



Our Ref: 80980

14 March 2018

Ms Margaret Quirk MLA
Committee Chair
Joint Standing Committee on the Corruption and Crime Commission
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Dear Ms Quirk

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

I refer to your letter, dated 1 December 2017, inviting me to provide a submission to the Joint Standing Committee on the Corruption and Crime Commission (the Committee) inquiry into public sector procurement of goods and services and its vulnerability to corrupt practice (the Inquiry).

The procurement of goods and services comprise a sizeable share of the Government's annual expenditure (approximately \$14.7 billion in 2015-16), meaning that corrupt practice in procurement can have serious consequences and result in substantial costs. The Public Sector Commission's (the Commission) misconduct records reflect that matters alleging misconduct in procurement make up a small portion of the misconduct matters dealt with by the Commission (approximately 2%).

The recent Special Inquiry into Government Programs and Projects also discussed a number of matters around the procurement process of the public sector and some of the matters raised may be relevant in ensuring that the public sector procurement process is not prone to issues of misconduct.

With regard to the Inquiry's terms of reference and in light of my legislative obligations, the following comments focus on: the varied profile and capability of public sector employees engaging in procurement; current training opportunities available; corruption prevention practices in procurement from other jurisdictions; and the adequacy of whistle-blowing protections in the context of the Inquiry's scope.

In my view the four pillars of transparent, accountable and resilient public sector practice are Workforce Capability, Governance, Culture and Ethical decision making. Applying these to the Inquiry's terms of reference means identifying how each can be improved to better

manage practices prone to corruption and misconduct in public sector procurement and contract management.

Capability

Capability refers to the knowledge and skills required by public sector employees to perform their roles effectively. It also refers to an organisation's ability to develop employees, equipping them with the skills and knowledge to act with integrity. The profile of public sector employees engaged in the procurement of goods and services is wide ranging in frequency, scope and scale. Similarly, the capability of employees engaging in procurement as part of their role is varied.

The Special Inquiry into Government Programs and Projects observed that the availability of skills across the public sector in key areas of project management, contract management, procurement and financial management appear to have diminished. This decreases the capability of the workforce and makes the public sector more prone to corruption and misconduct around procurement and contract management.

The Commission has used investigations and reviews to address specific issues and to build capability and awareness. The procurement of sponsorship arrangements was a particular focus of the July 2014 investigation "Acquisition and use of hospitality resources by Healthway". The tabling of the report was supported by a number of 'lessons learned' information sessions. In addition, a follow up exercise was undertaken in 2015 to assess the implementation of related controls in other agencies. That work was reported on through a Review of ticket use for sponsored or financially supported events.

More recently, the Commission has focused on capacity building in the key areas of leadership and financial capability. Specifically, the Commission has taken a step into standardising the capabilities for finance officers and chief finance officers through respective capability and success profiles. The profiles, while not addressing procurement directly, include the skills and expertise to build systems to minimise risk, and promote integrity and ethical behaviour through leadership and effective management.

Currently, the Department of Finance (Finance) is responsible for leading a whole of government approach to procurement that aims to efficiently meet the business needs of agencies and manage risks. The Government Procurement Division of Finance has recently developed a Procurement competency matrix (PCM) for procurement professionals in the WA public sector. The design and development of the matrix involved significant support from, and consultation with the Commission and the co-branded document is due for release in early 2018. The PCM identifies and defines the competencies required to provide a highly capable procurement function and service by procurement professionals in the WA public sector. It is intended for staff who undertake procurement or contract management activities as a significant part of their role.

The Commission has also collaborated with Finance to develop a *Chief procurement officer success profile*, and accompanying guidelines for *Measuring success* using the existing Commission success profile model and design framework. The success profile describes and supports high level chief procurement officer success factors by outlining role expectations and providing examples of key accountabilities and experiences deemed critical to overall individual, organisation and whole of sector performance. The co-branded

document is due for release in early 2018.

In the latter half of 2017, the Commission assisted Finance to facilitate 'Better Buying' and 'Contract Management' workshops which were well attended by employees from a range of agencies. These training opportunities are not mandatory, but are available for employees involved in procuring goods and services on a frequent basis. Internally, regularly updated procurement guidelines, policies, forms and schedules are accessible to Commission employees through our intranet.

