

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, 20 MARCH 2019**

Members

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

Hearing commenced at 10.19 am

Ms SHARYN O'NEILL

Commissioner, Public Sector Commission, examined:

Mr EAMON RYAN

Executive Director, Integrity and Risk, Public Sector Commission, examined:

Mr LINDSAY WARNER

Acting Executive Director, Policy and Data Analytics, Public Sector Commission, examined:

Ms MELISSA TRAVERS

Legal Officer, Public Sector Commission, examined:

The DEPUTY CHAIR: On behalf of the committee, I would like to thank you for agreeing to appear today. My name is Jim Chown and I am the Deputy Chair of the Joint Standing Committee on the Corruption and Crime Commission. I would like to introduce the other members of the committee present today. On my left is Hon Alison Xamon and Matthew Hughes, MLA. 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, this privilege does not apply to anything you might say outside today's proceedings.

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

The WITNESSES: No.

The DEPUTY CHAIR: We have an hour for this hearing —

Hon ALISON XAMON: And many questions.

The DEPUTY CHAIR: — and many questions, so I will commence with a question in regard to the report on the review of the Public Sector Commission that recommended that minor misconduct functions should be removed from the PSC and returned to the CCC. Do you have any comments about that suggestion?

Ms O'Neill: Probably the only comment to make is that the government at the time decided that that recommendation would not go forward, so minor misconduct remains with the Public Sector Commission.

The DEPUTY CHAIR: Why was that recommendation made in regard to the report that was handed down in 2018, which is only a few months ago in reality?

Ms O'Neill: That report was undertaken before I was there, so I am not sure on what basis it ended up in the report. I cannot really comment on how it got into the report, but the decision has been taken that minor misconduct will remain with the commission.

Hon ALISON XAMON: Do you know if there has been any quantifiable reduction in the way the matters of minor misconduct are being dealt with by the Public Sector Commission that might have led to this recommendation? Is there any way of measuring the effectiveness of the PSC having that function?

Ms O'Neill: We collect data for the purposes of the "State of the Sector" report. I am not aware of any reduction in how the matters have been dealt with. When the function came across from the

CCC, there was also the education function that came across. As we spoke last time, the statistics in terms of the training that has been provided have been maintained. In fact, we talked last time about further training that has been provided since then.

Hon ALISON XAMON: What we are trying to ascertain is why this recommendation would have been made in the first place. You obviously cannot answer that because you are not responsible for that recommendation, but the committee is interested to see whether there is any data at all, anything that would back up that concern. If not, then that obviously begs the question about why this recommendation may have come about.

Ms O'Neill: Lindsay Warner has advised me that it was part of the consultation process that issues were raised, but I am not aware of the specifics as to why that was a particular issue at the time.

Hon ALISON XAMON: Can I ask what sorts of issues were raised that may have led to that recommendation?

Mr Warner: I do not have the information that would be able to inform the committee of the specific issues that were raised, other than they would have been raised with the independent reviewer, Ms Carmel McGregor, rather than directly with the Public Sector Commission.

Hon ALISON XAMON: So you are not aware of what any of those concerns may have been?

Mr Warner: Other than what was published in the report, no.

Mr M. HUGHES: Do you want to summarise what your understanding was in terms of the comments that she made? Did she not refer to it as being resource intensive and a misdirection of resources that could be properly put to the program of education of officers with regard to their roles?

Ms O'Neill: My understanding on the reading of the report was to the point of clarity. When I met with Carmel McGregor, she made commentary to me that some people are unclear about where to report, so that was an issue. One of the issues, therefore, that she raised with me was around clarity and was everyone certain about where they should report and how things were to be handled. The prevention education was not really raised with me so much as an issue, but that effort needed to continue to be put into the prevention and education.

Hon ALISON XAMON: Presumably, if someone is reporting to the wrong entity, the other entity simply refers back to the correct entity? It is hard to think that that would be a major problem.

