

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, 3 APRIL 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 10.15 am**Mr ROSS EMERSON****Private Citizen, examined:**

The DEPUTY CHAIR: Good morning, Mr Emerson. Thank you for attending this hearing 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—Hon Alison Xamon and Mr Matthew Hughes. 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 of today's hearings.

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

Mr Emerson: No, I do not.

The DEPUTY CHAIR: Thank you once again for attending. You came to the notice of the committee following some of the statements you made about the Department of Health in a newspaper article some time ago. For the sake of *Hansard*, could you give a short résumé of your life as an inspector and how you ended up being employed by the department?

Mr Emerson: In 2007, I was employed by the Nursing and Midwifery Board of Western Australia as an investigator, and then I moved to the Department of Health at the end of 2008. I remained with the health department from 2008 until my retirement in 2017, I think—sorry, years get away a little bit—which included a two-year stint at the WA Country Health Service. I also had a three-month secondment at the Department of Corrective Services as an investigator. All of those times were as an investigator.

The DEPUTY CHAIR: You made some fairly strong statements in regard to the procurement process and your dissatisfaction of how that process is undertaken within the relevant department, the Department of Health.

Mr Emerson: Yes, I did.

The DEPUTY CHAIR: They were public statements in the press. Would you like to expand on why you made those statements and what you believe at this stage would rectify some of the breaches of procurement, while you were there as an inspector, that could be rectified?

Mr Emerson: We were tasked with investigating some concerns in relation to procurement in 2013 or 2014—I can find the dates if you need the exact dates. We looked at three contracts that were done, and only three contracts. Our investigation team was told that we could not have a look at the actual contracts themselves, so we were investigating the contracts and not being shown the contracts, which one might find to be a bit bizarre. As it turned out, they had not followed many of the policies. We interviewed a number of the senior people involved and some of them did not even know that the policies were in existence, let alone being able to follow them. After the evaluation documents were written—after the tenders had gone out and the evaluation came in and the successful tenderer got the job—depending on the amount of money and who was able to sign off on it, in those cases they went to the director general, who at that time was Mr Snowball. On the front of it, he had to sign it to say that all the policies had been followed. Now, clearly all the policies had not been followed, but he had signed. At that stage Mr Snowball had retired. Am I allowed to mention some names?

[10.20 am]

The DEPUTY CHAIR: Certainly, yes.

Hon ALISON XAMON: Yes, it is your evidence.

Mr Emerson: We were then directed to come up with some allegations against senior people that they had misled—I will not mention names in that—the director general. I said that I cannot —

The DEPUTY CHAIR: Can you just stop there? Can you just go back a bit and repeat what you just said? You were directed to come up with allegations —

Mr Emerson: Yes.

The DEPUTY CHAIR: — against senior people who had supposedly misled the director general?

Mr Emerson: Yes.

The DEPUTY CHAIR: Why?

Mr Emerson: Because the evidence was that the policies had not been followed and the director general had signed off to say that the policies had been followed.

The DEPUTY CHAIR: So the evidence had come from your investigation team?

Mr Emerson: Yes.

The DEPUTY CHAIR: To the director general at the time?

Mr Emerson: Yes.

The DEPUTY CHAIR: And the director general realised that there was something wrong or that this was —

Mr Emerson: No, no; that is not what happened. He just signed them, and I do not know whether he assumed that the policies had been followed or whether that is what he had been told, but I said that I could not write allegations against those people that the director general had been misled without interviewing the director general to see if in fact he had been misled. I was told that I could not interview the former director general.

Hon ALISON XAMON: I want to be clear.

Mr Emerson: It will not be clear!

Hon ALISON XAMON: I am mindful that you have already indicated to this committee that you wish to remain circumspect about the evidence you are giving to us now. Having said that, I will ask you the direct question and you can choose to answer as you wish: did that request to give the impression that the director general had been misled come from the director general?

Mr Emerson: No.

Hon ALISON XAMON: So it had come from other senior people within the health department, do you think in order to provide cover for the then director general?

Mr Emerson: I do not know. I cannot answer that.

Mr M. HUGHES: Can I just be clear in my mind: when you say “directed to find allegations”, do you mean evidence to suggest that the director general had been misled on the advice of junior officers that policies had been complied with?

Mr Emerson: Perhaps I did not explain myself —

Mr M. HUGHES: No, I do not think you did because you suggested that you were asked to provide —

Mr Emerson: If I can just jump back one: we had interviewed a number of people in relation to these three contracts. It was clear that the policies had not been followed, but on the front page of the evaluation documents that had been signed off in two cases by the then director general was that the policies had been followed.

Mr M. HUGHES: A declaration?

