

Inquiry into Corruption in Procurement

CPSU/CSA Submission





CPSU/CSA Submission to the Inquiry into Corruption in Procurement

The Community and Public Sector Union/Civil Service Association (CPSU/CSA) is a West Australian Union representing 630 occupations in over 130 public sector agencies.

We make work life better for over 40,000 people in WA.

We represent public sector staff who hold an enduring interest in protecting the public sector from misconduct and corruption, and wish to actively pursue opportunities to prevent wrongdoing from occurring in the first instance.

- We believe that robust, dynamic and quality public services are the foundation of a fair and just society.
- We are vehemently opposed to the privatisation of public goods and services, which increases the risk of exploitation of taxpayer funds.
- In formulating this report, we have actively consulted with members working within procurement; corruption investigation and prevention; and reporting wrongdoing.

CPSU/CSA's Recommendations

- Amend the *Public Interest Disclosure Act 2003* and the *Corruption, Crime and Misconduct Act 2003* to restore preventative education functions to the Corruption and Crime Commission.
- Explore the possibility of applying the State Supply Commission's high standards and rules to Government Trading Enterprises.
- Develop more robust guidelines around Government Trading Enterprise and Public Service staff self-disclosures of previous or current employment at any private enterprise that may seek to profit from government procurement or consultancy contracts.
- The *Auditor General Act 2006* should be amended to allow the Auditor General to undertake extensive performance examinations of private companies that win tenders for works on public projects. The results of these examinations can then be reported to parliament to assess efficiency, effectiveness and ethical high standards in government contracting.
- There must be greater efforts to further develop mandatory self-disclosure of employment or financial interests which could be perceived to affect the decision making capacity of public servants.
- Any reform of preventative frameworks in Western Australia should include units in Department of Finance, Corruption and Crime Commission or potentially the Public Sector Commission as a supervisory level of sign-off. This approach should also aim to ensure uniformity in preventative frameworks and agency risk management plans.
- Consider implementation of the suggested actions of the Public Sector Commission's "Managing Secondary Employment Risks in Public Authorities" 2017 Evaluation Report.
- Explore and trial greater safeguards and oversight checks for multiple low value contracts, for example maintenance contracts.
- Further safeguard against the growing misconduct risk of secondary employment by ensuring permanent, full-time employment is the preferred employment model of the West Australian public service over precarious casual, short-term labour-hire arrangements.
- Ensure the public sector continues to uphold best practice via AS 4811-2006 Australian Standard Employment Screening.
- Establish a sector-wide Code of Conduct and sector-wide HR and IR policies.
- Give consideration to a central Human Resources and Industrial Relations unit within the Public Sector Commission, to provide advice, oversight and specialist HR/IR/Investigations services to departments as required (in-house, not external such as the HR Investigation Service Common Use Arrangement).
- Enact Freedom of Information law reform in relation to commercial in confidence restrictions to ensure greater transparency.

- Introduce public access to agency exemption registers, including public access via the responsible agency's website.

Introduction

The CPSU/CSA welcomes the opportunity to comment on the robustness of the laws and frameworks surrounding corruption and misconduct prevention and investigation in WA. This submission follows the widely publicised Special Inquiry into Government Programs and Projects (the Langoulant Report) which was tasked with reporting on projects affected by serious misconduct. The Langoulant Report paints a picture of a public service that is grappling with poor transparency, auditing and accountability frameworks when it comes to major projects. This inquiry is therefore very timely.

In addition to the poor preventative and planning frameworks evidenced in the Langoulant Report, CPSU/CSA members feel that high integrity is not currently charting as well as it could be from a public sector workforce perspective.

The Public Sector Commission's 2017 Statistical Bulletin revealed the following:

- Seventy three per cent of Western Australian public servants agreed that senior leaders in their organisation lead by example in ethical behaviour
- Sixty seven per cent of Western Australian public servants feel comfortable to report unethical behaviour
- Forty seven per cent of Western Australian public servants agree their organisation deals effectively with unethical behaviour
- Ten per cent of Western Australian public servants say they have experienced bullying in the last twelve months
- Twenty three per cent of public servants surveyed reported all instances of unethical behaviour in their workplace when witnessed.
- Thirty nine per cent of Western Australian public servants surveyed never reported unethical behaviour
- Seven per cent of Western Australian public servants surveyed did not know how to report unethical behaviour (2017 Statistical Bulletin p65)

Term of Reference One: The adequacy and nature of oversight mechanisms, policies and guidelines for procurement within the WA public sector to prevent corruption and serious misconduct.