Ms O'Neill: That is right. I brought with me today the CCC and the PSC documents, which I can leave for you. I think you would probably already have this document: "Notifying misconduct: A guide for Principal Officers of Notifying Authorities". This was reviewed and put out again in August. I think it is reasonably clear and it has been clear to all reporting officers that where there is that overlap, if it gets reported to the PSC and it should have been the CCC, or vice versa, we liaise directly with them.

The DEPUTY CHAIR: Thank you for that. In November last year at a similar hearing you offered to outline examples that would assist the committee understand the concept of minor misconduct, particularly in relation to procurement, but we ran out of time. Would you be able to give us a verbal example in regard to what the PSC believes is minor misconduct?

Ms O'Neill: We have done a couple of things that may or may not be helpful. We have tried to put together a bit of a diagram about the relative responsibilities. That is more general, not specific to procurement. I am not sure whether that would be helpful as a starting point.

The DEPUTY CHAIR: Yes, that would be most helpful.

Ms O'Neill: We have tried to draw the diagram several different ways to make it clear for you. On the very right, we understand about serious misconduct and the oversight of the CCC. These definitions are all governed by the various pieces of legislation. Serious misconduct, criminal intent and behaviour punishable by two years or more, those definitions are in the act. It has to be something about—it is a public officer, someone who is taking advantage due to their employment, they obtain a benefit for themselves and cause a detriment to others. They are committing something where an offence could be punishable by two or more years in prison. That is serious misconduct. That is the part at the very right of the diagram. There are quite clear definitional terms around that.

Minor misconduct is the part in the middle, which is the part we administer in the act under section 4(d)—again, a public officer. The focus of the minor misconduct is around honesty and impartiality in performing their functions; basically, a matter of integrity, whether they were honest or impartial, it was a breach of trust. It could be misuse of information or material and it is for personal benefit. They are the sorts of distinctions. That can lead to disciplinary action and termination.

[10.30 am]

Hon ALISON XAMON: I am interested that minor misconduct also includes drug and alcohol policy infringements. I am curious to know the extent of that. Of course, as you are aware, there have been serious concerns about the misuse of schedule 8 drugs, particularly within the health system. In fact, it has received a little bit of media attention again only recently. Surely there would be elements when that flows over into what would be considered serious misconduct? Where would those parameters lie? Are you able to elaborate on that a little more? Where would be the point by which you would go, “This is more serious. I will refer this through to the CCC”?

Ms O'Neill: I will ask Eamon Ryan to help me describe that a bit further. There are occasions on which something has been referred to us and we are doing that analysis and it strikes us that this does more likely meet the threshold for serious misconduct. Perhaps Eamon can talk a little about that.

Mr Ryan: At the back of the document the commissioner gave you, schedule 1 lists the offences that we have published that illustrate the types of matters that would be caught by serious misconduct. For example, a worker who is stealing schedule 8 or schedule 4 medication from a hospital and then using it, and tests positive, would be something that clearly would be serious misconduct. A worker who turns up for work and is subject to a random breath test and has a residual amount of alcohol beyond whatever their department’s policy is, would be a breach of policy and more likely to be minor misconduct. There would be an element of criminal intent or a dishonesty or deceit that would push it into the continuum of serious misconduct. The same thing: the person is impaired or affected by alcohol or drugs, but depending on the context, and each case is judged on its merits, it could come into serious misconduct in the example I gave, or minor misconduct. Minor misconduct is not to say that it is an irrelevant or trivial matter. If you are a transport worker or a driver of a bus, for example, and you turned up for work under the influence of alcohol, that could result in termination. That would be minor misconduct.

Ms O'Neill: The term “minor misconduct” sometimes is hard for people to grasp because they think that minor misconduct —

Hon ALISON XAMON: It does sound like it is trivial.

Ms O'Neill: Well, “minor” sounds minor, but in fact it can be pretty serious if you are facing termination from your employment.

Hon ALISON XAMON: Really, it is largely about intent; that is where the subjective line is effectively drawn.

Ms O'Neill: And there are judgements always to be made. We liaise with the CCC to ensure that it is being dealt with under the right avenue. I guess when we look at those definitions of misconduct—that is, likely to be an offence punishable by two years or more, or taking personal advantage—they are the kinds of thresholds for misconduct. Criminality, I guess, is for more serious misconduct. For minor misconduct, it is usually more dishonesty and impartiality.

