

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

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



**TRANSCRIPT OF EVIDENCE  
TAKEN AT PERTH  
MONDAY, 17 SEPTEMBER 2018**

**SESSION ONE**

**Members**

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

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**Hearing commenced at 12.26 pm**

**Ms NINA LYHNE**

**Acting Director General, Department of Transport, examined:**

**Mr STEVE BEYER**

**Acting Managing Director, Department of Transport, examined:**

**Mr CRAIG ALAN SHEPHERD**

**Director, Procurement and Fleet Management, Department of Transport, examined:**

**Mrs NATASHA THOMAS**

**Budget Management Director, Department of Transport, examined:**

**The CHAIR:** Good afternoon, everyone. On behalf of the committee, I would like to thank you for agreeing to appear today. I am Margaret Quirk; I am the Chair of the committee. I would like to introduce the other members present today. On my left is Hon Jim Chown, MLC, who is the Deputy Chair; on my right is Hon Alison Xamon, MLC; and to the far left, which is probably appropriate, is Mr Matthew Hughes, MLA, member for Kalamunda. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege. However, this privilege does not apply to anything you might say outside today's proceedings.

I suppose the first question I need to ask is: when will your positions be filled substantively?

**Ms Lyhne:** I am only a short-term acting director general because the current director general is on leave. That flows on then to the acting managing director as well.

**The CHAIR:** Before we begin our questions, do you have any questions about your attendance, or you might like to make an opening statement?

**Ms Lyhne:** If I had the opportunity, I would very much like to do that very, very briefly. Obviously, we have made a submission and we can talk in much further detail about all of the processes and procedures that we have in place to ensure that we meet our obligations here. I want to start by saying that we take our obligations in this space very seriously, as we do in other areas of good governance around our organisation, whether that is cybersecurity. As an organisation, the Department of Transport is responsible for the identity records, for example, in the community, so we also take our responsibilities there very seriously. As an organisation, our view is that the culture of the organisation is the fundamental building block to good practice in this area. We have lots of practices and procedures, which we will talk to you about, and you have seen in our submission. We have over many years been working on ensuring that we have the type of culture in our organisation that means not only are our staff dedicated to serving the Western Australian community, but to doing that in a way that protects the interests of the Western Australian community at the same time. That involves having an environment in which people obviously do the right thing and follow the procedures with good training and education and follow-up, but also an environment in which people talk about things that they may see or do that they do not necessarily think is appropriate. We recognise that culture is not something you do once and then move on to the next thing. That is something we are constantly reinforcing throughout our organisation. I just wanted the opportunity to say that.

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[12.30 pm]

**The CHAIR:** Can you indicate whether you attended with other directors general a briefing by the CCC regarding procurement in the North Metropolitan Health Service?

**Ms Lyhne:** No, I did not, but I am sure that the director general would have been there at the time.

**The CHAIR:** We can go on to the Langoulant review. That found that the transport portfolio should be subject to review to introduce greater transparency in procurement and contract management. Are you able to advise what has happened as a result of those recommendations, if anything?

**Ms Lyhne:** This is the Department of Transport. You will be talking to the Public Transport Authority and Main Roads as well. Some of the recommendations in the Langoulant review referred specifically to Main Roads procedures. They will be able to talk in more detail about specific things they have done around greater involvement in the State Solicitor's Office and other practices that they have put in place since then.

I can add that obviously we have an ongoing audit process that happens within all our agencies on a regular basis. There is a constant review of how we are doing our practices and procedures, and we are acting on those. Each of the agencies operates under slightly different legislation so the practices in each of the agencies is different. We can go into more detail on the Main Roads practices. Main Roads operates under fairly old legislation and a lot of sign-off happens directly through a ministerial process, which is quite different from the Department of Transport process. Overall, there are many things that make up the portfolio, and a range of actions are in place to ensure that we are improving our practices.

**Hon JIM CHOWN:** Do you think this variation in processes your separate agencies have is helpful in regard to mitigating fraud in procurement processes?

**Ms Lyhne:** Do I think it is helpful?

**Hon JIM CHOWN:** Or unhelpful?

**Ms Lyhne:** I guess I would not like to make a judgement either way, but it does add a degree of complexity to the overall environment.

**Hon JIM CHOWN:** A standard process would be third position, I would assume.

**Ms Lyhne:** I guess that would reduce the complexity across the portfolio.

**Hon JIM CHOWN:** What is stopping that from happening?

**Ms Lyhne:** There is legislation in place. I cannot recall exactly when the PTA was modernised, but that was fairly recently. The Main Roads legislation has not been updated for some time, and the legislation that governs the Department of Transport is the more general government procurement practice.

**Hon JIM CHOWN:** Why would the director general not make a recommendation to the minister to amend the legislation for that to happen?

**Ms Lyhne:** It is not something that the director general has done. I guess it is a question of the degree to which that is seen as an inhibitor to good practice.

**Hon JIM CHOWN:** That would just ascertain that your perfect position would be to have the same procurement practices across all agencies as opposed to complications involved in regard to auditing requirements et cetera and the costs involved. You just said it is legislative issues that need to be addressed.

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**Ms Lyhne:** I said that there are complexities because of the different processes in place. I could not sit here now and say the degree to which—I mean, I am confident that across the different parts of the portfolio, we have good practices and processes in place that are consistent with the requirements of that legislation. I am not saying that the systems do not work because they operate under different pieces of legislation. We are complying with the requirements of each of those different pieces of legislation.

**Hon JIM CHOWN:** We have received a submission as a committee from DOT and Main Roads but we have not received one from the PTA. Why was that?

**Ms Lyhne:** I cannot answer that now, but I will be happy to answer that when the PTA is at the table.

**Hon JIM CHOWN:** Just for clarification, the acting director general is director general of all three agencies. Is that correct?