Looking to other jurisdictions there are practices and approaches that in addition to existing initiatives, may assist in safeguarding public sector procurement from misconduct and corrupt practice:

- Both the Independent Commission Against Corruption NSW (ICAC) and the Independent Broad-based Anti-corruption Commission (IBAC) have published best practice guidance on identifying employee and supplier risks throughout the procurement cycle, and suggest the minimum measures to mitigate identified risks and strengthen areas of vulnerability.
- Similar guidance is offered by the Tasmanian Integrity Commission and Queensland's Corruption and Crime Commission.
- Face-to-face training is provided by ICAC through workshops aimed at building capability in preventing corruption in procurement. Training is offered to all public officers and also forms part of ICAC's regional outreach program.

The Commission's 'Misconduct Prevention: introductory workshop for managers' has attracted a number of managers and decision makers in procurement roles. Key integrity risks are further explored in the 'Understanding the influences underpinning conflicts of interest' workshop. Training that provides guidance on identifying and mitigating risk in the areas of procurement and contract management would help reduce the vulnerability of the processes to misconduct. Providing employees with the appropriate tools and decision making frameworks enables them to identify potentially vulnerable areas, and to implement counter measures, prior to any misconduct arising. Finance also currently offers a workshop that aims at exploring risk management within the Procurement context.

The Service Priority Review's final report readily identified the increasing value of specialist commercial acumen in maximising value and protecting State interests, particularly in high value contracts for goods and services. In addition to building specialist commercial capability, integrating commercial process (e.g. ASIC and security searches, due diligence) into standard procurement practice, can help ensure that interactions with suppliers result in maximum value for the community.

Governance

Governance refers to the organisational rules, structure, policies and procedures that regulate and guide practice. Efficient and effective systems rely on regular review and assessment of governance frameworks by agencies, particularly as the sector becomes more responsive. Ensuring that Codes of Conduct are consistent with the public sector Code of Ethics and remain relevant to a public authority's business and priorities, is key to

encouraging employee best practice.

Senior leaders play an integral role in safeguarding the public interest through an efficient and effective governance system that demonstrates accountability and integrity. Importantly, collaboration between relevant public authority leaders should ensure that the governance systems in place enable the corporate executive or senior team to apply a risk based approach to procurement and contract management.

The Accountable and Ethical Decision Making (AEDM) training program is the Commission's overarching approach to inform the sector to identify and address governance matters. All public sector employees including Chief Executive Officers, Chief Employees, ministerial staff, and public sector bodies covered by the *Public Sector Management Act 1994* (including boards established under their own legislation) are required to undertake AEDM training in accordance with *Commissioner's Instruction No. 8 – Codes of Conduct and Integrity Training*.

The Commission is responsible for delivering AEDM training to Directors General, Chief Executive Officers and Chief Employees. The Commission also delivers training to ministerial officers at the request of the Director General, Department of the Premier and Cabinet. All public sector bodies and Board Chairs are required to provide or arrange AEDM training for their employees. The Commission maintains the curriculum, training materials and support resources for the program and updates content regularly to ensure that contemporary issues are addressed.

In recognition of the role that local government plays as a sphere of government and in serving the community, the Commission has also developed an AEDM program customised for local government, which is intended to support local governments in the development of an accountability program that assists employees to better understand expected standards of conduct and their obligations in serving the public interest. The AEDM program for local governments is comprised of a guide for developing a code of conduct and supporting AEDM workshop materials.

The Commission's 'Misconduct Prevention: introductory workshop for managers' also recommends that agencies develop corruption strategies as well as undertaking risk management assessment in order to minimise the likelihood of fraudulent and corrupt behaviour.

Visible in other jurisdictions and integrity agencies is guidance on the use of internal probity processes and procurement specific audits designed to look for potential evidence of corruption and misconduct. Such as, the Office of the Auditor General's role in relation to audit and performance reviews in local government. This has generated interest in the 'Misconduct Prevention: introductory workshop for managers' and AEDM. It is important that agencies and oversight bodies alike, adopt similar measures to ensure that unacceptable conduct at all stages of the procurement cycle does not go unnoticed.