The DEPUTY CHAIR: Minor misconduct is not that minor. I just do not like the terminology. Why do we not use “misconduct” and “serious misconduct”? Because “minor misconduct” actually sends a very weak message in regard to the concept of misconduct. “Minor misconduct” is through all our correspondence, including yours. I think we need to reset that to “misconduct” and “serious misconduct”. Do you agree?

Ms O'Neill: I agree that people find it hard to—the title does not necessarily meet with the common interpretation of major and minor. They are in the act.

The DEPUTY CHAIR: Where does the terminology “minor” come from?

Ms O'Neill: As I understand it, it is an amendment in the act to make a distinction between serious and the work we do, so it is in the legislation.

Hon ALISON XAMON: What, if any, procurement matters has the Public Sector Commission been involved in besides the receipt of minor misconduct matters?

Ms O'Neill: We had a look at that. It is not a huge number compared to the total. I think we are talking in the number of 39.

Hon ALISON XAMON: Thirty-nine? How many of those have been substantiated?

Ms O'Neill: I will clarify: in the period 1 July 2015 until the thirteenth of this year, so it is over a long period, 39 were assessed as corruption and procurement. I would just say to use that as an indicative number because our data and the way in which we collect that data is still being refined. We have not got with us the outcomes of the 39 cases but 39 is the number that has been assessed as corruption in relation to procurement and referred then to the CCC.

Hon ALISON XAMON: How many of them have come about as a result of whistleblowers, as opposed to being picked up through routine audits?

Ms O'Neill: We would not have that information with us today but we can see if we can test out the system to clarify how they came to us; how they were reported to us.

Hon ALISON XAMON: Yes, because that, of course, is of great interest to the committee, to get an idea of how these things are coming to the attention of the Public Sector Commission. Are you able to give even an anecdotal —

Ms O'Neill: I would not like to guess.

Hon ALISON XAMON: All right. What I am trying to get an idea of is whether it is rare for these things to come out as a result of whistleblowers, or whether it is quite common.

Ms O'Neill: I do not want to mislead the committee by making a guess. If I just talk more broadly about our misconduct matters, they are very often coming from agencies. If you took that as an indicator, they are internal referrals from people inside agencies.

Hon ALISON XAMON: Because we are talking about procurement matters, I am curious to know whether there is a degree of complaints coming through from unsuccessful tenderers, for example, who may be aggrieved.

Ms O'Neill: Out of the 39, to give you clear information we would have to go back and have a look at that. As I have said, as a general rule for the matters that we receive, they are largely coming from agencies. But we would be happy to provide that to you as supplementary information.

The DEPUTY CHAIR: Would it be possible to have a written report from the PSC in regard to all substantiated minor misconduct matters dealing with procurement since 2015?

Ms O'Neill: Because 39 have been assessed since that point, we will try to break that down to give you more information about how it came to us and what the outcome was. Those were all referred to the CCC to deal with, so we would be having to talk to the CCC to gather that.

Hon ALISON XAMON: One of the things I would also be interested in getting in that data is the dollar value attributed to each of those procurement activities because, as we know, depending on how much is being procured, there is a different level of accountability around how that occurs. It would be useful to the committee to get an idea if, systemically, there are particularly dollar values that are likely to attract misconduct.

Ms O'Neill: Given that the 39 were assessed and forwarded then to the CCC, I am not sure that we will have all of that information or in fact they would then hold it because they would have done the deeper investigation. Perhaps when we come back—we will be able to tell you what we can tell you about the 39, and either we would liaise with the CCC or once we give you our report that might be something that you want to explore further with them.

Hon ALISON XAMON: One of the concerns that has been raised with the committee is that the procurement frameworks as a whole tend to be quite complex and fragmented and, also, unfortunately, inconsistent, particularly across departments. Can you make some comment as to whether, firstly, that has been the PSC's experience, and, secondly, whether that raises particular complications in investigating minor misconduct around procurement?