**Ms Lyhne:** That is correct.

**Hon JIM CHOWN:** So any request to the Minister for Transport, going back to my previous question, has to come from the director general. Is that correct?

**Ms Lyhne:** The director general is the Commissioner of Main Roads as well as the CEO of the PTA, so, yes, that is correct.

**Mr Beyer:** Chair, through you, perhaps if I can just add to Ms Lyhne's comments. Where the particular difference in the legislation comes from is the delegated value to the public sector officer. The Main Roads Act requires a lot of contracts to be signed off by the minister simply because it actually locks in that as where the contracts have to be signed off on. There have been proposals, including to the previous government, for changes to the Main Roads Act, more comprehensively than just about dealing with procurement matters. It is a fairly old act, as Ms Lyhne said, and hence it becomes a matter of the priority of the government of the day as to how it fits that into its legislative program.

**The CHAIR:** Presumably, to raise the limit of which something has to go to the minister.

**Ms Lyhne:** Currently, set by Main Roads legislation, it is \$500 000.

**The CHAIR:** What are the proposals? Are you aware of those?

**Ms Lyhne:** If we could pursue that when Main Roads are the table, they will have more details historically—the reviews of the legislation. There is quite some history around that, so we would be happy to answer that in more detail when Main Roads is at the table.

**The CHAIR:** In response to my earlier questions, director general, you made some remarks about the processes being constantly reviewed. I just want to know how that is done and by whom. It looks like Mr Shepherd is chafing at the bit.

**Ms Lyhne:** Mr Shepherd would like to answer that in detail.

**Mr Shepherd:** We have quality assurance to ISO9000:2015, which requires us to have regular audits by internal audit. They are done six-monthly. They review or audit our compliance with our policies and procedures, and also the compliance with what the State Supply Commission policies are, so they have to be the same. Each year we have to provide the State Supply Commission with an audit of our compliance and other issues in regard to our partial exemption. That is undertaken by an external–internal audit and that is Ots and Associates at this stage. Essentially, we are audited every six months. We also have in our QA system, where annually —

**The CHAIR:** Sorry; for the purposes of Hansard, that is quality assurance.

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**Mr Shepherd:** Also, within our accreditation, we have to review every one of our procedures, work instructions and policies every six months. We have within our system, BILC, a reminder that comes up when a policy procedure has not been reviewed. There may not be any changes, but then the clock sets again.

**The CHAIR:** This regular six-monthly audit—are any random audits taken?

**Mr Shepherd:** Of our compliance with those?

**The CHAIR:** Yes, or just in relation to particular transactions.

**Mr Shepherd:** Random audits are done monthly on P-card transactions, and then it would be other audits that might be —

**The CHAIR:** So P-card is a purchasing card, is it?

**Mr Shepherd:** Yes, a purchasing card. We do a random audit of expenditure against purchasing cards every month and expenditures to ensure that they are in compliance with common-use arrangements or policies and processes.

**The CHAIR:** Are there restriction levels on those purchasing cards as to credit limits and what have you?

**Mr Shepherd:** The normal or usual limit is \$5 000. We have some that are \$20 000, which are essentially for people doing facilities management, where there might be emergency works needed to be done. But in all cases, they have to complete the proper paperwork and submit it when they acquit their expenditure in Oracle Financials.

**The CHAIR:** You mentioned earlier the part exemption in the reports that you have to give to the State Supply Commission. Can you just expand on that a bit, please?

**Mr Shepherd:** Yes, the annual report, as one of the conditions of our partial exemption, we have to provide it each year. It looks at compliance with policy and in particular we have to report instances where we have waived competitive quotes or competitive tenders, where we have done variations, and where we have done any exemption from policy requirements, as well as insurance that we have got all our contracts in our contract system and that that is properly maintained. We publish all tender results on Tenders WA and what our expenditure has been throughout that year—those type of things.

[12.40 pm]

**The CHAIR:** Can you describe the circumstances where you would request a closed tender or to not go through a tender process? Can you explain to us some of the circumstances?

**Mr Shepherd:** If we were to call a tender and then not award it, do you mean?

**The CHAIR:** No, you proceed with one contractor without having to go to tender.

**Mr Shepherd:** Okay. The business area has to put forward a business case as to why they can only go to this particular supplier. Normally, it would be where it is to seek existing equipment, and they are the only Australian agent for that equipment. That is a circumstance we would look at, the same as software. For instance, you can only go to Oracle for Oracle Financials. Then there would be those emergency situations as well, where they are the only people who can provide it within the time limit. Then, other circumstances where they would have to have a compelling business case. An instance might be particularly where they are doing works on a breakwater and then there are some works close by that they already had mobilised for, so we would say to put the case forward. They would have to substantiate that there was value for money in doing that.

**The CHAIR:** So is there that level of detail in the report that goes to the State Supply Commission?

**Mr Shepherd:** No, only the instances, and then if they want to, they can come back and request further information.

**Hon ALISON XAMON:** Do they come back very often?

**Mr Shepherd:** No. They have only done two. They did not come back with the first one, and the last one we did was due on 31 July.

**The CHAIR:** Are they tabled or anything?

**Mr Shepherd:** Not that I am aware.

**Mr Beyer:** Chair, it may not technically be within the confines of your question, but the department also has a number of panel contracts, so to the extent you say examples where we have closed tenders, the panel contracts have gone through a competitive tender process. We end up issuing a contract with three, four or five parties, and any procurement is within the bounds of the panel contract for sole supply or for two or three or all of them.