- Risk factors have been identified as: lack of processes; inadequate record keeping; lack of supervision and training; failure to declare gifts and conflicts of interest; and lack of adequate audits and assurance.

Department of Finance staff advised that perceived conflicts of interest are managed via a self-reporting system of personal declaration. There is currently no audit process for conflicts of interest as it is viewed as an employee's individual responsibility. There are already published guides to expected conduct and compliance with regards to conflicts of interest. Self-reporting was fundamental to the current preventative frameworks.

Department of Finance members noted the increased risk surrounding maintenance contracts in the current procurement and tendering environment. As of early 2018, Western Australia has robust rules around high value, complex tenders that could have the greatest harm if mismanagement, misconduct or corruption were to occur.



The Department of Finance Goods and Service Procurement Practice Guide lists the following:

| Threshold | Procedure |
|------------------------------------|--|
| Purchases up to \$50,000 | Direct sourcing, verbal quotes or written quotes. |
| Purchases \$50,000 up to \$250,000 | Written quotes. Any contract variation of \$50,000 or more must be listed on TendersWA. |
| Purchases \$250,000 and above | Open Tender, an evaluation panel of at least three voting members must be formed. Any contract variation of \$250,000 or above then partially exempt agencies must submit a contract variation memo to the Department of Finance for comment. Any contract variation of \$5 million or more must have partially exempt agencies submit a contract variation memo to the State Tender Review Committee via the Department of Finance. |

Purchases of \$5 million or more must be submitted to the State Tender Review Committee for endorsement to ensure the process used to select the supplier is robust.

In addition, since 2008 any: Infrastructure projects valued at \$100 million and above; ICT projects valued at \$10 million (inclusive of GST) and above; and any other projects identified by Treasury; required the completion of a Gateway Review. The rules are not as robust when dealing with the management of multiple, low value maintenance contracts. Although individually these contracts may be small in comparison, they do add up to millions of taxpayer funds over time.

Higher value procurement processes generally have greater oversight mechanisms, policies and guidelines. Lower value procurement processes tend to get missed in terms of oversight and these lower value procurement processes often add up at the end of the day. It largely depends on whether there is an appetite in the WA public sector for clamping down on corruption and misconduct for lower value procurement. People often see these oversight mechanisms, policies and guidelines as 'red tape' or a barrier in their procurement processes (especially so for simple, low value, low risk procurements). There needs to be a balance.

-CPSU/CSA member, February 2018.

The Department's 'Gateway Review' process is still comparatively new. On 1 September 2016, Cabinet approved a recommendation to mandate the Gateway Review process where major project or programs meet the following requirements:

- infrastructure projects or programs valued at \$100 million and above;
- ICT projects or programs valued at \$10 million and above; and
- other projects or programs identified by the Department of Treasury.
-

An exemption to the Gateway Review can be approved by the Department of Finance.

In early February this year, the *West Australian* reported in an article entitled 'Sex for Work Probe. The Corruption and Crime Commission looked at the emails of emails sent in 2017. The emails revealed a female company boss was having an affair with a man who was sub-contracted by an unnamed Department to manage the tendering process for more than \$50 million worth of maintenance and smaller construction projects (The West, 2018). As well as raising questions around the opportunities for misconduct in maintenance tenders, this also raises questions about the suitability of the private sector to manage tenders on behalf of the public sector.

Department of Finance members responded positively to the new practice of developing Contract Management Plans for any project that reached the threshold required. These plans ensured active management of the contractual relationship and were seen to ensure better stewardship of taxpayer funds. Members were confident these safeguards would have been effective in preventing a large amount of the losses caused by the widely publicised Department of Health and Fujitsu ICT contract.

Members acknowledged that familiarity was a major risk factor for corruption and misconduct. The longer a procurement officer or contract manager was able to liaise and work directly with a member of the public, a greater familiarity and basis of trust was established. This trust, or opportunity for a relationship, makes it harder for a public servant to instantly reject any offer of corruption or act of misconduct. The Department of Finance should consider rotating staff working on individual long-term contracts they are working on to maintain a professional distance and increase oversight.

