example, the jobs bill, all of those pieces of legislation apply to different sets of agencies. We need to form a view as to what is the appropriate jurisdiction of the act, and we are yet to do that. We will not do that in isolation.

**The CHAIR:** We expressed some concerns in a previous hearing, and the department has provided more material about the frequency of variations and applications for exemptions, and the fact that there are serial offenders within certain agencies and there do not seem to be any sanctions. How is this going to be addressed?

**Mr M. HUGHES:** Can I add to that? The exemption and variations register is reporting on that. What purpose does it serve?

**Mrs Black:** We have just developed reporting on variations. The first step is to make sure that the people who are responsible in agencies understand their obligations and the level of variations that are occurring in their agencies. We have developed a report that Jodi will be taking to the directors general leadership council to inform directors general of the levels of variations that are occurring

in their agencies, so that they have an awareness. In that report, if we identify large variations that appear to be outside of the current procurement policy, we deal with those individually.

**Mr M. HUGHES:** When you say you deal with them individually —

**Mrs Black:** We talk to the agencies concerned.

**Mr M. HUGHES:** You have a conversation with them?

**Mrs Black:** Yes.

**Mr M. HUGHES:** Is that it? Is it just advice? Presumably, it is what they should already know in terms of their business practices. Are they extending contracts without due review, for example?

**Mrs Black:** Well, they —

**Mr M. HUGHES:** It seems to me, when you note that there is a variation that exceeds an allowable limit, you say the responsibility for that lies with the authority.

**Mrs Black:** Yes.

**Mr M. HUGHES:** Not with Finance.

**Mrs Black:** No.

**Ms Cant:** That is true.

**Mr M. HUGHES:** Effectively, it is a return which is of interest, but nothing much happens beyond that.

**Mrs Black:** We are able to implement regulations to —

**Mr M. HUGHES:** Can you give me an example of when you have?

**Mrs Black:** We have not. In my time, we have not.

**Mr M. HUGHES:** That is the point I think we are making. That really pays lip service to the oversight role that Finance has of the management of various budgets within the responsibilities of departmental heads.

**Mrs Black:** Although we do have a report that shows variations, and we do investigate large variations or multiple variations on a contract, we have not identified anything that would require a sanction since we have been doing this.

**Mr M. HUGHES:** From 2016, the variations are close to \$2 billion, I think it was.

**Mrs Black:** That is the total, yes.

**Mr M. HUGHES:** That is a lot of money.

**Hon ALISON XAMON:** It is a huge amount of money.

**Mrs Black:** Our approach is to inform and educate. We support agencies and go to individual agencies that have shown up either in the variations report or other reporting or in compliance audits and which have issues in the way that they procure. We individually educate them. Our teams go and support them, and we can assist them with specific contracts.

**Hon ALISON XAMON:** Are there any departments that are resistant or basically do not care about the advice that you are giving them?

**Mrs Black:** No, they all embrace the assistance.

**Hon ALISON XAMON:** They may embrace the assistance; do they change their conduct?

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**Mrs Black:** Well, we have not been doing this long enough for me to be able to answer that, but my answer is we definitely hope they do.

**Hon JIM CHOWN:** Let me get this right. You are working on a policy for procurement across all agencies as opposed to those that have exemptions, like PTA and Main Roads, correct?

**Mrs Black:** Yes, the policy relates to all agencies.

**Hon JIM CHOWN:** But you have no role in the procurement process of those agencies?

**Mrs Black:** We do have a role in the procurement process of all agencies except those that have the full exemption.

**Hon JIM CHOWN:** So you are working on a policy and a process that could be standardised to ensure that corruption does not take place in its many forms in your role. Let us say this happens in an idealistic world. How are you going to ensure compliance and reporting back to the Department of Finance to ensure that the agencies are carrying out these requirements?