**The CHAIR:** Anyone can answer this, but are there occasions where you get complaints from unsuccessful tenderers?

**Mr Shepherd:** We do. We have had probably I think two in the last 12 months where they have received feedback and then written to the director general to ask for it to be reviewed, and we have referred it to the Department of Finance, and the Department of Finance has looked at it and said that they cannot see any problem with it; we have followed the process.

**Hon JIM CHOWN:** As a department, you have a \$20 million cap before you refer the process on to the Department of Finance—is that correct?

**Mr Shepherd:** That is right. We undertake all procurement up to that value.

**Hon JIM CHOWN:** How much purchasing would take place under the \$20 million, which would be dealt with internally through your own procurement processes? Give me a ballpark figure.

**Mr Shepherd:** Probably 96 per cent; something like that.

**Hon JIM CHOWN:** What is your annual budget for procurement?

**Mrs Thomas:** We spend about \$130 million per annum on goods and services.

**Hon JIM CHOWN:** So 96 per cent is done before—it is dealt with internally, within the department. The other four per cent goes off to the Department of Finance. You said you have a six-month audit process. Is there an external audit process by somebody other than DOT staff?

**Mr Shepherd:** That is done by an external auditor, Julie Ots and Associates. They are our —

**Hon JIM CHOWN:** Okay. Every six months it is an external agency who carries out the audit. Is that audit made public or is it just dealt with internally?

**Mr Shepherd:** No, it is dealt with internally. It is part of our quality assurance audit.

**Hon JIM CHOWN:** How many breaches come up from that external audit?

**Mr Shepherd:** Very few.

**Hon JIM CHOWN:** But there are breaches.

**Mr Shepherd:** Most of them are where someone might have not put the item on Tenders WA, the result, but there is nothing that has come up that has suggested anything has been out of place in the actual assessment and award of the contract. It is mainly just process.

**Hon JIM CHOWN:** So these are minor breaches, in your belief.

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**Mr Shepherd:** That is right.

**Hon JIM CHOWN:** This external audit company that you have just named, how long have they been doing this? Do you actually go out and seek other external companies to carry out audits?

**Mr Shepherd:** Yes, we go out every three years.

**Hon JIM CHOWN:** How long has this particular company been auditing your procurement processes within the Department of Transport?

**Mr Shepherd:** Probably for more than 10 years.

**Hon JIM CHOWN:** Really?

**Mr Shepherd:** Yes.

**Hon JIM CHOWN:** And you are comfortable with that?

**Mr Shepherd:** Yes.

**Hon JIM CHOWN:** Why?

**Mr Shepherd:** Because we have the same auditor; she knows our processes and she is very thorough in what she does and offers suggestions on how we can improve all the time.

**Hon JIM CHOWN:** I find that quite unsettling.

**Ms Lyhne:** Can I add, obviously, there is also oversight by the OAG and other parts of government as well. This is for the standards, to ensure that we meet the standards.

**Mr Shepherd:** The ISO 9000.

**The CHAIR:** You understand what Mr Chown is getting at—he is concerned about capture and things getting a little cosy. How do you guard against that?

**Ms Lyhne:** We also have an internal audit process that is separate. I cannot recall when our last audit of procurement functions was undertaken as part of that, but there is an internal audit process, which we have also got contracted to an external provider that goes out on a regular basis —

**Hon JIM CHOWN:** It is not the same company, I hope?

**Ms Lyhne:** No, it is not.

**The CHAIR:** I do not understand the rationale for this cap; it just seems to be limited to Department of Transport entities, that was brought in with the State Supply Commission. Finance could not explain to us why it is that it applies mainly to transport agencies.

**Ms Lyhne:** You mean the \$20 million —

**The CHAIR:** Yes.

**Ms Lyhne:** I can maybe give you an overview, and then Craig can go into the detail. Basically, the Department of Finance oversees procurement for the state government and they delegate authority to various departments based on what their processes and requirements are. Our cap was changed fairly recently, if I recall, based on our ability to demonstrate need and systems. Mr Shepherd can probably give you a little more detail on that.

[12.50 pm]

**Mr Shepherd:** If we go back to when the Supply Commission Act was proclaimed, there were a number of agencies, Main Roads being one of them, that were given a total exemption, which meant that they did not have to come to the supply commission to undertake their procurement and they

had no limit. After that was proclaimed, SEC was one, R&I Holdings was another, SGIC—there was a few. Westrail at that time, before the PTA, came to the commission and asked for the total exemption. Up till then, there had not been any criteria; it was just these bodies were the main bodies that worked with the State Supply Policy Council, which put together the commission act. They were then given an exemption, a total exemption, on the basis that they were statutory authorities that had their own legal entity.

The decision was made then that for government agencies where they did not have their own legal entity—they were entities under the Crown—they would have to apply for partial exemptions, so that is how that came about. The Department of Transport, being one of the public service agencies, could not obtain a total exemption. When recently the Department of Finance wound back their centralised procurement and enabled agencies to purchase up to \$250 000, we were granted a million dollars because we were currently doing works—contracts up to \$20 million. After 12 months, we applied through their process to increase that limit to \$20 million so it would be consistent with what we had already from the minister. We had to provide a lot of documentation and assurances. They assessed our systems, our processes and our tenders committee, and they granted us an exemption to \$20 million, which is what we have now. I think that was in around January this year that it came through.

**Ms Lyhne:** Yes, fairly recently.

**The CHAIR:** I do not understand the rationale. Is it because you have so many, the number of contracts will make it unwieldy, or is it your demonstrated ability to undertake procurement with probity? What is it that made you seek that upper limit?

**Ms Lyhne:** It is about both, really. It is about our ability to conduct our business in an effective and efficient way, and, from a Department of Finance point of view, it is about them ensuring that if they do give that kind of authorisation, that we have the right processes in place to ensure that we do that as we should.