[10.40 am]

Ms O'Neill: Perhaps if I talk first about procurement and, more broadly, the framework. The oversight for procurement is quite extensive. The Auditor General's 2017–18 report talked about directors general and their responsibilities for adequacy in terms of internal control systems. The Treasurer's Instructions refers to corporate governance, systems controls and risk management. There is also the FMA and state supply; departments having internal controls; audit; and the integrity framework. We drew a picture more broadly of the whole integrity story, because I was asking myself the same question to start with. It looks something like this sheet, which I am happy to table. In terms of framework, there are a lot of rules and controls in place. But if I drop down a level, my observation is that there is reasonable framework and controls in the goods and services area. It is more centralised and the Department of Finance is the lead agency in that. The area of works is much more disparate. Under various acts, departments have powers for works. I think greater consistency and clarity is certainly needed across procurement, particularly reaching into the works area, to ensure that there is less risk, less misconduct and better procurement outcomes. I have been meeting with the Department of Finance around the procurement reform. I am not sure whether they have briefed you or had discussions with you around the procurement reform project. Looking at the recommendations from the SPR and the special inquiry, there are three stages to that work that gives me some confidence that we might get some good improvement. In stage 1 they are looking at policy; stage 2, the framework; and stage 3, functional leadership. They are holding a forum in a couple of days around this.

There are quite a lot of rules. My observation is that the practice around goods and services is showing improvement; the works is patchy and disparate. I am not sure there are clear standards

for policy and practice in that area, but I think the procurement reform project will deal with some of that. What I am interested in as commissioner is —

The DEPUTY CHAIR: Do you think the process is overly complicated?

Hon ALISON XAMON: It sounds like it.

Ms O'Neill: Do you mean for procurement?

The DEPUTY CHAIR: Yes.

Ms O'Neill: I am sure that it is overly complicated. There are lots of checks and balances, and there are good reasons for that. In the goods and services area, there are certainly lots of steps to go through. There might be some streamlining that can be done there.

The DEPUTY CHAIR: What sort of streamlining would you be advocating to make the process as watertight as possible but less complicated than it currently is?

Ms O'Neill: I do not think it would be appropriate for me to pretend that I am the detailed expert around procurement. The Department of Finance —

The DEPUTY CHAIR: Have you done any work on this internally within the department?

Ms O'Neill: Within the Public Sector Commission?

The DEPUTY CHAIR: Yes.

Ms O'Neill: No, we do not work specifically on procurement. The part we are working on, which I was just going to make mention of my interest, and I think where we need to get better, is consistency and clarity. Internally, we have been not just talking about but working on developing a strategy around corruption prevention that could sit inside our integrity strategy—I am talking about procurement now—around detection, prevention, education and investigation. I think there is the capacity, or the potential at least, to do more work around detection. I met with two groups last week who have developed and are trialling and implementing software that is able to scan across procurement data and look for matches and mismatches as a detection scheme. A couple of agencies—who they are do not come to mind straightaway—are working on that. That is something I am interested in, to work with directors general around: are there tools we could use for greater detection, education and investigation. The question you started with was: is everyone clear about how these things ought to get investigated? I think there is greater clarity around what the CCC does and what we do; that is getting better over time. Then there is the question about the investigations that directors general do, because they maintain responsibility for that.

Just to finish that part, that is one group of things that we are looking to do. CEO performance agreements, I am interested in and contemplating what I might recommend could be in CEO performance agreements in relation to this matter.

Hon ALISON XAMON: Fantastic, so creating a buck-stops-here approach?

Ms O'Neill: Well, the buck does stop, when you look at the accountability. The final thing we are working on at the moment is how we might adjust some of the surveys that we run with agencies to ask for information that could help us seek to look at themes and better learnings for agencies. We are not the lead agency under the functional area leadership project. The Department of Finance will take the lead across other agencies with procurement, but with my role being around admin and advising changes for improvement and planning for improvement across agencies, we are looking at a corruption prevention strategy inside our whole-of-sector integrity strategy. There is not one and we are trying to begin the development of one.

The DEPUTY CHAIR: Does the commission have its own investigators?

Ms O'Neill: We do.