Mr Emerson: Yes; that is right. When we were told to formulate allegations against a number of people that they had misled the then director general, obviously I wanted to interview the director general to see whether in fact he had been misled, because the most important part of an allegation that they had misled the director general was in fact that the director general was misled. If he was not misled and knew about it, the whole allegation breaks down.

Hon ALISON XAMON: I suppose that what is piquing our curiosity is: who gave you that direction?

The DEPUTY CHAIR: And why.

Mr Emerson: I did not receive it and our team did not receive it from the then acting director general, as far as I am aware. We were directed by our management that that was the case.

The DEPUTY CHAIR: Why was this direction given?

Mr Emerson: I do not know. I cannot answer that. I would love to, but cannot—because I do not know, not because I am refusing to answer. I do not know why it came out.

The DEPUTY CHAIR: I understand that. What action did you or your investigation team take in regard to the direction?

Mr Emerson: We formulated allegations as directed.

The DEPUTY CHAIR: Really? And what was the outcome of those allegations?

Mr Emerson: A number of people eventually got called in to meet with the director general one-on-one and received a slap on the wrist.

Hon ALISON XAMON: You are suggesting that a number of those people may not have even committed any wrongdoing. But you had been instructed to —

Mr Emerson: No, they had all committed some wrongdoing because they had not followed policies and procedures.

The DEPUTY CHAIR: For procurement.

Mr M. HUGHES: Could I just say—correct me if my comments are wrong—that when you use the term “were directed to establish allegations that”, there is an inference there that in fact you were asked to do something that was improper. Just to go back: were you simply being asked, on the basis of the information available to you, to investigate and discover whether people making reports to the director general about compliance with policy had in fact misled, if there was evidence to suggest that the director general had been misled on those matters?

Mr Emerson: We were asked to formulate allegations where the evidence that we had obtained did not fit in with that. Does that make sense?

Mr M. HUGHES: Yes, so actually to construct allegations?

Mr Emerson: Yes.

Mr M. HUGHES: Okay.

The DEPUTY CHAIR: What would you call that—a fit-up?

Mr Emerson: No, I would call it incompetence.

The DEPUTY CHAIR: Okay.

Mr Emerson: It was not a fit-up otherwise more severe action would have been taken against those people concerned. That is my personal view.

The DEPUTY CHAIR: Would you be aware whether those same people are in the department today?

Mr Emerson: I do not know. I have been gone for two years and that was not part of my area as such anyway, the procurement side of it.

The DEPUTY CHAIR: When you retired, and you talked about an investigation team, how many people were on that team? To the best of your knowledge, are they still operating as a team?

Mr Emerson: No, it has changed somewhat. When I first started there in 2008 there were about seven investigators and I think all of them were ex-police, and then things changed and they brought in people who were not police. I am not for one moment saying that police are the only people who can do investigations, but it is fair to say that if you have a couple of people with 20 years' experience in the CIB, they probably have a fair chance of knowing how to investigate. When they brought in somebody, my issue was that management did not understand investigations, evidence and all those types of things. They were employing people for their experience and then not taking any notice of it.

Hon ALISON XAMON: I would like to get some clarity around the scope of the investigatory function. As I understand it, clearly it is not limited to just procurement matters; it is all matters to do with —

Mr Emerson: Misconduct.

Hon ALISON XAMON: —misconduct. One of the things I wanted to know was whether it also goes into potentially ethical or misconduct matters between patients and clinicians as well?

Mr Emerson: It can do, yes.

Hon ALISON XAMON: It can do. So it is the full scope of all actions undertaken by the Department of Health from the bureaucracy through to the delivery of services?

Mr Emerson: Yes, misconduct and disciplinary action, and sometimes in criminal matters as well.

Hon ALISON XAMON: So everything from corruption in procurement matters through to sexual harassment claims at a patient level, and everything in-between?

Mr Emerson: Yes.

Hon ALISON XAMON: Thank you. You are saying that for the entire health department when you were there, there were seven people to undertake all of those investigatory functions?

Mr Emerson: Yes, there were seven people at the Department of Health.

Hon ALISON XAMON: Do you mean in Royal Street, so the central Department of Health?

Mr Emerson: Yes, bearing in mind that in those days you had the area health services as well, which came in under the Department of Health.

Hon ALISON XAMON: And who have their own investigators as well?

Mr Emerson: No. Under the CCC act any reports of serious misconduct had to be reported to the CCC and the director general had the legislative requirement to report to the CCC. All of those matters would come into our area, which was called the corporate governance directorate. We would take on the matters that we had the capacity to take on—mainly the more serious ones—and the ones that we did not have the capacity or the resources to take on because they were the more minor ones would be farmed back to the areas and they would undertake their own

investigations. Sometimes they would do those investigations themselves by one of the senior people there, HR or whoever, or they would farm it out to a private investigator.