Department of Finance – contracting out

Issues arise where public sector Chief Executive Officers are expected to ensure that external contractors engaged by a public authority should have the relevant qualifications, skills and /or experience to conduct this work, free from misconduct. This is effectively expecting the private sector to be familiar with the high standards of the public sector and to be trained in a field that they would not otherwise have access to. The lack of shared standards between the public sector and private commercial enterprises clearly increases the risk of corruption and misconduct arising from outsourcing. (p11, Integrity Checking of Employees)

For building and works operations, construction and works a specific lead external agency will submit documents dependent on a number of sub-consultants under them. For instance, although one company is responsible for submitting the tender, underneath the lead contractor there will be a range of sub-consultants who deal with areas of specialty (for example hydrological, electrical, surveying, etc). Currently, the Department of Finance has arranged sub-consultant panels into two streams: Engineering and Building Specialists (EBS) Panel and Building Certification Services (BCS) Panel. Relationships between the lead contractor and sub-consultants can easily become fractious.

This issue raises the option of the Auditor-General being empowered to investigate private companies in order to protect taxpayer funds and lift the standards of private contracting. Members in the Department of Finance were not convinced that the Auditor-General would always be necessary to ensuring that are able to investigate and audit private companies doing business with the government. There was a perception that these powers would amount to an invasion of privacy. Only when extenuating circumstances suggesting corruption, misconduct or wrongdoing arose should it be permissible.

The EBS Panel plays an important role as at least one quote must be sourced from the panel for the appointment of sub-consultants. In addition, builders bidding for a government tender over the value of \$500,000 must be prequalified under the Builders Prequalification Scheme. Prior to 2015, the requirement was \$300,000. Prequalification lasts for three years, after which it must be renewed. Receiving prequalification means the contractor is able to undertake spot checks on sub-contractor payment, performance or financial health.

The Department of Finance's Building Management and Works has the ability to decline, suspend or cancel the prequalification of any building contractor that is subject to any adverse findings by any board, commission, licensing authority, Government Department, court, tribunal or other entity of any kind. This power extends to suspending prequalification if a person who holds a management role in an organisation also receives adverse findings. These current powers would be well-placed to work in conjunction with an expanded role for the Auditor-General in private contracting.

The complexity in this field has not been unnoticed by interstate authorities. The Queensland public service Audit Office noted it was unable to examine the extent and appropriateness of the use of commercial confidentiality provisions in government contracts as their five audited department's contract registers lacked sufficient

information (The Mandarin, 22nd February). It seems commercial in confidence is used just as much to prevent proper record-keeping as it is used to protect private enterprises from scrutiny.

Term of Reference Two: The profile and training of public sector personnel engaged in procurement.

The *Corruption, Crime and Misconduct Act 2003* gives the Public Sector Commissioner a role to:

- Assist public authorities to prevent, and to identify and deal effectively and appropriately with misconduct
- Collect and analyse information gathered in relation to its broader functions
- Receive, assess notifications from principal officers in public authorities about minor misconduct allegations and minor misconduct allegation reports from individuals
- Monitor management of minor misconduct matters by public authorities
- Potentially investigate cases of minor misconduct by public officers

Public servants beginning a career within the Department of Finance can expect a wide-ranging induction which encompasses their professional rights and responsibilities, including training for their Code of Ethics. Staff are well briefed on the need to ensure that all payments are recorded, even if this practice can sometimes be perceived as “tedious” by staff.

Codes of Conduct – the need for a shared understanding

The CPSU/CSA has made a strong argument in favour of the simplification of Codes of Conduct within the WA public sector (page 29, Service Priority Review). Each WA agency has different policies on a range of human resource functions, including a unique Code of Conduct which refers to the Public Sector Commissioner’s Public Sector Code of Ethics. The Code of Ethics itself is a very brief document with the bare bones underlying how an agency may choose to exercise its disciplinary responsibilities.

Each agency has a unique Code of Conduct and Human Resources policies which are locally enforced and subject to the whims of each agency’s Integrity, Ethics and Standards directorate, Industrial Relations and Employee Relations division, as well as differences in application at the line management stage. As a result, there are a plethora of potential outcomes for each Human Resources intervention. This can occur whether it’s a substandard performance process, disciplinary process or an application of any number of other policies. The duplication and wasted resources this involves is unhelpful given there already exists a sector-wide body involved in the administration of the *Public Sector Management Act*, in the person of the Public Sector Commissioner.