The DEPUTY CHAIR: How many would you have and what sort of training would they receive in these matters?

Ms O'Neill: I am advised that we have between six and eight. Everyone has the Certificate IV in Government Investigations—the last two are just finalising. So out of the six or eight that we have, almost everyone has at least the certificate for training in that area. Others have other training. One I know of previously was a policeman, so we tend to have some people who used to be in that field coming into the team. Our team largely triages referrals when they come to us: do they meet the standard for minor misconduct? Yes. Should it be referred to the CCC, or in fact does it go back to the directors general to investigate? One of the things we are giving some thought to now is the capacity of agencies to undertake their own investigations, because that is required of them. In Education, a big system, we had a highly skilled workforce in this area. There are a lot of small agencies that would not have that same capacity. In the strategy I was talking about when I said detection, education and investigation, how can we better maximise the skills of investigation across agencies so that when matters are referred back to them, because they have powers to do that work, they are able to undertake those investigations to a good standard?

The DEPUTY CHAIR: I am going to put you on the spot, commissioner, in regard to a conversation we had a few minutes ago: do you think the definitions of serious and minor misconduct in the CCM act are sufficient, or is there room for amendment?

Ms O'Neill: You are putting me on the spot, Deputy Chair.

The DEPUTY CHAIR: You voiced an opinion previously.

Ms O'Neill: I am comfortable with the definitions. I think the use of the term “minor”, in my observation of the past six months, does on occasion prove to be distracting, complicating or confusing.

The DEPUTY CHAIR: Misleading. I agree with you.

Ms O'Neill: If I could limit my comment around—my experience thus far is that the word “minor” does cause people to think that it is taking money from the social club tin or something like that.

[10.50 am]

Hon ALISON XAMON: Which is still an uncool thing to do, by the way.

Ms O'Neill: It is not a good thing to do. In saying that I have just been reminded—obviously the people who work in this space are very clear about the definitions and what they mean. I do not think they are confused, but the broader public—internal public—when they hear “minor misconduct”, they do not imagine that could lead to dismissal.

Hon ALISON XAMON: You have described again a whole bunch of processes that you are looking at reviewing and you have given us this mandala of processes that have been mapped out. The committee has been hearing consistently evidence that no matter how good the processes in place are, one of the problems holding us back is a culture of indifference to procedures. Indeed, this has been borne out with some of the CCC reports as well. When we put this to you in the last committee hearing, you indicated at the time that you did not think that was such an issue, which I have to say is at odds with the evidence that has otherwise come before this committee. One of the questions I want to ask, because otherwise it is indicated as quite a serious red flag for future misconduct, is: on what basis are you reaching that conclusion? Is that just anecdotally your own experience of having worked extensively in the public sector or have you got any research to back that up? We are trying to reconcile what is inconsistent evidence.

Ms O'Neill: Can I just clarify if you are talking—when you say people are indifferent to the rules, is that generally or specifically around procurement?

Hon ALISON XAMON: Generally, but we have been obviously looking more specifically at the issue of procurement and drilling down.

Mr M. HUGHES: There are references to people holding senior positions within an organisation who have access to the authority to approve purchases—let us put it that way—and have remained at positions for significant periods of time. Around them the staff change and the best practice in terms of prevention and detection go to the wall because there is, in effect, insufficient oversight in relation to that individual.

Ms O'Neill: I think I made the comment last time, and I stand by my comment—first of all, if we start at the big question of indifference to rules more generally. I do not see indifference to rules more generally. I do not have data to back that up, except to say that the rules of procurement and selection and recruitment—in the public sector, we are well equipped with policies, rules and legislation. If people were indifferent to those, I think we would be in a large state of disarray. Standing back as the Public Sector Commissioner, if there was a general indifference to rules we would be in a very different place than we are today. Specifically around procurement, again, the fact that we have 39 matters since 2015 to date, in that period at least we are not awash with corruption cases around procurement. That being said, the ones that we have are pretty dreadful and stunning in their size, scope and lack of oversight —

The DEPUTY CHAIR: And the period of time they have been underway on a number of occasions without being picked up.