[10.30 am]

Hon ALISON XAMON: Is it your opinion that that level of FTE available to do that scope of investigation was adequate or is it your opinion that perhaps there is far more misconduct and, indeed, corruption occurring which is just not getting picked up because of the lack of FTE?

Mr Emerson: Of course. In any organisation in which there is over 30 000 people you are going to have your elements of misconduct. As I wrote in one of my reports, whereas a nurse might be an excellent clinician, he or she does not necessarily have the skills and experience to be able to conduct an adequate investigation. That is the crux of the matter. Sometimes you had people investigate their own when they were the direct supervisor, which meant that they were also performance managing the person. Sometimes they were also a witness to the event, and they investigated it.

Hon ALISON XAMON: What sorts of trends of misconduct did you see as being the most prevalent during your time there?

Mr Emerson: We had quite a lot of incidents of drugs and medications.

Hon ALISON XAMON: Misuse of schedule 8 drugs—those sorts of things?

Mr Emerson: Yes, at that stage all medication discrepancies had to be reported to the CCC. As an example, back in 2008, Sir Charles Gairdner Hospital had a whole heap of drugs go missing. In concert with the chief pharmacist we organised for an audit to be done just on three drugs—Diazepam, Temazepam and Panadeine Forte—over the whole of the hospital in just one week: these are not schedule 8, they are schedule 4 restricted drugs. After that one week, about 3 500 drugs were unaccounted for. It was amazing. As a result of that, they brought in a drug register for schedule 4R drugs, similar to the schedule 8 drugs. Then again, still not a lot happened.

Hon ALISON XAMON: And that was at just one hospital?

Mr Emerson: No, it was across the board.

Hon ALISON XAMON: It was across the board but it was introduced after it was picked up at one hospital?

Mr Emerson: Yes. When I went to the WA Country Health Service, we set up a unit there because country health was not satisfied with what corporate governance was doing as far as the investigations were going. They did not think that they were getting the service they needed or required. So they set up their own unit, and I happened to be one of those who went over to set up the unit. We were doing misconduct investigations right throughout the regions. If we had any spare time, I would travel around to all the hospitals and nursing posts and do drug audits and then teach the nurses how to fill in a drug register properly, because apparently they do not teach you that at university. Following the regulations and legislation, I was telling them how to fill in the drug registers. I do not have tickets on myself, but just as a result of going around to all of the hospitals and keeping all of the nurses aware that somebody was looking over their shoulder, the incidents of discrepancies dropped down by about 80 per cent. After two years, when I left and nobody was doing them anymore, they shot back up again. When I went back to corporate governance after two years at WACHS, I tried to introduce that again and got no joy. I was not allowed to do it.

Hon ALISON XAMON: Why were you not allowed to do it?

Mr Emerson: I do not think they wanted somebody running off around the hospitals checking up on the drugs. I was going to get an authorisation from the chief pharmacist to become an authorised

officer, which meant that I could handle the schedule 8 drugs. The chief pharmacist was happy to give it to me but wanted me to report to the pharmaceutical branch because they did not trust the people at corporate governance. Corporate governance was adamant that I still had to report through them and not through the pharmaceutical branch.

Hon ALISON XAMON: Is that because they did not want to have what you were going to discover uncovered? What would be the rationale behind that?

Mr Emerson: I do not know the answer to that. You would have to ask them what their idea was. I think it was just that they thought that I was trying to run the show. I was not trying to run the show; I was just trying to sort things out.

The DEPUTY CHAIR: So there was no concern in regard to these drugs that were walking out of the hospital?

Mr Emerson: No real concern.

The DEPUTY CHAIR: No real concern, even though prior in the WA country health system you curtailed that by 80 per cent through a proper process?

Mr Emerson: Yes.

The DEPUTY CHAIR: What would the value of these drugs be, regardless of the fact that they are now out in the public arena, illegally?

Mr Emerson: As I understand it, Oxycodone tablets sell for about \$80 on the street, not that I have any direct experience with that.

The DEPUTY CHAIR: A single one?

Mr Emerson: Yes.

The DEPUTY CHAIR: And you talked about how many were missing when you did an investigation?

Hon ALISON XAMON: That was the schedule 4 drugs.

Mr Emerson: Yes, not Oxycodone, because that is a schedule 8 drug. But of the schedule 4, Temazepam is a sleeping tablet, Panadeine Forte is a painkiller, and Diazepam is —

Hon ALISON XAMON: An anti-anxiety drug.

The DEPUTY CHAIR: Regardless of that, these drugs would be worth many thousands of dollars in the open market?

Mr Emerson: On the black market?

The DEPUTY CHAIR: Yes.