This wastage drains resources which could be more proactively spent on preventative education. In addition, the range of various codes and policies can lead to confusion for staff moving across agencies and can lead to fractured communications to staff. The CPSU/CSA firmly believes the level of awareness of professional obligations would be improved by a sector-wide document as well as a single body to make the determination on interpretation of that single document.

Term Of Reference Three: Corruption prevention and risk strategies deployed in WA Public Sector agencies.

If you have risky systems, you run the risk of corruption.

And it's likely to occur particularly in this day and age, when many of what were once traditional functions of government have been outsourced.

I make no comment on the value or not of outsourcing, that is a government decision from time to time.

But what it does leave is organisations which may be vulnerable, because your skills in delivering a particular service or regulatory service, licensing and so forth, may be outsourced.

Do you have, then, the new skills and competencies required to actively regulate, police and enforce the private sector who are performing those public functions?

-Corruption and Crime Commissioner John McKechnie, 3 July 2015.

The current iteration of the Western Australian Corruption and Crime Commission was established in 2004 due to a reported lack of public confidence in the then-existing processes for the investigation of corrupt and criminal conduct. When the agency was first formed it was given the responsibility for the continual improvement of the integrity of, and reduced incidence of misconduct in the public sector.

In 2015, jurisdiction over minor misconduct was devolved to the Public Sector Commission. This followed findings by Public Sector Commissioner Mal Wauchope that the previous model had not operated as efficiently as hoped after 12 years. Pre-2015, the Corruption and Crime Commission found itself alerted to 7,000 notifications, many of which did not require the application of their exceptional powers. Public servants obviously wished their notifications to be taken seriously, and there are very few organisations with investigative powers as strong as the Corruption and Crime Commission – effectively a standing Royal Commission. Members were aware of the Commission's abilities to conduct covert surveillance, telephone intercepts, visual and listening devices and tracking devices, including the ability to require people to give evidence on oath or affirmation with severe penalties for providing false or misleading testimony to the Commission.

The flood of approximately 7,000 notifications had occurred as the old model (well-publicised amongst public servants) was to notify the Corruption and Crime Commission under Section 28 of the Act, without stopping to discern the seriousness of the notification. Public servants, keen to do the right thing, had also gotten into the practice of 'hedging their bets' by alerting both the Corruption and Crime Commission and the Public Sector Commission. While excellent for ensuring a high rate of notifications, it ultimately meant work was duplicated.

The devolving of some responsibilities to the Public Sector Commission also led to the creation of a 'capacity building pyramid' which aimed to empower each agency's HR department to more appropriately deal with lower level issues in their own workplaces in a timely manner. The recent revisions also meant the Public Sector Commission became responsible for coverage of local government paid officers, public universities and the Government Trading Enterprises. Section 45A of the *Corruption, Crime and Misconduct Act 2003* deals with the Public Sector Commissioner's ability to prevent misconduct via education and training.

Section 45B(c) of the Act details the responsibility to investigate misconduct:

...inquiring into or taking other action in relation to allegations and matters related to minor misconduct if it is appropriate to do so, or referring the allegations or matters to other independent agencies or appropriate authorities so that they can take action themselves or in cooperation with the Public Sector Commissioner...

Members at the Department of Finance shared that the training sessions run by the Corruption and Crime Commission were engaging, educational and a worthwhile exercise in refreshing public servants' knowledge about their responsibilities and the need for high standards. Members made particular note of the Corruption and Crime Commission's use of real life case studies to demonstrate how quickly conduct can become serious misconduct or worse. There were perceptions that little on-the-job training was offered by the Public Sector Commission in comparison.

Public sector prevention via education was transferred to the Public Sector Commission in 2015. Corruption and Crime Commission staff are sceptical and suspicious that the Public Sector Commission is not adequately managing

their new responsibilities to manage misconduct and deliver educational preventative outcomes. A brief scan of the Public Sector Commission's learning and development section on their website revealed training in four streams:

- Leadership,
- Professional Development,
- Capability Reviews; and
- The Centre for Public Sector Excellence.

Aside from the necessary induction training for any new public servant, there did not seem to be any specialised training events allocated to boost capability in misconduct prevention. The Union has also heard multiple anecdotal reports from members that the Public Sector Commission does not adequately investigate and progress misconduct complaints, instead preferring to refer the matter to individual agency human resource departments. This is of concern as it may not adequately meet the obligations publicised in mid-2015 and could therefore be an area of investigation for the Inquiry committee.