**Hon ALISON XAMON:** The State Supply Commission oversights goods and services; who is oversighting capital works?

**Mr Shepherd:** I suppose that is the difficulty across government—that there is no-one, really. There is no policy set that is applicable to all agencies for works. Ourselves, we follow the supply commission policies and practices for work so that we operate within a single framework. There has been discussion for a number of years about trying to bring the State Supply Commission Act and I think the Public Works Act together and have one body that looks after all procurement.

**Hon ALISON XAMON:** It is a current deficit at the moment.

**Mr Shepherd:** For coordinated policies, yes. We operate under the Marine and Harbours Act and the Transport Co-Ordination Act.

**Hon JIM CHOWN:** The CCC, between July 2016 and 2018, had 298 allegations and 106 notifications relating to your portfolios. Eleven of them related to procurement serious misconduct. Most of them, I think, were found to be unsustainable or not worthy of pursuit. My question is: are all these matters brought before the director general?

**Ms Lyhne:** The director general has processes in place to report these matters to the CCC. As I am the acting director general, I cannot say that they have all crossed my desk, but I think it would be normal practice for the director general to be informed of the processes that were on foot.

**Hon JIM CHOWN:** What is his input or what action does he take when he is notified that there is a possible breach through your processes?

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**Ms Lyhne:** I can talk generally about discipline within the organisation.

**Hon JIM CHOWN:** Yes, please do. I understand that you are not the director general.

**Ms Lyhne:** But I obviously have responsibilities in this area, also. The CCC operates under very specific legislation, which requires that when we report things, obviously, the CCC becomes —

**Hon JIM CHOWN:** I mean your internal process once —

**Ms Lyhne:** Yes. I just want to be clear that if we are reporting something to the CCC, then, clearly, they are the lead agency and we would wait for an investigation or further direction from the CCC. In our agency, I guess it goes to culture, as I opened with. We have a very rigorous process around any reporting that comes through our organisation, which goes then to our people and organisational development process. There is all the natural justice that occurs, of course, but where there was some substance, we would normally engage an independent investigator to investigate. Following that investigation, we would obviously then draw conclusions about what had and had not happened. Then there would be a couple of things, if proven, that would happen. We would deal with the individuals concerned and we would have a range of disciplinary actions that we would take, not necessarily in relation to procurement but any sorts of discipline within the organisation. I can say that we have, on many occasions, sought to take disciplinary action in relation to staff, ranging from reprimands through to dismissal. As an agency, we do do that. We take it very seriously. The other action, of course, that we would take is that we would seek to learn from the experience and we would review the policies and the processes that we have in place to understand how that could have happened and what we could do to make sure that does not happen again. So they are really those two very important arms. It is something that we as an agency take very seriously and I think we have a very good record of taking seriously any reported breaches that happen in our agency.

**Hon JIM CHOWN:** Mr Shepherd, in regard to the external audits that take place by this entity that has been doing it for nine years, and, as you already identified, there are at times areas of concern brought to your attention as director of procurement, would you take those matters before the director general and voice your opinion, or, at the very least, inform him of any concerns you may have?

**Mr Shepherd:** Yes.

**Hon JIM CHOWN:** You would?

**Mr Shepherd:** Yes.

**Hon JIM CHOWN:** Would he give you direction then, or would you just put up suggestions? Would you discuss it? That is what I am saying.

**Mr Shepherd:** Yes, and I would put reports to him.

**Mr M. HUGHES:** From your externally appointed internal auditor, do you get management advice in relation to improvement of procedures?

**Mr Shepherd:** That is right.

**Mr M. HUGHES:** That goes to the director general, does it?

**Mr Shepherd:** No, that is dealt with internally because that advice is in relation to our quality assurance and ensuring that, through that quality assurance, we are maintaining adherence with those policies.

**Mr M. HUGHES:** So the internal audit is to do with policies and procedures, and implementation of that?

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**Mr Shepherd:** That is right.

**Ms Lyhne:** I should add, though, if that audit uncovered something that we felt was corrupt or inappropriate conduct, then that would then go back into the other process.

**Mr M. HUGHES:** Has it ever uncovered any suspicion of corrupt practices?

**Mr Shepherd:** Not from there, no.

**Mr M. HUGHES:** Over the last 10 years, there has been no indication of corrupt practices?

**Mr Shepherd:** Not through those audits, but there has been a couple of others where they have been captured by the finance area.

**Mr M. HUGHES:** That is the external audit, is it not?

**Hon JIM CHOWN:** The Department of Finance.

**Ms Lyhne:** Or through internal checks and balances.

**Mr Shepherd:** No, our own internal processes. Where the items were sought to be added to the asset register, where finance has pulled it up and referred it to me, and I have had to do an assessment.

**Mr M. HUGHES:** If I was a junior member of the department and I had my suspicions about my superior, how would I address those concerns if I felt indications that perhaps things were not quite right?

**Ms Lyhne:** There are a number.

**Mr M. HUGHES:** I would like to know how I could raise those matters in a confidential way.

**Ms Lyhne:** Obviously, again it goes to culture. It is about creating an environment where we encourage that kind of conversation within our organisation. So there are, clearly, formal practices and processes that government has in place, like the public interest disclosures and so forth, which is a very formal process. We also have codes of conduct. We have strong messages that go out to staff around, if they have concerns. Clearly, we seek to get people to raise issues with their manager, but if it is their manager that is the concern, then we have guidance around how they might manage that as well. We, I think, have a very good track record of taking reports like that seriously, even if they are anonymous. We will investigate and we do that in a way so it is known that we do that, to encourage and create confidence in the organisation that we take those reports very seriously.