Mr Emerson: Yes, they would be worth money.

Hon ALISON XAMON: Definitely.

The DEPUTY CHAIR: You have been retired for two years; is that correct?

Mr Emerson: Yes.

The DEPUTY CHAIR: Do you still believe that this practice would be ongoing in the public health system today? Are you aware of any checks and balances that have been put in to stop this?

Mr Emerson: No. I am assuming that it is still going on. I have read the CCC report into drugs and the incident in which they charged a pharmacist from Charlies and Fiona Stanley.

Hon ALISON XAMON: Although that was a few years ago.

The DEPUTY CHAIR: It was some time ago.

Mr Emerson: The problem is that nobody checks up on the hospitals now. The pharmaceutical branch that came under the chief pharmacist in the report is made up of two investigators. They spend most of their time on private pharmacies. They expect the chief pharmacist from each of the hospitals to look after the hospitals, but you only have to walk in to any pharmacy in a hospital and realise that there is not enough hours in the day for them to do their job properly, so they cannot do any extra work. That is why I said that if somebody just goes down there, and from the experience I had at WACHS, just by somebody coming in and seeing that I have audited the drug register, they think that somebody is watching them. Prevention is better than cure. There is not a lot of cure going on there. There are lots of incidents in which clinicians have been known to be taking drugs—self-medicating, if I can put it that way—and no action is taken.

The DEPUTY CHAIR: In your press statement you said that there is even dysfunction in the corporate governance directorate.

Mr Emerson: That was not my press statement. That might have been in the paper, but it is not what I actually said. It is actually what I believe.

The DEPUTY CHAIR: Would you expand on what dysfunction is taking place in the corporate governance directorate?

Mr Emerson: The two senior people were relieved of their positions at one stage. The director was dropped down to assistant director and stayed there. The manager of the investigation unit was moved to Charlie Gardiners for six months and they brought in a new director from the Ombudsman's office for six months, and then they brought them back.

[10.40 am]

The DEPUTY CHAIR: Why were they moved?

Mr Emerson: Misconduct.

The DEPUTY CHAIR: Misconduct? Okay. Then they were reintroduced to their previous positions after a period of time?

Mr Emerson: Correct.

The DEPUTY CHAIR: Do you recall what year that was?

Mr Emerson: In 2015? I am a bit rubbery on times without checking my notes.

The DEPUTY CHAIR: Please feel free to check your notes.

Mr Emerson: I have diaries here.

The DEPUTY CHAIR: Perhaps if it is okay with you, you could table those diaries, if that is possible, or you could pull out the particular pages—or you could send it to us?

Mr Emerson: A lot of the diaries would have confidential stuff in it.

The DEPUTY CHAIR: Okay; we will let you send it to us. You can redact whatever you like.

Mr Emerson: They are like the old police diaries that we used to keep. For example, here I am on duty at 6.45 am at corporate governance—office duties and inquiries and attending team meeting, rah, rah, rah; and then out to see so-and-so, blah, blah, blah.

The DEPUTY CHAIR: Sure. You will get a copy of the uncorrected *Hansard* so you can look up this particular section if you want to send us something at a later date.

Hon ALISON XAMON: Mr Emerson, you are aware that this committee is currently conducting an inquiry into corruption risks around procurement within the public sector?

Mr Emerson: Yes.

Hon ALISON XAMON: I will ask some questions about that. During the time that you were an investigator with the Department of Health, did you investigate any procurement matters?

Mr Emerson: The ones I have spoken about.

Hon ALISON XAMON: Just those three contracts?

Mr Emerson: Those three.

Hon ALISON XAMON: Noting that you were not allowed to see the contracts, were you at least given some indication of the value of those three contracts?

Mr Emerson: We were. There were three contracts on—I do not remember the exact figures or what they were, but I think one was \$5 million up to, I think, one for \$20 million.

Hon ALISON XAMON: To the best of your knowledge, were they selected just because they were considered to be indicative of the type of contract, or were there specific considerations?

Mr Emerson: It was selective because they were considered to be dodgy.

Hon ALISON XAMON: Right, so there were specific concerns.

Mr Emerson: Our audit section, which is part of the corporate governance directorate, had identified some contracts over a period of time and nothing had changed. They sent out recommendations and of course like most recommendations it was, “Yes, we’ll do those. We’ll adopt the recommendations”, and nothing changes. It is a little like one of the comments from the investigators for that drug matter that all the policies are in place and they are you beaut policies, but if they are not followed, they are not worth much.

Hon ALISON XAMON: Have these particular contracts come from any particular area health service? Were they Royal Street contracts? From where had they been generated?

Mr Emerson: They came from Osborne Park, out there.

Hon ALISON XAMON: So north metro?