Ms O'Neill: That is right.

The DEPUTY CHAIR: So there is a problem with the process.

Ms O'Neill: The point I am making is that there have not been a huge number, when you think about 140 000 employees and the size of procurement the government does—39 matters to us, and others have gone to DGs, possibly, and to —

Hon ALISON XAMON: Yes.

Ms O'Neill: I would not say that is an overwhelming number of cases to count, but the size, scope and reach of those and, as I said, the concern not only of the activity but how long they went for and the fact that they were not picked up is the concerning issue to me.

The DEPUTY CHAIR: The seniority of the perpetrators as well is very concerning. We just had another CCC report with regard to the trade commissioner in Japan, which we will get onto later, who has slipped under the radar.

Ms O'Neill: To get to Mr Hughes' question, which goes to the fact that senior people in positions of authority were able to act in that way—there is the opinion that the CCC commissioner found—and get away with that for a long period of time, that says something to me about the fact that you can have all the processes and best will in the world, but there are still going to be some individuals who misbehave. Then there is the question for me around the processes. We are undertaking a review. We have been requested by the head of the Department of the Premier and Cabinet to review their processes, as you would be aware from the latest CCC report. The oversight for that rested in DPC for a period. It has now moved to the Department of Jobs, Tourism, Science and Innovation. So the head of Premier and Cabinet has asked us to commission a review of the governance in DPC to answer the question, and my keen question: how did this go on for so long undetected? We are undertaking that review as an independent commission for DPC.

The DEPUTY CHAIR: When is this review likely to be complete?

Ms O'Neill: We are in discussions now. We have just finalised the terms of reference. I am not sure if the committee would be interested to receive a copy of those. They were just completed yesterday.

The DEPUTY CHAIR: Yes.

Ms O'Neill: We have a copy here for you. We are just in discussions because we will need some specialist assistance for this review in terms of —

The DEPUTY CHAIR: Are these public or otherwise?

Ms O'Neill: They have not been made public but I am comfortable for you to make them public.

The DEPUTY CHAIR: Okay, thank you.

Ms O'Neill: They were only just signed off late yesterday. We are going to be getting some external assistance with this because we need a bit more forensic expertise in terms of audits. We are in discussions now to do that. I have not finalised the time line but I imagine, at the absolute outset, six weeks.

The DEPUTY CHAIR: If we could just go back a bit, you are getting external help with regard to this review. Do you have anybody in mind?

Ms O'Neill: We are in procurement at the moment so it is best that I do not mention that.

The DEPUTY CHAIR: Sure.

Ms O'Neill: I am imagining it will take six weeks or eight weeks perhaps at the absolute longest. That is what we are looking at. The function has moved, of course, so this is to make sure that we give advice to the Department of the Premier and Cabinet about their governance and how they go about this sort of work inside their agency. We will also review an audit that has been done by JTSI—it has already been announced—on any learnings that can inform how they develop their processes going forward. There are three key references here.

The DEPUTY CHAIR: The CCC report with regard to Mr Peacock's conduct as the trade commissioner in Japan falls under the remit of minor misconduct. Is that correct or not?

Ms O'Neill: Serious misconduct.

Hon ALISON XAMON: It was deliberate fraud.

Ms O'Neill: Commissioner McKechnie formed an opinion in his report of serious misconduct.

The DEPUTY CHAIR: So this investigation, or this review, is actually looking at the processes within the —

Ms O'Neill: Department of the Premier and Cabinet: how could it have gone on undetected, what systems did they have in place and what governance did they have in place?

Hon ALISON XAMON: This is the \$500 000 question, because it is hard to fathom that this was able to happen for so long, and presumably through audits of what was happening with the money: can you please give any thoughts about how you think this was able to occur the way it did? Clearly, Mr Peacock himself was engaging in serious misconduct. I am quite happy to make that assertion based on the evidence that has been presented by the CCC, and so there is an intent there. But the fact that it was not picked up for so long, is that just incompetence on behalf of the DPC or how did this manage to just fall through the cracks?