[1.00 pm]

**Mr M. HUGHES:** So beyond the induction training that you might have, how regularly do you have these reminders?

**Ms Lyhne:** Generally, there is a whole process that we are constantly engaged in. Mr Shepherd can go into detail about the procurement training, but there are regular refreshers around that. We also have code-of-conduct training when people enter the organisation, and constant reminders in all sorts of different ways, just merely by the way we go about our business. I think there is a fairly frequent refresher for procurement practices as well.

**Mr Shepherd:** Any officer involved in procurement, be it requisitioning, tender evaluation or purchasing card, must complete an online training course and have a pass mark of 80 per cent or more. They have to do a refresher of that every three years.

**Mr M. HUGHES:** Is that online?

**Mr Shepherd:** Yes.

**Mr M. HUGHES:** Not face to face?

**Mr Shepherd:** It is online.

**Ms Lyhne:** I have actually completed that course a number of times myself online. It is very rigorous. I have had to repeat the course on occasion, too. It is not just a tick and flick; it is actually a very rigorous process that goes not only to procedure but also to conduct.

**Hon ALISON XAMON:** The thing is, this is the intangible part—how do you handle issues around culture? What we saw with the uncoverings with the North Metropolitan Health Service was that the policies and procedures were all there and they were reported back that they were excellent, but, clearly, there was a huge problem with culture there. I suppose my question for you, and it is a difficult one I think to answer, is: what sort of assurances can you give that, even though you might have all the processes in place and they are being followed, you feel confident that, culturally, you have got something very different that you are dealing with?

**Ms Lyhne:** That is a good question. I think that is a challenge for the leadership of any organisation with respect to any governance. I would not sit here and say that I am 100 per cent confident that there is no wrongdoing in our organisation, because it is a large organisation with many, many facets. This applies not only to procurement; it applies to cybersecurity; it applies to the way that we deal with all the confidential information that we are responsible for. The obligation is on us to deal with the culture, which we have an active program of. As I said at the beginning, it is not about saying that that is done and we are going to move on; we do that in the way that we work constantly.

**Hon ALISON XAMON:** Do you encourage whistleblowing, for example?

**Ms Lyhne:** Through the practices. As you say, you can have all the processes and pieces of paper in place that you like that say we encourage whistleblowing, but it is how you behave as an organisation that is important. As I said, we are very clear with staff about how we investigate, and we communicate that. I guess it is more about our behaviour as an organisation and demonstrating that we take those things seriously when they have been reported. If people see us doing that, it means that it is more likely for people to do it in the future or for people who have not considered it in the past to report something. I think that is the key to a good culture that is about reporting. I cannot sit here and say to you with 100 per cent guarantee that it does not occur, but I can say we take it seriously. In addition to that, it is not just about culture; it is about really good practices and processes that are not only written on paper but that are actually followed through. They are the sorts of things that Mr Shepherd is responsible for. We could go through in great detail about the checks and balances we have in place, not only on paper but that are actually followed through.

**The CHAIR:** Mr Shepherd, if the external audit discloses something questionable, where do you go with it from there? Do you go straight to the DG or are there people in between you?

**Mr Shepherd:** I would investigate it first and then I would go through the chief financial officer, who is my direct report. Then from there it would go as a report through to the MD and then the director general.

**Hon JIM CHOWN:** So everybody becomes aware of your concerns?

**Mr Shepherd:** The people above me, yes.

**The CHAIR:** I am trying to work out how many stages there are before it gets to the DG.

**Mr Shepherd:** There would be two between myself and the DG.

**The CHAIR:** Two people?

**Mr Shepherd:** Yes.

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**Hon ALISON XAMON:** Is it feasible that the DG just would never find out the full extent of concerns that are potentially being raised?

**Mr Shepherd:** No, I would not let it. If I felt strongly there was something, I would make sure that it went to the DG.

**Hon JIM CHOWN:** We are dealing a lot with internal processes here, but procurement also has some responsibility for the external process. Ms Lyhne and Mr Shepherd, I will probably direct this question to you. You will probably have a large number of suppliers that are quite specialised, so in each category of supply, I imagine you may have a maximum of half a dozen who specialise in whatever your requirements are. What processes do you put in place to ensure that the people tendering for the jobs that are on offer, one, are not colluding with each other and saying, "Mr A, you can go this time; Mr B will go next time; and Mr C, you can go the time after", for example?

**Hon ALISON XAMON:** Like happened in health.

**Hon JIM CHOWN:** How would you be aware of something like that being undertaken, and what checks and balances do you put in place?

**Mr Shepherd:** Within, I suppose, the tender documents that we put out. We would advertise it publicly. We point out that they cannot be colluding and we seek them to assure us that they are not. It is difficult to assess that.

**Hon JIM CHOWN:** That was not my question. My question was: what checks and balances do you put in place to ensure that that is not happening? We are talking about large amounts of money here. We have seen examples over the years where people agree that they are not colluding, but they actually are. There is too much money involved. What checks and balances does your department put in place to ensure that is not happening?

**Mr Shepherd:** As I say, we go through a public tender process. We do not have the same people winning jobs all the time. Our construction area is fairly small.

**Hon JIM CHOWN:** I have just said that, yes.

**Mr Shepherd:** There is nothing really that we have, no.

**Hon JIM CHOWN:** So you do not have any checks and balances in place? Is that what you are saying?

**Mr Shepherd:** Not for detecting collusion, no.

**Hon JIM CHOWN:** Do you believe that should be part of your responsibility and that you should have those processes in place, or do you believe, "That's out of my hands. Whatever comes up from the tender process, the tender process ensures that I am okay and that we are okay"?