Mr Emerson: No, no—well, yes. One was a WACHS contract, and that was one of the ones where they were talking about the patient billing system. The tenders went out. The contract was awarded thinking that WACHS had one database for all its patients. When they got into it, it worked out that WACHS actually has 68 different databases. Of course, that throws the contract way out. Instead of terminating the contract, or whatever the proper term would be, and reissuing tender documents, they just kept giving more money out to the winner, so it went from \$5 million or whatever it was to \$12 million.

Hon ALISON XAMON: So that was an inappropriate variation of contract?

Mr Emerson: Yes, because on a lot of those contracts, as we found out, there are different expectations from different sections. Your clinicians want something, your bean counters want something else, the parliamentarians want something else and the IT people want something, and they do not talk to each other.

Hon ALISON XAMON: But that is incompetence rather than corruption.

Mr M. HUGHES: A system failure.

Mr Emerson: Yes, it is, as long as the contract is still going out to the right person. We do not want to talk about north metro.

The DEPUTY CHAIR: What you are saying here is that in this particular contract you are talking about, the initial tender was not comprehensive enough.

Mr Emerson: Correct. The specifications are not accurate—that is what it comes down to—because however many silos you have do not talk to each other.

The DEPUTY CHAIR: We have already found out that variations in regard to procurement contracts are a way to make money.

Hon ALISON XAMON: A high-risk factor.

Mr Emerson: That is right.

The DEPUTY CHAIR: It is a high-risk factor, as the member said, yes.

Hon ALISON XAMON: What role have you found that supplier complaints have had in the identification of misconduct or corruption risks?

Mr Emerson: Supplier?

Hon ALISON XAMON: Yes. One of the things that we have been particularly interested in is these issues come to the attention of people in the first place. We are interested in the role the Auditor General can potentially play. We are interested in the role that internal audit processes do or do not effectively pick these up. We are interested in the role that whistleblowers might play. We are also interested in the role that suppliers themselves might play in highlighting when there has been wrongdoing or even just not following the processes. That is where I am coming from. In your experience, what role have suppliers played in highlighting when there is a problem around procurement—they doing it at all?

Mr Emerson: I have no knowledge or experience of suppliers making any stuff like that. I do know that we had an informer who came in about north metro that the CCC has reported on. We spoke to him and, as a result of that, there were complaints about procurement, but also complaints about nepotism where this particular fellow was employing all his mates and giving jobs out to his mates. I was only given the job of investigating the nepotism side of stuff and the Office of the Chief Procurement Officer doing all the procurement stuff. We were told—it is confirmed in the CCC report—that the Office of the Chief Procurement Officer found some irregularities in the contracts but did not name anybody. I was just looking at the nepotism of one of the main people involved in that. I managed to get all his emails, but nothing was done on email. I said that I needed to get his electronic diaries and some other information and I was told, “Don’t worry about it. Write it off.”

Hon ALISON XAMON: Who told you that?

Mr Emerson: Management.

Hon ALISON XAMON: So you had picked up that there was a problem and they were just prepared to let it go?

Mr Emerson: No, I had not picked up any problems. That was the issue.

Hon ALISON XAMON: They did not want you to pursue it?

Mr Emerson: Yes, that would be a fair enough comment. I did not find anything at issue on his emails, but I had to go through the emails one by one, basically, just looking at the subject matters because there were thousands of that and we did not have an algorithm or whatever the fancy technical term is —

The DEPUTY CHAIR: But you were suspicious that corruption in some way or form was being conducted?

[10.50 am]

Mr Emerson: That is right. I had already been told that that bloke used to go out for lunch all the time and some other things that we had been told by the informant, so I wanted to see his electronic diary and car logs and those types of things.

The DEPUTY CHAIR: What part of the department are we talking about?

Mr Emerson: The North Metropolitan Health Service.

Mr M. HUGHES: When you say that they told you not to bother about this, I am interested in at what level of seniority above you that came from. You do not have to name the person.

Mr Emerson: The manager of our branch and the director.

Mr M. HUGHES: And the director?

Mr Emerson: Yes.

Hon ALISON XAMON: When would that have been?

Mr Emerson: I would have to check the date, but it would be around 2014.

The DEPUTY CHAIR: You can send us the date at a later stage as well with the other information.

Hon ALISON XAMON: But the 2014 is helpful. Had you ever spoken to the CCC about this particular matter?

Mr Emerson: No, but the CCC took over the investigation.

Hon ALISON XAMON: Yes, clearly it did.

Mr Emerson: I know that they sent a section 41, or whatever the section is, to say that they are going to take over.

Hon ALISON XAMON: It is section 42.

Mr Emerson: A section 42, yes, to say that it was going to take over, and that goes to the director general.