**Mrs Black:** We already do require them to audit regularly in goods and services. We already had the leadership —

**Hon JIM CHOWN:** Do you carry out the audits, or do they do it through external agencies and you just read the report?

**Mrs Black:** We do not do it. They are required to have an independent audit and to provide us with the reports.

**Hon JIM CHOWN:** I am talking about your oversight role as Finance in regard to this new world of procurement and policies. Why would Finance not be sending out its investigators in regard to issues that may be in breach of the process or the policy?

**Mrs Black:** Those matters will be considered during the development of the procurement act and its associated policies.

**Hon JIM CHOWN:** I would have thought it was essential.

**Ms Cant:** Whether it is —

**Hon JIM CHOWN:** I mean, there is no point in having Rome look after Rome, because Rome will look after itself.

**Ms Cant:** I understand that, but the argument can be put, from a public sector view, that in fact independent auditors, independent to the whole public sector, may actually be more useful or more beneficial.

**The CHAIR:** They are more costly, too.

**Ms Cant:** Potentially. It really depends. There are different views on how much public servants cost. However, as we are developing legislation, it is obviously something we have to look at in terms of how we audit and what powers we end up with. We are not there yet.

**The CHAIR:** Mr Davy, you looked keen to say something in response to the Deputy Chair?

**Mr Davy:** No, nothing further.

**Hon JIM CHOWN:** I think this is really important if we are going to get this procurement process right. You have had consultation, obviously, with agency heads, and they will be ongoing. I assume you have floated the idea of having some independence, as the Department of Finance, for audit purposes. Even similar to the CCC, with public servants, you get a whistleblower who says, "I'm not happy about this process; I think we're in breach of it. Would you send somebody to check?" Have

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you had any pushback from agencies? Because we know agencies are little kingdoms, little silos in their own right, and that is part of the problem.

**Mrs Black:** For goods and services, if there is a whistleblower, we already have authority to independently investigate, and we do. We investigate complaints and issues that arise in the goods and services space.

**Hon JIM CHOWN:** My next question to that statement is: how often have you done this, and what has been the outcome of those investigations?

**Mrs Black:** We have not had any whistleblowers that have come to us in my time, but we have had many disputes and complaints.

**Hon JIM CHOWN:** I find that amazing, because where do they go other than the CCC?

**Mrs Black:** Each agency has its own public interest disclosure requirement. Every agency has its own public interest disclosure process, and they manage them themselves, if people do not go directly to the Public Sector Commission or to the CCC.

**Mr Bryden:** The complaints that would ordinarily come to the Department of Finance or the State Supply Commission typically relate to procurement processes rather than corruption.

**Hon JIM CHOWN:** That is what we are here talking about today.

**Mr Bryden:** Quite often, they will be referred directly to agencies with investigatory powers in relation to public officers.

**Hon JIM CHOWN:** Okay, so you can transfer. If you believe corruption has taken place, you will alert the CCC.

**Mr Bryden:** Correct.

**Ms Cant:** Absolutely.

**Hon JIM CHOWN:** How many times have you done that?

**Mrs Black:** I think we have provided that information previously. I think it is in the previous paperwork. Offhand, I think it is six.

[11.00am]

**The CHAIR:** We asked earlier whether any jurisdiction was a model jurisdiction they are looking at. In preparing the material that you asked stakeholders to look at, did you draw on any particular system or parts of a system that you thought were optimal?

**Mr Bryden:** We looked domestically or across Australia in terms of government jurisdictions. We have looked at models including Queensland and Victoria, off the top of my head. We have looked internationally and we have looked at larger private entities.

**The CHAIR:** Is there anything that we are not doing that, when you did this examination, made you say that that is a good idea or we should incorporate that into our system?

**Mr Bryden:** I think we would certainly favour the introduction of a broader ethical procurement framework to set out expectations, particularly in relation to suppliers, and then what flows from that is clearly monitoring and compliance.