**Ms Lyhne:** There are obviously bodies in place that have responsibility.

**Hon JIM CHOWN:** Hang on; Mr Shepherd has not finished his answer yet.

**Mr Shepherd:** No, I do not think that we should just say, "No, it is not our concern."

**Hon JIM CHOWN:** But you just stated you do not have any processes in place to ensure that collusion is not taking place.

**Mr Shepherd:** I do not know how we could do that within the confines of our resources.

**Hon ALISON XAMON:** Even within the confines of your resources, would you be in a position to undertake basic inquiries, such as checking ownership of companies, for example, bearing in mind that people of course hide that as well? I am just trying to get an idea of whether there is at least a basic level that you would automatically undertake as a matter of course.

**Mr Shepherd:** Before we enter into contract, we do ensure that they are a legitimate legal entity. We use the ASIC website to do that. That is part of our process.

**Hon ALISON XAMON:** Can you confirm that it is an automatic part of your process to do that?

**Mr Shepherd:** That is right, yes.

**Hon ALISON XAMON:** So there is the potential, then, unless people are being quite clever, to pick up whether there is collusion between companies with joint ownership or anything like that if that is the case. If people are setting out to commit fraud, they will be probably be a little bit clever.

**Mr Shepherd:** On the basis that they were the same owners of the companies, yes.

**Hon ALISON XAMON:** That is part of your process now?

**Mr Shepherd:** Yes.

**Hon JIM CHOWN:** If I were to ask the same question to the director of procurement in the PTA and MRD, would I get the same response?

**Ms Lyhne:** You would probably need to ask them.

**Hon JIM CHOWN:** Director general, I direct the question to you, because you are the overall person responsible for all three agencies.

**Ms Lyhne:** And as I was saying before, there are organisations who have investigation responsibilities in this space.

**Hon JIM CHOWN:** Who are they?

**Ms Lyhne:** ASIC and other organisations have legislation that gives them powers to investigate these sorts of activities. We obviously would report if we suspected something like that. I cannot tell you what the director of procurement in the PTA or Main Roads is going to say to that question, but, obviously, you will have the opportunity to ask them.

[1.10 pm]

**Mr Beyer:** Through you, Chair, just perhaps to go back to Mr Shepherd's point about competitive tendering processes, there is a fairly obvious one—if you start to find that the market self-cancels itself and you find that you are getting repeat tenders from just one company, for instance, is an obvious test. More broadly, we are not putting out huge contracts for big facilities management within our agency. I know Main Roads, for instance, is actively cultivating a broader marketplace, so they are not dealing with a narrow marketplace in terms of the same old companies that are always tendering and, hence, which would risk potential collusion. Bearing in mind that when you are trying to get into very big contracts for building railways and freeways, the tier 1 companies are somewhat limited not just in WA, but also nationally. That is a matter of then having robust processes in place to ensure that there is a good understanding of where the market is at in terms of cost pressures and whether or not you are getting, on the back of history with previous procurement, good prices coming in. There are some smarts in the system in terms of knowing the marketplace, knowing the companies that are going to be competing and having some reference points in terms of what previous prices were as to whether or not you are actually getting a genuinely competitive process or whether there is some potential collusion going on.

**Hon JIM CHOWN:** That is great to hear, Mr Beyer, but we have just seen a very good example where the smarts in the marketplace knew more about what they were doing in regard to procurement corruption than the actual agency.

**Mr Beyer:** I understand that, yes. But, as I say —

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**Hon JIM CHOWN:** I believe that agencies nowadays need to have a process in place so they can protect themselves and ensure that they are very comfortable in regard to their procurement processes from tender arrangements.

**The CHAIR:** Can we just contextualise this a bit? You will probably need to take this on notice. How many transactions—that is in terms of services, goods, capital works—would be the subject of procurement activity within Main Roads? You would need to take that on notice, I suspect. How many staff have you got, Mr Shepherd?

**Mr Shepherd:** Contract officers? Nine.

**The CHAIR:** Thanks for that.

**Ms Lyhne:** Would you like the answer in relation to the Department of Transport in terms of how many procurement —

**Hon JIM CHOWN:** Yes, please.

**Ms Lyhne:** Mr Beyer, if you want to give some of the broad statistics, we can do that here; and, then, if you want more detail, we can take that on notice.

**Mr Beyer:** I will just give some numbers. Our asset investment program is \$32.4 million—Natasha, is that this year or last year?

**Mrs Thomas:** That is this year.

**Mr Beyer:** This year. We have 1 000 live contracts currently and we award 300 to 400 contracts per annum. Our annual operating budget is \$436 million, but in terms of this territory, as Ms Thomas mentioned earlier on, there is a \$130 million program for goods and services, \$90 million worth of grants and \$25 million for capital projects and non-current assets.

**The CHAIR:** It is terrific to have that all on hand; thank you.

**Mr Beyer:** There are 21 500 invoices per annum—about \$245 million in 2017–18—so there is a fair bit of transactional stuff, and we have got 3 700 active suppliers.

**Hon JIM CHOWN:** And 96 per cent of those transactions were dealt with internally.

**Ms Lyhne:** That was what Mr Shepherd said.

**Mr Shepherd:** We arranged the contracts.

**Mr Beyer:** Up to \$20 million.

**The CHAIR:** One of the areas of vulnerability is where a firm is awarded a tender on a low quotation and then kills the pig by going and getting a lot of variations. There is some room for, I think, some improper practice in that regard. Is that something you have come across recently or is that something that needs some further scrutiny?

**Mr Shepherd:** We have a very strict procedure in regards to variations. Where any variation is going to result in an increase in total contract value, they have to submit a request for variation form that, depending on the value of the contract with the variation value—so, the total contract—has to go to an officer delegated with that authority to, in the first place, submit it to procurement. Then when we get it—procurement—the contract officer goes back to the contract and sees, firstly, whether it is within the scope of the contract; and, if it is not, then it is rejected. If it is, then we look at it and, if it is more than the original contract value, we would be saying, “Why has this occurred?” and only allowing it if we felt that there was adequate reason for it.