Hon ALISON XAMON: But they did not come to ask you what you had potentially found?

Mr Emerson: No, I have not been interviewed over it.

The DEPUTY CHAIR: What was the talk when the S42 arrived?

Mr Emerson: There was no talk.

The DEPUTY CHAIR: There was no talk?

Mr Emerson: That was it.

Hon ALISON XAMON: One of the things that came out of the report into north metro was pretty much a lot of what you have already said—that the processes were really good and that theoretically all the right things were in place, but that there was a culture there of complacency around following those guidelines, reports, protocols and policies.

Mr Emerson: I am not sure that there was a complacency about following them; I just do not think they were followed.

Hon ALISON XAMON: Can you please give to this committee some reflection on your observations around the culture at the time—what was going on there, why you think that blatant disregard was able to be perpetuated?

Mr Emerson: The culture at corporate governance?

Hon ALISON XAMON: Yes.

Mr Emerson: Definitely incompetence. I used to say that you have people there to investigate who have 20 years' experience in the CIB and you are being told what to do by somebody who cannot even spell "investigator", except if they have spellcheck. That is probably an amusing line, but it is not amusing at all.

The DEPUTY CHAIR: You are saying that your hands were tied?

Mr Emerson: Absolutely. You start off an investigation and then you are not allowed to complete it.

The DEPUTY CHAIR: How did you react to that?

Mr Emerson: I had my say, and got shot down. I did a job up in the country where the information was that one of the nurses was stealing morphine. I got sent up there. I was up there for a week. I cannot interview a nurse and say, "Do you remember on 16 September giving morphine to patient X?" without having all the documents ready—copies of the drug register, copies of patient notes, copies of the medication records so they can refresh their memory. I went up there and it looked like over a six-month period there were 100 cases where that nurse had stolen morphine and injected herself. There was evidence that she was coming out of the toilets after she had gone to the patient and rah, rah, rah. I came back down after a week up there and told the operations manager at the country hospital that I would be back the next week. I was not allowed to go back. I had to submit a report and I recommended that no allegations be put to the nurse until we were able to put them all. In the end they put one allegation to her.

Hon ALISON XAMON: To the best of your knowledge, what happened then?

Mr Emerson: I do not know. But this was a nurse who had a history of drug issues from overseas and interstate. I was told by my manager at the time when I went away—because I said that it would take a while; it looked like there might be 100 cases—to just pick out the four strongest ones and go with that. I said, "How will I know what the four strongest ones are until I look at them all?"

Mr M. HUGHES: What is your view about the training provided to health department staff regarding accountable and ethical decision-making?

Mr Emerson: They do an online e-course, or whatever they call it.

Hon ALISON XAMON: Can I interpret that as meaning "inadequate" in your view?

Mr Emerson: Ethical decision-making should not have to be taught; we should have it. That is integrity and doing the right thing, but, unfortunately, that is not the case. People do not understand and they take shortcuts. It starts off that, "We have always done this." There have been some occasions on which I have said, "You can't do this because the legislation says you cannot do it." They say, "We've always been doing it." I say, "Well, you can't do it." What happens is that because they have been doing it all along and they think it is right, legend becomes legislation. It is hard to change. My experience with working in various government agencies is that nobody wants to make the big decision in case they get it wrong.

The DEPUTY CHAIR: Mr Emerson, you were tasked to review health processes, by the former acting director general Bryant Stokes, and you assessed about 421 finalised misconduct matters between 2012 and 2014.

Mr Emerson: Yes.

The DEPUTY CHAIR: Would you talk to us about that review?

Mr Emerson: In that review, as you can see from the numbers on that redacted document, I actually considered that only seven per cent of those jobs had the allegations properly worded. Without an

allegation being properly worded, it is very hard for the investigation to be done properly, if I can say that. One example was, "You have falsified your timesheets." That was it. There were no dates, no anything.

Hon ALISON XAMON: That also just means that people are not afforded procedural fairness, because how are they supposed to respond to that?

Mr Emerson: That is right. When I first went to the health department, they talk about natural justice, which is fine, but the first thing was that we had to tell the respondent what the allegation was and let him know that we were going to commence an investigation.

Hon ALISON XAMON: So you are pre-warning someone who is potentially undertaking wrongdoing that they are about to be investigated?

Mr Emerson: Yes, you are, but you are also giving them an allegation before you have learnt what all the facts are, so the allegation is not the correct allegation.

Hon ALISON XAMON: Potentially, you are trying to formulate an investigation around a predetermined outcome.

Mr Emerson: That is right. If after you had written to him and you found out that the allegation had changed, you had to write to him again to tell him what the new allegation was, which is bizarre.