The Public Sector Commission has a wealth of public, downloadable fact sheets clearly communicating rights, responsibilities and operations of the *Crime and Corruption Management Act* and the *Public Interest Disclosure Act*. In order to be aware of these resources however, a public servant would need to actively search for them.

The vast majority of CPSU/CSA members consulted in forming this submission, working as Public Interest Disclosure Officers, or in Procurement, did not feel that the level of preventative training given to them was adequate.

The Corruption and Crime Commission workforce – who keeps the safeguard safe?

Corruption and Crime Commission staff hold incredible responsibility, even when compared to their colleagues in various high-level state agencies. Each staff member is hired for a fixed term period of five years according to Section 179 of the *Corruption and Crime Commission Act 2003*. All staff are eligible for re-employment. After the five year term, if the Officer is reappointed they are not required to serve an additional probation period. They are not employed under the *Public Sector Management Act 1994*. The current median tenure for the agency is just 3.3 years (p21 Statistical Bulletin). All Corruption and Crime Commission staff must uphold an Oath of Secrecy as defined under Section 183 of the Act, preventing them from discussing their work pressures with loved ones, friends and remarkably, even their Union. This is an onerous duty and one that is often not adequately acknowledged in wider society.

Staff at the Corruption and Crime Commission report one of the greatest challenges for reducing corruption is adequate resourcing. In the last few years, the FTE ceiling of the Corruption and Crime Commission has fallen from 148 FTE to 115 FTE (PSC, Statistical Bulletin 2017). Fortunately, the recent Voluntary Targeted Severance Scheme will not apply to the Corruption and Crime Commission, but the agency already faces resourcing issues with unfilled vacancies, short-term contracted staff serving only six months and band aid solutions implemented.

Key Indicators, Corruption and Crime Commission

| 2007 | 2017 |
|--|---|
| 2,150 complaints and notification of misconduct | 4,939 allegations assessed |
| 2,055 misconduct investigations | 2,425 notifications and reports received |
| 155 educational seminars delivered to 5,616 attendees, including 995 staff in regional WA. | 1,967 allegations assessed requiring further action |
| 148 FTE | 94% allegations assessed within three months |
| | 115 FTE |

Source: CCC Annual Reports 2006-07, 2016-17

The situation has worsened in recent years with the Corruption and Crime Commission executive favouring an approach whereby working for the Corruption and Crime Commission is essentially a transitory experience. Members have repeatedly reported to the Union that current practice is that staff do not remain with the Corruption and Crime Commission for more than 10 years – often after two to three fixed term contracts their service ends and they are replaced. This has led to a considerable amount of anxiety and suspicions of discriminatory employment practices based on age within the organisation. During the course of consultation for this submission, Corruption and Crime Commission staff alerted the Union that the Employee Perceptions Survey for the Corruption and Crime Commission in 2017 resulted in a shocking statistic: 70 per cent of current Corruption and Crime Commission employees would not recommend working at the Corruption and Crime Commission. The Union had requested this document from the Public Sector Commission and the Corruption and Crime Commission but unfortunately the survey was not sent before the Inquiry Submission deadline.

Corruption and Crime Commission staff desire a workplace that is adequately resourced to protect the sector from risk, retain talent and experience while also providing secure employment. It is clear that the current employment practices are not leading to a workplace that is capable of attracting or retaining talent, which in turn creates misconduct and corruption risks for the wider public service.

Creating transparency – lessons from Langoult

The CPSU/CSA is deeply committed to greater transparency in government contracts. The Langoult Report has encouraged extending the State Supply Commission guidelines to Government Trading Entities, in order to deliver the following:

- Promoting competition in the marketplace, which drives down price and encourages innovation;
- Reducing the risk of undue influence within government departments, from suppliers, or from other government officials;
- Providing a framework for the management of conflicts of interest; and
- Ensuring the rationale for decisions is thorough and fair, and based on value for money. Documented decisions can be used to debrief unsuccessful bidders (p80, volume 2).

The CPSU/CSA believes the recent Langoult Report comparison of safeguards in procurement for the wider public service and government trading entities should be of interest to the inquiry panel. The benefits of extending State Supply Commission rules for Government Trading Enterprises should be seriously considered (p82, Volume 2).