**The CHAIR:** And then they would take you to court for failure to deliver on the contract—no? You do not have any litigation —

**Mr Shepherd:** No. The variation is never approved until we issue the letter of approval.

**The CHAIR:** But if they say there are unforeseen circumstances or the ground was harder, or this that or the other or some other —

**Mr Shepherd:** Sorry—for works?

**The CHAIR:** Yes.

**Mr Shepherd:** If it is for works, the superintendent, in their role, can authorise the variations and then those variations are open to scrutiny by our tenders committee.

**The CHAIR:** Now, director general, you were sort of smiling a bit when I asked that question. I wonder why. Does it have some resonance with you?

**Ms Lyhne:** Sorry—no particular reason. I guess I was trying to remember whether that had ever happened. I know the variation process is a very rigorous one, because I have to sign off on most of the variations, even if they are very small. I guess that may be why I smiled.

**Hon JIM CHOWN:** What happens when a contract is let and then, for whatever reasons, the government of the day decides that it is not going to honour that contract? What takes place?

**Ms Lyhne:** Do we have an example of that?

**Hon JIM CHOWN:** I do.

**The CHAIR:** I think he is thinking Roe 9.

**Mr Shepherd:** Main Roads will.

**Ms Lyhne:** That might be a good question for Main Roads.

**Hon JIM CHOWN:** Does the director general or his people actually look at these things, as the oversight person responsible for the whole three agencies, and have input into what repercussions there would be?

**Ms Lyhne:** I am sure that a significant withdrawal of a contract or whatever would be something that would be the subject of discussion with the director general. Historically, when I have acted in the role, communication around those things and significant amounts of money in contracts are always a part of it, and potentially discussions with the minister as well.

**Hon JIM CHOWN:** I am actually thinking of the footbridge to the stadium, which has doubled, virtually, in price.

**Ms Lyhne:** When Main Roads is here, we will be able to provide you with information.

**The CHAIR:** The CCC has provided us with information about notifications and investigations under the department and one of the allegations was raised by an employee. None of these was ever sustained, but I am wondering if you are aware of that case and what has happened to the employee.

**Ms Lyhne:** As the acting director general, I am not aware of that specific case. I do not know whether Mr Shepherd is aware.

**Mr Shepherd:** No.

**The CHAIR:** That is probably a good thing, then.

**Hon ALISON XAMON:** It is a good thing because it means that they are able to undertake the investigations and not alert people that that they are being investigated.

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**Mr M. HUGHES:** In relation to the purchase cards, in April 2017 the Auditor General commented that the Department of Transport did not have good controls over the use of the cards. Did you agree with that; and, if you did, what did you do about it?

**Mr Shepherd:** I believe that that instance was we had failed to cancel some cards.

**Mr M. HUGHES:** He suggested it exposed the department to difficulties in detecting inappropriate payments. Was it not a big issue for the department?

**Mr Shepherd:** If this is the particular case, it is that when people had left the department, we had not immediately cancelled their purchasing card. But now we have ensured that as soon as we get notification that someone is leaving, we do terminate or cancel that card.

**Mr M. HUGHES:** I thought it was a bit wider than that—that it went to the question about permits not necessarily being proved valid in business transactions.

**Ms Lyhne:** We would be happy to take it on notice. I do recall that there was—occasionally, you do get instances where staff have inadvertently used the wrong purchasing card, and obviously that is unacceptable. We have a very rigorous process in place—Mr Shepherd can probably talk in more detail about that—around the kind of reporting that is required when that occurs, and it goes right to our corporate executive.

[1.20 pm]

**Mr M. HUGHES:** Yes, I am just saying that April 2017 is not that long ago, and I would have thought if it had been a matter of concern, you would be aware of the detail.

**Ms Lyhne:** It is a matter that has been at our corporate executive and we now get reporting to our corporate executive about any purchasing cards. I do not know whether there is anything further that you can add to that.

**Mrs Thomas:** I do not think so.

**The CHAIR:** IT is one of the areas of vulnerability for procurement. Perhaps you can talk us through what sort of checks and balances you have in relation to information technology purchases.

**Mr Shepherd:** We currently have a panel contract in place for where we have four vendors who have gone through a public tender process and have been appointed to this panel, where they can provide resources such as business analysis and database administrators—whatever our requirements are. They have submitted prices for each of these. At any time that we have a requirement, we can go to that panel and seek quotes from there, where they will nominate who they have available and what rate we would be required to pay. They can offer lower rates, but they cannot go beyond that initial price that they have given us. Then it really depends on what resources there are in the market and who has them available at the time, and there is an assessment done by an evaluation panel as to who they will select.

**Ms Lyhne:** Our tenders committee oversees the CUA. It is kind of a very formal part of our process.

**Mr Shepherd:** The initial panel was put in place through a process run by the Department of Finance, which went through STRC, or the state tender review committee. Then the selection of the base services people, that went to our tenders committee last week, where under that panel we call for the tenderers to provide personnel. Outside of that, we have our own internal systems. We do not have an IT company running our networks or anything like that. It is our own resources.

**Ms Lyhne:** Of course we, as a part of the GovNext process, will be procuring services in the future through that—a whole-of-government approach to that.

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**Mr Shepherd:** We are slowly rolling into that, because we do have assets that we need to retire and to retire them too soon, we would be wasting our money.

**Hon JIM CHOWN:** What is the relationship between budget and management within the department and procurement? How do you work together?

**Mr Shepherd:** We report to the same executive director and we keep in close touch with each other in regard to matters. We meet fortnightly as a management group.