Hon ALISON XAMON: It is bizarre. It is bizarre for lots of reasons, not least of which you would hope that people would simply undertake investigations, find out whether there is an issue, determine what that issue is and then put that allegation to somebody, hopefully, with backup evidence so that they know what it is they are responding to. That would strike me as being procedurally fair.

Mr Emerson: Of course. Eventually, I got that taken out of the natural justice side of it, but it is still in the policy now. If you read the current policy, the first step is to write to him and tell him that we are going to conduct an investigation.

Hon ALISON XAMON: Can I say how weird that is, because that is actually not natural justice; that is just someone's strange interpretation of what they think it might be.

[11.00 am]

Mr Emerson: That is what I am saying: it is incompetence when people are making decisions on stuff that they do not understand. They would not ask me to go and do an operation.

The DEPUTY CHAIR: You are saying that this is still current practice?

Mr Emerson: Yes.

Hon ALISON XAMON: It has clearly been written by people who not only are not investigators but are not lawyers either, because that is not actually the way it operates.

Mr M. HUGHES: It seems to be an odd mixture of performance management.

Mr Emerson: It is. Contrary to what you have said, some of these policies have been written by lawyers because our health industrial relations section have written them and they have lawyers there. But a lot of the people there are also ex-union people as well, so they write the stuff. Because our managers do not understand the process properly, in my opinion, they take notice of what somebody with a law degree says, whereas some of the people with law degrees do not have practising certificates. I am critical of a lot of the things that went on, without saying that I am the best investigator who ever lived, if you understand what I mean. Some things just come out and hit you in the face so hard that you know they are wrong.

The DEPUTY CHAIR: But you were critical while you were employed by the department?

Mr Emerson: Absolutely, yes. As you can see by the reports I have put in.

Hon ALISON XAMON: Getting back to the review that you undertook, what do you think were the main lessons for WA Health that came out of this review, if you can articulate that?

Mr Emerson: That the investigation process was not worth the paper it was written on, basically.

The DEPUTY CHAIR: They were the recommendations that you put forward?

Mr Emerson: That was not the recommendation—I did not actually put it in as many words. My recommendation was to change the format. Once an allegation comes in, a decision-maker is appointed. As I said earlier, that decision-maker might just be the supervisor who does it. They have no experience in anything, so they are acting on behalf of what HR are telling them, but HR are also advising the respondent, so there is a conflict there somewhere along the lines, and that is what happens. On some of those investigations that were substantiated, the evidence did not fit; and some of the ones that were not substantiated, the evidence was clear that they should have been substantiated. Even after that, some of the sanctions that were imposed were contrary to what the relevant awards were. One particular person got three final warnings.

Hon ALISON XAMON: Three final warnings? That was lucky for them!

Mr Emerson: We have two processes. The ones that are employed under the Public Sector Management Act are bound by that act and the Public Sector Commissioner's instructions on how to do investigations. The ones that are not employed, which is a majority of the department, come under the health misconduct policy. We have two separate policies that are basically totally different.

Hon ALISON XAMON: What came about from your recommendations following the review?

Mr Emerson: I rewrote the policy to make them both the same.

Hon ALISON XAMON: Was that accepted?

Mr Emerson: It was accepted by the acting director general who thought it was a very good report, and he liked it, and then nothing happened.

Hon ALISON XAMON: Why do you think that was the case? Why do you think nothing came out of that?

Mr Emerson: I do not know—too hard? I do not know. Only the director general can sack people who are part of the Department of Health. In those days, the chief executives—I know things have changed a little now they have the boards and so on—were the only people who could sack somebody. Up to and not including sacking, the decision-maker, depending on their level, could do it. I suggested that we actually appoint someone—I called it a director of integrity, but it could have been X, Y or Z at whatever level—who had enough seniority to be able to deal with them all. I also put in that he or she had to have some experience in investigation, some experience in the law—not necessarily to be a lawyer but some experience in the law—understand evidence, know what facts are that fit the evidence and so on. And I said that if somebody was going to be sacked from the North Metropolitan Health Service, the chief executive of north metro would be disqualified because of the conflict as one of his employees, so it would be another chief executive who would do it. That was accepted by Professor Stokes; nothing happened. It would solve the problem almost overnight. Sure, you have to employ maybe one or two people to do the whole state. It is quite simple.

Hon ALISON XAMON: No wonder you were frustrated.

Mr Emerson: Yes, well it was. It got to the stage when I was making some of these suggestions orally and got pooh-poohed, so then I went to the press. I put it in. I was told to bypass our management and go directly to, firstly, Patsy Turner, who is the director of the director general's department—I think that is her title—and then to the assistant director general, Kylie Towie.

Hon ALISON XAMON: And you did?

Mr Emerson: Yes.