[11.00 am]

Ms O'Neill: That is what we will look at. I am glad that the head of the Department of the Premier and Cabinet sought our advice. We could have equally under our own powers decided to review, so I am glad there is some pro-activity there. Putting aside the obvious deceit of Mr Peacock and the impact that might have had on people doing their job around him and back here in Perth—if I can just put that to one side for the moment—I found myself asking the question: did people not know what was expected of them? Were their policies inadequate? Were their procedures inadequate? Was it just sloppy? Was it—as you have talked about—just wilful intent not to do their job or a culture of “this is not important”? I do not know, but I guess it is going to be one or a combination of those things. That is what we hope to ascertain.

The DEPUTY CHAIR: The review will be made public?

Ms O'Neill: I have spoken to the director general of DPC and he said he would be comfortable for this report when it is finalised to be made public.

Hon ALISON XAMON: What options are available to the Public Sector Commission if ultimately it finds that there has not been minor misconduct—in other words, deliberate wrongdoing—but that we are just talking about people who have been really bad at their jobs?

Ms O'Neill: If I can go back to this diagram, which is probably the least daunting of the two, on the left-hand side of what we commonly now refer to as the “bonbon”, where it says “not misconduct defined”—if we decide during the course of that review, and there is a line in the review that says if there is any evidence of impropriety that will be dealt with appropriately, it is possible that we find things that are not considered in the definition of the legislation to be minor misconduct or serious misconduct. Then that would be, and this is what I was saying before, where the directors general have responsibility. We most likely would refer that back to the directors general. And on the left here it is most likely to fall into—it could be performance management; the person is not performing well if it is an individual; it could be considered general low-level discipline, because of course there is misconduct that is neither serious nor minor, but it is “other”.

Mr M. HUGHES: Can I just come out and say, because it has been such a long time—we might come back to that—and given that unless the public service is so solidified with respect to responsibilities that personnel never change, so would that not suggest a systemic problem?

Ms O'Neill: That is right. It may well be that the individuals—we know there has been a change of government as well, and we know that there is general mobility; the people could be the same and they could be people who are different. The broader issue then, of culture, which is what you raised earlier, certainly will be of interest to me. I have organised with Commissioner McKechnie to run a forum with senior people in agencies specifically on the culture issue. I think there needs to be a lot more conversation, reflection and activity around developing cultures of integrity. You are right; there could be individuals in scope, but with the passage of time, that is perhaps less likely. Certainly it could be their systems, their procedures, the expectations that are laid out for staff and the way in which staff are performance managed. There might have been an individual here that was meant to cross-check data or something and they have not —

Hon ALISON XAMON: For 14 years!

Ms O'Neill: So, in terms of performance, who was monitoring their performance? They are questions around those sorts of systems as well.

Hon ALISON XAMON: Clearly someone was doing their job eventually because it got picked up, but it just begs the question: how it was able to continue this long? It also begs the question of how much is this happening elsewhere? I suppose we will wait and see.

Ms O'Neill: That is why I am keen and I will speak to the Premier about my suggestion around a sector-wide integrity strategy, which has inside it—perhaps something that does not look quite like that—a particular focus on corruption prevention and, of course, procurement would be key to that.

Hon ALISON XAMON: Can we talk a little bit about the independent review of the north metro health service contractors? In relation to the review of the NMHS contractors, which you conducted last year and the SSO and the Department of Finance, was anything examined further by the Public Sector Commission as potential minor misconduct following the independent review of the contractors?

Ms O'Neill: There was the review of the contract and then there is the bigger review that is coming to completion shortly. If you would like to talk a little more about that, then I would do that in confidence with the —

The DEPUTY CHAIR: We will have a closed session.

Hon ALISON XAMON: We will be going into closed session, so if you want to flag that and we can come back to that. If there is anything further that you can give us now?

Ms O'Neill: Are we talking about the review of the —

The DEPUTY CHAIR: By KPMG. We will leave that to the closed session.

Ms O'Neill: So the broader KPMG review will be in closed session. I did not know which part you were referring to but if you would like to leave that —

The DEPUTY CHAIR: We will get into that later.

[The committee took evidence in closed session]