**Mrs Thomas:** Just to add to that, in terms of the procurement process, obviously, one of the key steps is to ensure that there is budget available for going out to tender.

**Mr Beyer:** Through you, Chair, perhaps just a crossover point also is that at a point when a contract is about to be awarded, the job cannot start until a purchase order has been notified to the supplier and then of course that becomes part of the finance system for payment of invoices. You cannot get the job started, unless you have got a purchase order, and you cannot get paid, unless you have got a purchase order. And, of course, all the financial tracking of the systems within the finance system.

**Hon JIM CHOWN:** Thank you for that, Mr Beyer. Is there a brick wall between procurement and management when it comes to that process of signing purchase orders?

**Ms Lyhne:** What do you mean by brick wall?

**Hon JIM CHOWN:** No association.

**The CHAIR:** You mean a Chinese wall.

**Hon JIM CHOWN:** A Chinese wall, whatever.

**Mr Beyer:** The process would be that the —

**Hon JIM CHOWN:** The purchase order at times is the key, that is where the money is. That goes to a preferred tenderer—sign off, off it goes. That is done by one side of the house that the other side of the house has no input in after all processes are cleared off, yes or no?

**Mr Shepherd:** No, what happens is the requisition is entered in by the business area and the requisition has to have cost codes which assign the funds to it. It then has to be approved by a manager in that business area or higher up—depending on the value, it might go to the DG. Then it crosses into procurement. Procurement then has to turn that requisition into a purchase order.

**Hon JIM CHOWN:** You do the purchase order?

**Mr Shepherd:** We create the purchase order, and at that point we will not turn it into a purchase order, unless there is a valid contract in place or there is a valid exemption or whatever. We will not turn it into a purchase order and people cannot get paid, unless it is a purchase order. That is the control we have. That is the same with variations. Any variation of a requisition has to be raised, has to be approved, has to come to us for us to add a line to that purchase order for them to be able to be paid.

**Hon JIM CHOWN:** The purchase order has approval from a senior manager?

**Mr Shepherd:** The requisition does; the purchase order is approved by a senior procurement officer.

**Mr Beyer:** The business area approves the requisition. The procurement area approves the purchase order, the issuing of a purchase order, which then goes on the contract and the notification of the award of the contract, and then at the invoicing stage, invoices have to go back to the business area to the relevant project manager to say, “Yes, the works have been completed up to that stage, happy to pay.” Then that goes into the finance system for payment of the moneys.

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**Mr Shepherd:** The systems are electronically constructed so that no-one can create a requisition and approve it. You cannot approve a purchase order and then turn it into a purchase order. That is how we separate it.

**Ms Lyhne:** I think that probably constitutes a brick wall then, does it?

**Hon JIM CHOWN:** Yes, thank you.

**The CHAIR:** Some of the cases the CCC have investigated have involved, effectively, consultants or contractors within the department being used as vehicles for shifting money to and from or diverting them illicitly. Are you able to advise whether things like human resources, IT, recruitment, whether they are in-house or whether there are contracted entities within the department?

**Ms Lyhne:** They would be contracted entities in the department, but if I go through them in the main, that work would be done by public servants—recruitment and all the core functions would be. We would maybe enlist consultants to provide services too, but the entire responsibility, I cannot think of an instance where —

**The CHAIR:** No, it is not the responsibility, it is the—for example, in recruitment that they make a recommendation to the department that you hire X and X has got some conflict of interest or other association. There will be instances where non—public servants are doing department functions.

**Ms Lyhne:** If that were the case, then that would still be required to come back through our normal procurement process.

**The CHAIR:** No, but you would not necessarily be aware—those people are not under the same constraints in terms of public sector discipline and so on, secrecy provisions and so on.

**Mr Shepherd:** Are you talking recruitment services where they do the shortlisting and then you say to the agency?

**The CHAIR:** Yes.

**Ms Lyhne:** I cannot think of an example, but facilities management might be where we have a contractor that manages the facility and then contracts into that.

**The CHAIR:** Do you understand the question?

**Ms Lyhne:** I am not sure that I have —

**The CHAIR:** Maybe we might write to you about that because that is an area that we have identified, say, in the Horizon Power case —

**Ms Lyhne:** We can consider it, that would be useful.

**Mr Shepherd:** Just following that line, if I may, we do not allow any external contractors to sit on or to chair any of our evaluation panels. They can sit on them, but they cannot chair any evaluation panel. They have to actually be a DOT employee.

**The CHAIR:** Yes.

[1.30 pm]

**Mr Beyer:** We would be ensuring that, basically, anybody who is involved in that would have to declare any conflict of interest, so if we had a —

**The CHAIR:** Declaring it and actually ensuring it are two different things.

**Mr Beyer:** I know, but to the extent that, for instance, if you have a specialist engineer working for us on contract, and if you went through a tender process, any company that they had previously been involved in, we have got a pretty good idea of who they had been involved with previously. If

they were party to the tender, that person would have to declare, “I’ve got a conflict of interest; I can’t sit on that evaluation panel for that process.”

**The CHAIR:** On the other hand, he or she could be someone who says, “I need this sort of treatment of this particular project, or whatever it is, and there is only one supplier or whatever.” That is the potential I would have thought, and it turns out that he has some association that would not necessarily be known to the agency.

**Mr Beyer:** Always theoretically possible. It is a question of how closely you are working with those people and managing it. In the main, other than through clearly defined contracts, we are not outsourcing core departmental functions to external agencies which are then in a capacity to either influence or make the decision that can have a material impact on us.

**The CHAIR:** Thank you for your evidence before the committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made to the transcript and 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.

**Hearing concluded at 1.31 pm**

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