**Hon ALISON XAMON:** And having someone who has the authority to be able to do that.

**Mr Bryden:** Correct. What we are contemplating at present is a very broad ethical procurement framework. That might include occupational safety and health. It might include industrial relations, state tax obligations, domestic violence and a range of things, and clearly Finance or whoever

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administers that framework is not going to be able to deal with all of those matters. Those things will have to be triaged and referred to the appropriate bodies to deal with. That is why it takes time to work through.

**The CHAIR:** We have talked a bit about variations. I want to quickly talk about exemptions altogether. It seems to me that an assertion is often made: "There is only one supplier of this sort of product, therefore, we seek an exemption."

**Hon ALISON XAMON:** Especially in Health.

**The CHAIR:** It may well be that they are the only ones that supply a red-coloured such and such, but there are other suppliers who have them in blue, yellow and green or something like that. Is that kind of assertion ever tested? I think that particular area is ripe for some malpractice, frankly.

**Mrs Black:** Within government procurement, our people are assigned to look after portfolios of agencies and they help agencies with their procurement. If an agency comes with a proposal for an exemption on the basis of a sole supplier, our people do test it. If our people do not feel that it is justified, they will not support the exemption request. But as we have previously said, if an agency's accountable authority—the CEO or delegate—decides to use a sole supplier, we cannot stop them. We can only say that we do not support it, and we do say that. If an exemption request is put up and we do not agree with it, we will say we will not support it, but we currently do not have any authority to stop them from doing that.

**Hon ALISON XAMON:** There are a couple of things on that. Of course, we have seen the information you previously provided where you have indicated that you do not support it, and we are clear that there are no repercussions for that. My first question is: do you think there need to be repercussions? In your opinion, do you think that there need to be greater powers for Finance to effectively prohibit where you have determined that it is not a reasonable exemption? The second question is about the level of expertise that exists within Finance to make these determinations. I imagine that it is fairly limited and possibly not comparable with the departments that you are dealing with. Two come to mind. With Health, as I mentioned previously, we are talking about millions and millions of dollars sometimes in those exemptions, but it is a very specialist area. I am curious to know how you would deal with that. The other one that comes to mind is everything IT related, where you again often require a specific level of expertise—maybe I am revealing my deficit as a gen Xer. How do you compete with that? I suppose my point is: how much of it is falling through the cracks because the expertise does not exist to be able to appropriately oversight that area?

**Mrs Black:** The first part of your question was about whether we should be able to prevent exemptions if we do not believe that they are justified. Mark will probably speak to that in a minute. That will be under consideration in how we manage the single procurement act and the associated policies and practice that goes with that in our reform program—Mark can cover that. In terms of dealing with large agencies, especially line agencies that have a specific business that we do not work in, the same people are assigned to Health for a long time, or education or transport. They do understand those businesses. They are ensconced in those businesses quite a lot. They meet those people regularly, especially the large complex agencies. They understand the history of procurement within those agencies. Of course, they do not understand all the clinical ins and outs, but they are informed enough and very experienced people and educated. On an ongoing basis they are educated within the department to be able to give very informed opinions. The exemption also progresses up the line. The leaders of the agency support area—our agency procurement services area—are highly experienced procurement professionals who understand government extremely well and can make very educated calls on those exemption requests. Then it can even be progressed

further to me or the director general. If we do support a request for an exemption, I am confident that that is the right call.

**Mr M. HUGHES:** How can a request be applied retrospectively? It does not make any sense.

**Mrs Black:** It is not supposed to be.

**Mr M. HUGHES:** But it happens when an agency has exceeded a budget in relation to a particular area, whatever it might be, and it alerts Finance to the fact. Finance says, "Had we been in the position to advise you about this, we would not have approved it, but you've done it, so it's noted."

**Mrs Black:** Most exemption requests come before the action. It would be very rare, but variations to contract, those happen afterwards.