From a whole-of-organisation perspective, the Corruption and Crime Commission has recently communicated that transparency is a key to reducing misconduct in the public sector. In 2017, through correspondence to the Special Inquiry into Government Programs and Projects, the Corruption and Crime Commission stated their support for the principle of public transparency because it is regarded as one of the most effective ‘tools’ for combatting corruption and maintaining public confidence in government. (p194, Special Inquiry Volume One)

In 2017, the CPSU/CSA made two recommendations with regards to the Langoult Report/Commission of Inquiry. The first was to consider reform around the transparency-breaking protections afforded by commercial-in-confidence provisions relating to Freedom of Information requests. These rules hinder any access to details around procurement with private enterprise and hamper any scrutiny of contracts awarded. Section 33 of the *Freedom of Information Act 1992* makes nebulous reference to “trade secrets” and information of a “commercial value”. It seems clear these rules were drafted to protect the intellectual property of private enterprise, which is reasonable. However, Section 33 has also given the public service a fast and easy method to halt any disclosure of information pertaining to quotes or amounts paid for outsourced services. Review of these provisions is required.

The second recommendation was focused on the practice of registers of exemption. Under State Supply Commission policies, certain contracts can be exempt from public listing if there is no perceived requirement to go

out to public tender. This can occur if the contract can be met by an Aboriginal business, a business employing West Australians living with disability or the service can only realistically be fulfilled by one provider (for example, a specialist IT developer who owns complete rights to their programming technology). State Supply Commission policies outline that an agency must maintain an exemption register so that major contracts are not able to bypass the responsibilities set out in the *State Records Act 2000*.

In attempting to scrutinise events of outsourcing, the CPSU/CSA became aware of the possibility that exemption registers were only available via a Freedom of Information request or via a Question on Notice in the Western Australian parliament. This process had to be followed for scrutiny of the Department of Corrective Services contracts with the external consultancy 'Futurewise' (p.19, Commission of Inquiry). As the exemption register deals with private companies and payments for services, there is a risk that commercial-in-confidence guidelines could limit the ability of a member of the public to access these registers. This has negative consequences for transparency in public expenditure and increases the risk of misconduct (p19, Commission of Inquiry).

Term of Reference Four: The sufficiency and use of sanctions for individuals found to have engaged in corrupt and serious misconduct in procurement duties.

The *Corruption, Crime and Misconduct Act 2003* describes misconduct as occurring if a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment. This extends to situations where the officer corruptly takes advantage of the office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person. It is an offence punishable by two or more years' imprisonment. Union members felt the current punishments are clear, easy to remember and played an important role in discerning the difference between corruption and misconduct.

Term of Reference Five: Best corruption prevention practices in procurement from other jurisdictions.

As this Term of Reference was outside the core business of the CPSU/CSA, it will not be addressed in this submission. However, the CPSU/CSA would support any initiative to allow policy staff within the Western Australian public sector to research and draft a report on potential interstate options for further discussion.

Term of Reference Six: Reform to current legal and administrative practices in the area of procurement to prevent and reduce the risk of corruption.

Policies, education and guidelines are in place. However these are ineffective as there is zero consequence if there is a breach due to non-effective oversight and investigation of breaches. Corruption prevention requires all strategies to be effective, policies and education alone do not prevent corruption or misconduct unless an effective oversight investigation process with real consequences exists. Real examples include the reduction in drink driving and the reduction in speeding – education and enforcement combined bring success in managing these issues.

-CPSU/CSA Member, February 2018.

The Western Australian State Supply Commission (SSC) sits within the Department of Finance. The SSC's role includes issuing mandatory procurement policies and guidelines, including the State's highly important Probity and Accountability policy. The Union believes some of the responsibilities are followed in a haphazard manner. For instance, the TendersWA online portal requires serious 'cleaning up' when it comes to listing contracts awarded to each supplier. In addition, documents published for public transparency are known to be removed from the site after the contract has been awarded. This actively hinders transparency of contracts.

In addition, Section 9 of the *Public Sector Management Act 1994* states the standards employees are expected to uphold. Public servants are also reminded by 'Treasurer's Instruction 825: Risk Management and Security' to have a risk management process against "misconduct and corruption" which works from Standards Australia's published protocols (Financial Administration Bookcase, 2017). However on the whole, this instruction deals with a range of risks in a broad manner and does not deal with specifics in fraud, misconduct and corruption.

All members surveyed felt that induction training when joining the Western Australian public sector was currently quite robust. What perhaps required more attention was check-ups later down the road when any changes of circumstance could occur relating to the identity, integrity and credentials of a government officer, and how new information was relevant to the resources, decisions and/or assets entrusted to the government officer. This could include full and honest disclosure as a condition of ongoing employment (eg. criminal convictions), change in shareholdings which could lead to financial benefit as a result of decisions made, and secondary employment.