Part of an effective governance framework are measures and processes in place to enable employees to raise allegations of corruption or misconduct without fear of reprisal. Provisions of the *Public Interest Disclosure Act 2003* and Part 9 of the *Corruption, Crime and Misconduct Act 2003* provide a range of whistle-blower protections for those who report.

Sanctions commensurate with criminal penalties are provided under relevant provisions and pose a significant deterrent against breach. Although there are serious consequences in breaching protective provisions, the adequacy of the available protections in the context of reporting allegations of corruption or misconduct in procurement remains untested in any real form.

Recently, the Commission was involved in a research project with Griffiths University, titled 'Whistling While They Work 2', to measure the relative strength of organisational processes for responding to staff wrongdoing concerns. It is hoped that this research will provide invaluable information around the effectiveness of whistleblowing practices within a full range of sectors in Australia and New Zealand, including public authorities. These projects and controls are promoted as an element of the Commission's Integrity Promotion function through forums such as those hosting Professor AJ Brown from Griffith's Centre for Governance and Public Policy in Bunbury and Perth in March 2018.

Culture

Workplace culture is the sum of the shared values and beliefs that guide how members of an organisation approach their professional duties and interactions. Rules and procedures may govern practice, but when it comes to individuals and individual decisions, culture will determine how things get done. Collaborative and inclusive cultures grounded in excellence and integrity are more conducive to transparency and naturally prevent situations prone to corruption, such as employees working in isolation.

A key recommendation of the Special Inquiry into Government Programs and Projects is that Directors General and Chief Executive Officers should be encouraged to give their Ministers 'frank and fearless advice'. A transparent and collaborative workplace is important to maintain an optimal workplace culture, with the public sector more prone to risks of misconduct and corruption when an open work environment is not present.

There is also a risk that poor workplace culture can cause mediocre behaviour to become the norm, and inappropriate processes and cutting corners to become acceptable. This risk to culture is particularly high during times of change, where employees and their roles may be subject to change or restructure.

The topics and concepts above are also addressed in the 'Misconduct Prevention: introductory workshop for managers' run by the Commission. Discussion and case studies include the application of relevant issues in procurement and contract management contexts. In the current year 132 public officers have participated in these workshops.

Decision making frameworks

Depending on the estimated cost of the good or service, public sector employees involved in procurement can have a large deal of autonomy in selecting and engaging suppliers. This requires employees individually to possess the capability required to make good decisions based on the rule of law and ethical judgements.

Codes of Conduct provide an opportunity for public authorities to articulate expected conduct for employees and to link those expected standards to both broader compliance

obligations and specific authority level policies. Codes of conduct typically cover use of resources, conflicts of interests and use of confidential information. They are therefore key elements in decision making frameworks with a high level of relevance to procurement decision making.

Typically, new Departments of State that were created through the 2017 Machinery of Government changes are still in the process of establishing new codes for the new entities and have not completed the harmonisation of relevant policies. This circumstance is considered to create a slightly heightened compliance and conduct risk and the Commission is communicating with Director's General on this issue.

The AEDM program applies ethical principles and local decision making frameworks to a range of scenarios that include procurement and contract management where this is an identified integrity risk for the public authority.

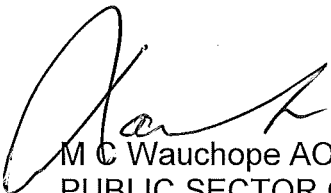
As I have expressed in my *State of the Sectors 2017* report, public trust is dependent on the perception that government decisions are being made transparently, responsively and with the public interest in mind. The adoption of appropriate decision making frameworks with appropriate mechanisms in place to ensure and record effective accountability and transparency are essential to maintaining this trust.

As a well-informed public becomes increasingly interested in not only how public funds are being spent, but why and how decisions are made. Accountable and transparent processes are central to the public sector delivering maximum value in their finance and procurement functions. Documented policies and procedures supported by good information management protocols are essential. In my view, such procedures and protocols must strike the right balance between facilitation and compliance dependent on the context, but should not be dismissed as unnecessary.

Going forward

Thank you for the opportunity to share my comments in relation to the Committee's Inquiry. Please contact me should you wish to discuss any of the above further.

Yours sincerely



M C Wauchope AO

PUBLIC SECTOR COMMISSIONER