**Mr M. HUGHES:** Maybe it is a different sort of problem for me.

**Mrs Black:** It is a slightly different thing here. Variations occur after the contract is in place and then they vary either the price or the time or something like that. That is just a matter of recording that variation so that we can monitor it and check to make sure it is not poor practice. In terms of exemptions, exemption requests come before the exemption. As I said, if we do not support it—most agencies do not do that though. There are a lot more exemption requests that are not supported than is shown here, because most agencies take our advice.

**Mr Davy:** Can I add that we may have limited resources as an agency in terms of an exemption, but as Steph pointed out, we have a range of practitioners who are connected to those agencies and serve them regularly, so they understand their clients. We also look at the previous procurements quite often in the same space and do market research and scan. A fairly informed opinion is created in terms of accepting or not supporting an exemption as it goes. As Steph says, quite often if it is not supported, it will not proceed, and the agency will go away and review what it is intending to do and either strengthen its argument as to why or literally change its procurement strategy altogether.

**Mr Bryden:** What you will not see from the exemption register is the phone calls that often go on for the public servant who puts the work into drafting the exemption request. Quite often there is a conversation to say at an informal level: "Does this stack up?" Our people will say that it does not or that it depends on how well it is justified, and then it goes through that process. There is quite a lot of discussion that goes on usually beforehand.

**Hon ALISON XAMON:** It is good to hear that Finance is so confident that where they grant exemptions, they completely get it right. I will just point out that if it turns out in the future that maybe you have got it wrong on one, that you have just provided a whole bunch of evidence to say that you always get it right. You gave yourself no wriggle room.

**Ms Cant:** I think it would be a very brave person who would say that we get everything right 100 per cent of the time. I am certainly not going to say that. But we are confident that in the majority of cases, yes, we have the information and the right decision is made, and I am happy to stand by that. If you asked all the other public sector agencies, they would probably say that often they wish we were not quite as pernickety as indeed we are.

**Hon ALISON XAMON:** Good; I am glad you are annoying them.

**Ms Cant:** We are not hugely popular.

[11.10 am]

**The CHAIR:** I have a couple more questions before we go briefly in camera. We did provide one example that came to the attention of the committee and that revolved around Programmed, which had a large management contract, and one of their subsidiaries being a successful tenderer. There

did not seem to be initially any disclosure of that. How appropriate is that, given the nature of the management contract which Programmed has? Was anyone able to find some information about that for us?

**Mr Helberg:** Is this the one in relation to the Department of Training and Workforce Development?

**The CHAIR:** Yes.

**Mr Helberg:** We looked into that and we could not find any information that related to that time period and involvement from Programmed that was procured through Finance. We have also made inquiries with Programmed themselves, and they also could not identify any contract that related to that particular TAFE facility during that period of time.

**The CHAIR:** The allegations still raise the issue about whether there are preferred suppliers and how much due diligence is done at that initial stage to make them preferred suppliers, as to what other corporate entities or subsidiaries or associations they might have.

**Mr Bryden:** Is that question specifically in relation to Programmed or more generally?

**The CHAIR:** Generally.

**Mr Bryden:** In the example of Building Management and Works, we do a range of things to prequalify builders. That prequalification assesses, in a broad sense, financial and technical capability, and then there is due diligence undertaken in the background. We will do company searches and director searches because we have a policy around phoenixing. We look into directorships and those relationships and we can tend to find things. That is an ongoing arrangement. And then when we go out to market and we get to a preferred tenderer, we do additional checks at that point in time. We do quite a bit around those style of contracts. We also then generally have larger panel contracts, and to get onto those panels, we do a due diligence there. In relation to Programmed and other arrangements which might be more outsourced, we apply, to a large extent, the same rules upon them which are applied on government agencies through the State Supply Commission. We require quotes and tenders et cetera. There are special arrangements involving Programmed, which I am happy to provide on notice

**The CHAIR:** Yes, thank you.

**Mr Bryden:** They involve our staff, at times, sitting on evaluation panels, chairing an evaluation panel, Q&Aing, eval reports and the like. I can take that on notice.