Public authorities should have a risk management strategy which refers to:

- Employment screening and the need for screening to be commensurate with the level of risk posed by a particular role, as identified during the risk assessment process.
- Where considered necessary, includes the provision for a systematic and regular review of positions with particular risk exposures to ensure screening policies address current risk.

The CPSU/CSA believes prevention and disciplinary matters could be avoided if the employee is informed and empowered through the provision of the following: clear operational documents, clear JDF documents, application forms and integrity checking applications and screening requests. Criminal history screenings should only be considered if determined to be relevant to the role. Broad and non-descriptive JDF documents can be used to morph a role into generalist duties, but they also create risk by not managing authority adequately.

In recent years, concerns around the growing risks of secondary employment came to the Public Sector Commissioner's attention (PSC 2016). The widespread myth of public servants' secure and 'cushy' employment is not borne in reality, and more public servants have chosen to supplement their income with secondary employment outside of the service. Evaluation of secondary employment policies and practices across the public service by the Commissioner uncovered that:

- One in ten public authorities reported that they do not have a documented framework to guide employees in identifying secondary employment risks;
 - Almost all employee requests regarding secondary employment arrangements are approved by their managers;
 - More than half of public sector agencies reported their accountable and ethical decision making training does not describe or refer to the risks of secondary employment; and
 - Authorities do not prompt staff to re-disclose or seek approval on a regular basis and generally rely on employees remembering to advise them of any changes.
- (p48, State of the Sectors 2017)

The CPSU/CSA believes the suggested actions of the Public Sector Commission's "Managing Secondary Employment Risks in Public Authorities" Evaluation Report should be explored. Most of these actions could be implemented in a way that respects a public servant's life outside the sector, maintains a professional respect and ensures the sector is briefed on any potential conflicts of interest.

Term of Reference Seven: Adequacy of whistleblowing protections in the context of allegations of corruption in procurement.

The whistle-blower always gets it in the neck. Penalties for people trying to detriment or harm whistle-blowers should be very high in order to see a change in the culture.

-CPSU/CSA Member. February 2018.

Consultation with the membership revealed a lack of confidence in the protections of the PID Act. In discussions with members, the following concerns with the current Act were raised:

- Making a disclosure does not stop any disciplinary or substandard performance processes or actions that are unrelated to your disclosure;
- Who gets to decide if the detrimental actions are unrelated to the public interest disclosure? and
- What occurs if another staff member connected with the disciplinary action is also connected to your disclosure?

Members shared that making a disclosure under the PID Act is viewed as 'career limiting' and were disturbed that the Act did not go further to protect the anonymity of the discloser. Union members within the CCC said that one issue with official reporting guidelines was that there currently existed a perception in the public service that sensitive information could often only come from one unit, risking a witch-hunt or erosion of trust internally.

Additionally, your identity will only be revealed in accordance with the PID Act. This includes where you consent or where it is necessary for the matter to be effectively investigated. All reasonable steps will be taken to advise you that your identity will be revealed.

-Page 10, Guide for Disclosers

Public servants commented that it seemed far safer to make disclosures to a journalist following the Media Entertainment Arts Alliance Code of Ethics. This way the issue could be investigated without management targeting the whistle-blower via more subtle means of detrimental action.

There is capacity to make an anonymous disclosure under the PID Act, however there are three factors public servants consider with this route:

- There are no protections offered under the Act to an anonymous discloser;
- There is no avenue to enquire how the investigation is progressing; and
- The discloser may be inadvertently revealed by the ensuing investigation.

Conclusion

Overall, the Western Australian public sector holds itself to a high standard in preventing misconduct and corruption. However, the current environment of a lack of resourcing for investigators, auditors and a "second pair of eyes", coupled with sector-wide trends towards casualised labour, greater outsourcing and a private sector which can often view the state public sector as a 'slow giant with deep pockets', the time is right to review how the public service can adapt to cover new areas of risk. This submission has sought to give insights from the staff perspective on how the systems can be improved. The CPSU/CSA eagerly awaits the reporting and research conducted by the Committee towards this end.