Hon ALISON XAMON: And what was the response?

Mr Emerson: Once again, everybody said what great reports they were, good ideas, and nothing happened.

The DEPUTY CHAIR: Why do you think nothing happened? The inference is that the culture will not let it happen and corruption of procurement is now so normal, until something happens such as in the North Metropolitan Health Service where it becomes almost impossible to ignore it and then something is done. Why do you think nothing happened in regard to your recommendations at the highest level of the health department?

Mr Emerson: I think it is mainly incompetence and not understanding —

The DEPUTY CHAIR: Those people should not be in those positions if they are incompetent, so I will not accept incompetence.

Mr Emerson: I will stick with incompetent.

The DEPUTY CHAIR: Okay!

Mr Emerson: Perhaps they should not be there.

The DEPUTY CHAIR: Or is it too hard to unravel?

Mr Emerson: If you get the right person in the job, it would not have been, because he or she would have that control and be able to basically direct further investigations to be carried out if he or she was not happy with the report that came in. You have somebody who understands the investigation process overseeing it. The standard of investigations would have to lift, because he or she would not be satisfied until the investigation was done properly. That might take a little bit of time to evolve and for that competence and standard to lift, but it would not take forever.

The DEPUTY CHAIR: An investigation team that you were the head of up until 2016 —

Mr Emerson: I was not the head of it.

The DEPUTY CHAIR: I thought you were—sorry.

Mr Emerson: No.

The DEPUTY CHAIR: It was my assumption; okay. You were just part of the team?

Mr Emerson: I was just a lowly investigator who could not even get promoted because I spoke too much.

The DEPUTY CHAIR: Regardless of that, as an investigator, does the investigation team have some autonomy in the Department of Health? Are they able to conduct investigations in their own right without interference from superior officials as such? Or are all investigations given direction from higher up on how they are to conduct those investigations?

Mr Emerson: As I indicated earlier, all the jobs used to come in to corporate governance. We would take what we could and farm out the rest. Things changed after we set up the unit at WACHS. North Metro, for example, thought that they could do it better themselves and they set up a unit as well,

but without experienced investigators running it. Then they stopped sending us the work. Even towards the end of my time they were not even reporting stuff to us that needed to be forwarded on to the CCC under section 28, I think.

[11.10 am]

The DEPUTY CHAIR: Why?

Mr Emerson: Because they had done an investigation and sent it in. I was asked to review it and was fairly critical of the investigation.

The DEPUTY CHAIR: Because it was not adequate?

Mr Emerson: They got it wrong. They had not substantiated some allegations against some triage nurses for a patient brought in by ambulance who was complaining that she had been run over by a car. To cut a long story short, they kept her waiting and she was in agony. The ED consultant, Dr Mountain, looked at her. The triage nurses did not believe that she had been run over. When Dave Mountain looked at her, she had tyre marks across her abdomen, which probably indicates that she had been run over. She spent a month in hospital. It is those sorts of things. We were critical of what they were doing. The nurses had filled in reports for a debrief. I asked for copies of those so I could do the review properly and was told that they were privileged. They were not privileged because privilege does not cover that, which I tried to explain, but I still did not get them.

Mr M. HUGHES: Are we talking about privileged medical reports?

Mr Emerson: No, no—a privileged explanation by the nurses as to what had actually happened, as part of a debrief, but they are not privileged.

Hon ALISON XAMON: You talked about the internal audit divisions. How effective do you think they are at picking up whether there are problems that are emerging in the first instance that then need to be subject to investigation?

Mr Emerson: I was not part of the internal audit process, because they are more into the numbers and that sort of stuff, which I am not very good at. The audit part of corporate governance was separate to the investigation side of it.

Hon ALISON XAMON: Of course they are. My interest is the degree to which the internal processes exist within the health department to potentially pick up whether there are irregularities that subsequently need to be investigated. My question to you was about your view as to the effectiveness of the internal audit processes.

Mr Emerson: Poor.

Hon ALISON XAMON: Okay; thank you. Do you feel that the level of oversight provided by the Auditor General of the health department as a whole is sufficient, and does it go far enough?

Mr Emerson: I cannot answer that because I do not know.

Hon ALISON XAMON: Do you think there is more of a role to be played by the Auditor General to be looking at what is happening within the Department of Health, not just around procurement functions but around other concerns more generally?

Mr Emerson: I cannot really comment on that because I do not know what the Auditor General does in relation to the health department.

The DEPUTY CHAIR: Mr Emerson, we will finalise the hearing now. Thank you for your evidence today before the committee. A transcript of this hearing will be forwarded to you for the 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. We certainly appreciate your attendance here today.

Mr Emerson: Thank you.

Hearing concluded at 11.15 am