**The CHAIR:** Is there any utility in just completely getting rid of closed tenders in the interests of transparency and accountability? Is there any place in this brave new world of procurement for closed tenders?

**Mr Helberg:** Can you just clarify what you mean by “closed tenders”?

**The CHAIR:** I thought it had a general meaning. Maybe if there is something more subtle, you can tell me what that might be.

**Mr Helberg:** I am just trying to establish whether you are talking about going out to a selected group rather than —

**The CHAIR:** No, I mean that the details of the contract that was awarded are not made public.

**Ms Cant:** The commercial details?

**The CHAIR:** Yes, well, sometimes it is even broader than that, is it not?

**Mr Helberg:** Clearly, there will be a concern by competitors if we are in a position where we published some information that they might view as confidential or they feel they have some—

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**Hon JIM CHOWN:** Can you give an example of what that might be?

**Mr Helberg:** In the works space, it could be that they have a particular system that gives them a competitive advantage when they do bid for work, and we will require them to elaborate on exactly what the system is and how it operates to give us satisfaction that that meets our requirements. But in doing so, if that is then published, obviously that may present certain problems for them.

**The CHAIR:** By closed tenders I meant that it is not generally open for people to tender and that only a select few are given the opportunity.

**Mr Helberg:** That is what I was trying to clarify. If it is about going out to only a selected group, what we often do in the works space is to go through a staged process where we go through an expression of interest stage, just to narrow the field. Then we shortlist based on bidders meeting certain qualitative criteria. We then go out to tender to only that selected group. That is an example of where we would not go to open tender for a particular reason. In construction, the industry is quite favourable of that approach because you do not then put many people through the process of tendering, which is quite a costly process. You actually go through a staged process where you narrow it down first and then go out.

**The CHAIR:** Some evidence was given earlier about having referred matters to the CCC. Did those particular matters arise from a whistleblower? How were they identified as potentially involving corruption?

**Mr Bryden:** If you are referring to the six instances in the previous examination —

**The CHAIR:** I am referring to evidence given earlier.

**Mr Bryden:** I am aware that one of them was a whistleblower, and that was an aggrieved party. I am not sure on how the second one originated. I have had two come to me direct from the CCC and we have dealt with both of those. These were prior to the time period that was questioned in the previous examination.

**The CHAIR:** So they were not referral by Finance to the CCC; it was the other way around?

**Mr Bryden:** Correct. I have dealt with at least two, maybe as many as four, that do not relate to Finance in my time in Finance where I have referred those. We were not necessarily the principal notifying officer, but we referred those matters anyway to the CCC.

**Mrs Black:** In the previous paper that we sent you, the six refer to an employee who improperly accessed confidential and sensitive information—that was found through our HR systems; falsified medical certificates—similarly; falsified an attendance record—again, the same way; inappropriately used public resources, improperly influenced contractors and a breach of trust, which Mark has covered; and improperly managed a conflict of interest with a contractor relating to a works contract and acted corruptly to attain personal benefit—that was in our regional office in Broome. The sixth one was another on attendance records falsification, failure to declare a gift, inappropriate use of public resources and acting corruptly to obtain personal benefit.

**The CHAIR:** When did you give that to us?

**Mrs Black:** That was sent to you on 10 July last year.

**The CHAIR:** Thank you. Just finally, before we quickly go into closed session, the commonwealth has changed its procurement rules and they actually have the Government Procurement (Judicial Review) Act 2018 that does a judicial review of the tender process. I am wondering, in contemplating legislative change, whether any thought has been given to having provisions so that these tenders can be reviewed.

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**Mr Bryden:** It absolutely is and that act itself is being reviewed.

**The CHAIR:** What act?

**Mr Bryden:** The commonwealth procurement act.

**The CHAIR:** No, I am talking about in your drafting of your legislation, are you considering a similar regime?

**Mr Bryden:** Yes, we are considering judicial review in drafting our act and potentially mirroring other jurisdictions like the commonwealth.

**[The committee took evidence in closed session]**

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