References

Annual Report 2006-07. Corruption and Crime Commission. Available at:

<https://www.ccc.wa.gov.au/sites/default/files/CorruptionandCrimeCommissionAnnualReport2006-2007.pdf>

Annual Report 2016-17. Corruption and Crime Commission. Available at:

<https://www.ccc.wa.gov.au/sites/default/files/CorruptionandCrimeCommissionAnnualReport2016-2017.pdf>

Auditor General Act 2006 (WA)

Commission of Inquiry – CPSU/CSA Submission. CPSU/CSA. June 2017

Available at: <https://www.cpsucsa.org/documents/general-documents/1844-cpsu-csa-commission-of-inquiry-submission>

Corruption, Crime and Misconduct Act 2003 (WA)

Donaldson, D. Police want to report corruption, but fear repercussion. The Mandarin. 6 December 1985. Available at: <https://www.themandarin.com.au/86953-police-want-report-corruption-fear-repercussions/>

Easton, S. Anti-Corruption Day: 7 factors enabling crook public servants. The Mandarin. 9 December 2015. Available at:

<https://www.themandarin.com.au/58030-anti-corruption-day-7-sins-crooked-public-servants/>

Easton, S. Queensland's corruption reform welcome, but there's more to be done. The Mandarin. 28 March 2017. Available at:

<https://www.themandarin.com.au/77303-queenslands-corruption-reform-welcome-but-theres-more-to-be-done/>

Easton, S. Audit: Queensland procurement lacks transparency, echoing ANAO concerns. The Mandarin. 22 February 2018. Available at:

<https://www.themandarin.com.au/category/news>

Fraud and Corruption Control Plan. Department of Culture and the Arts. August 2014. Available at:

<http://www.dca.wa.gov.au/Documents/AboutUs/FraudandCorruptionControlPlan.pdf>

Fraud Prevention and Detection in the Public Sector. June 2013. Western Australian Auditor General. Available at:

https://audit.wa.gov.au/wp-content/uploads/report2013_07.pdf

Freedom of Information Act 1992 (WA)

'Gateway' Department of Finance. Available from:

https://www.finance.wa.gov.au/cms/Government_Procurement/Gateway/Gateway.aspx

Guide for Disclosers – Don't be afraid to speak up. Public Sector Commission. July 2016.

Integrity checking of employees managing misconduct allegations. Public Sector Commission. October 2017. Available at:

https://publicsector.wa.gov.au/sites/default/files/documents/integrity_checking_of_employees_managing_misconduct_allegations.pdf

Joint Commissioner's Forum – Understanding the new integrity landscape. Public Sector Commission. 23 July 2015. Available at:



<https://publicsector.wa.gov.au/document/joint-commissioners%E2%80%99-forum-understanding-new-integrity-landscape-friday-3-july-2015>

Levy, M. 'Government staff in printer rort' Sydney Morning Herald. 15 June 2011. Available at: <https://www.smh.com.au/technology/government-staff-in-printer-rort-20110615-1g2si.html>

Managing secondary employment risks in public authorities. Public Sector Commission. October 2017. Available at: https://publicsector.wa.gov.au/sites/default/files/documents/secondary_employment_risks_in_public_authorities.pdf

Procurement Practice Guide – A Guide to Products and Services Contracting, for Public Authorities. Department of Finance. December 2017. Available at: http://www.finance.wa.gov.au/cms/uploadedFiles/Government_Procurement/Guidelines_and_templates/Goods_and_service_procurement_practice_guide.pdf

Public Sector Commission. State of the sectors 2017 statistical bulletin. October 2017. Available at: https://publicsector.wa.gov.au/sites/default/files/documents/state_of_the_sectors_statistical_bulletin_2017_2.pdf

Public Interest Disclosure Act 2003

Report on Misconduct Risk in Local Government Procurement. Corruption and Crime Commission. February 2015. Available at: <https://www.ccc.wa.gov.au/sites/default/files/ReportonMisconductRiskinLocalGovernmentProcurement.pdf>

'Sex for Work Probe. CCC looks at lover's email' The West. 3 February 2018. Available at: <https://www.pressreader.com/australia/the-west-australian/20180203/textview>

'Serious Misconduct in the Shire of Exmouth, CCC. Available at: <https://www.ccc.wa.gov.au/sites/default/files/ReportonMattersofSeriousMisconductintheShireofExmouth.pdf>

The Financial Administration Bookcase. Department of Treasury. 22 December 2017. Available at: <https://www.treasury.wa.gov.au/FAB>