

40TH PARLIAMENT



Public Accounts Committee

Report 13

KNOWING WHAT GOOD LOOKS LIKE

Challenges in managing major public sector contracts

Presented by
Dr A.D Buti, MLA
November 2019

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Public Accounts Committee

Knowing what good looks like

**Challenges in managing major public sector
contracts**

Report No. 13

Presented by

Dr A.D. Buti, MLA

Laid on the Table of the Legislative Assembly on 28 November 2019

Inquiry Terms of Reference

On 28 November 2018 the Public Accounts Committee resolved to establish an Inquiry with the following terms of reference.

The Public Accounts Committee will inquire into and report on public sector contract management practices, with a focus on:

1. the policy frameworks that currently govern public sector contract management in WA;
2. the extent to which compliance with these frameworks is monitored and reported;
3. the effectiveness of these frameworks in fostering robust contract management practices and capacity within agencies;
4. the processes by which contract management expertise and good practice within individual agencies is identified, developed, and shared across the WA public sector;
5. the processes and instruments available to ensure agencies can effectively allocate and manage commercial and performance risks on major contracts;
and
6. ways to improve or enhance contract management performance across the sector.

Chair's Foreword

In tabling this 13th report of the Public Accounts Committee (the Committee) titled *Knowing what good looks like*, I think it is important and useful to articulate the focus of our inquiry into the frameworks, processes and effectiveness of public sector contract management.

Our inquiry focused on large contracts, which we defined as those valued at \$5 million and above. While acknowledging this value is somewhat arbitrary, it allowed the Committee to focus our inquiry on activity that poses a reasonably high level of risk and significance, and imposes a high cost to the State.

Whenever one is dealing with the use of public funds, it is important to ensure that there is appropriate oversight and creditable, workable and effective regulation. This is equally important in the procurement process and in the contract management phase.

The current serious corruption allegations emanating from the Department of Communities highlight the importance of scrutinising how government procurement is managed and how contracts are managed. However, the terms of reference for this inquiry did not focus on potential fraud or misbehaviour and obviously our Committee is not in a position to comment further on the allegations. Our report, though, remains timely as it deals with high-level preparedness for better management practices on major contracts and for improving control, oversight and transparency in pursuit of good public outcomes. This report's recommendations are aimed at improving the efficiency and effectiveness of public sector contract management.

In conducting the inquiry, the Committee has considered 18 written submissions and heard evidence from 38 witnesses across 11 briefings and hearings in Perth, which led to seven agencies providing detailed responses to follow-up questions. We also held discussions with 38 experts and practitioners over 12 meetings in the United Kingdom. The Committee has worked collaboratively throughout the process of receiving and considering this evidence, and I would like to take this opportunity to acknowledge the hard work and contribution of my fellow Committee members: Mr Dean Nalder, Member for Bateman and Deputy Chair; Mr Simon Millman, Member for Mt Lawley; Mr Vince Catania, Member for North West Central; and Mrs Lisa O'Malley, Member for Bicton. Further, on behalf of the Committee, I would like to thank our secretariat: Principal Research Officer Dr Alan Charlton and Research Officer Dr Sam Hutchinson, for their excellent assistance and dedication with this inquiry. I would also like to acknowledge the outstanding contribution made to this inquiry by former Principal Research Officer Mr Timothy Hughes before he moved to the Office of the Auditor General in July of this year.

This inquiry logically follows from our earlier inquiry into the Perth Children's Hospital project where we observed notable shortcomings in the management of contracts. During that inquiry we also heard evidence from the State Solicitor, Mr Nicholas Egan, who expressed concern with the quality of contract management in the public service in Western

Australia. The State Solicitor reinforced these views when appearing before the Committee in this current inquiry.

We also note the Auditor General's observation that 'some agencies are not following their own approved practices or widely accepted good practice in contract management.' Likewise, in evidence to the Committee, the Department of Finance said that 'Shortcomings of contract management appear to be embedded in the culture and processes within agencies.' Further, three recent public sector inquiries, namely by the Service Priority Review, the CEO Working Group on Public Sector Efficiency, and Special Inquirer Mr John Langoulant, reinforced the need for reform in public sector contract management practices.

To this effect, key public sector agencies are currently undertaking an ambitious program of reform in response to the recommendations of those earlier reports. Under these proposed reforms, the Department of Finance will be the functional lead for all government procurement. In addition, the Department of Treasury is leading reform of Government Trading Enterprises, to standardise and streamline their governance arrangements and operations.

While the Committee accepts the need for change, we also recognise that there are many examples of good contract management in the public service. As the Auditor General told us, 'every day in government, many, many services are delivered successfully under contract.' And even though the State Solicitor was critical of the quality of contract management, he also acknowledged that there are examples in the public service of well-managed contracts.

However, there is room for much improvement in the management of contracts by the public service and we believe that the 42 Findings and 30 Recommendations found in this report can assist the reform process. We respectfully submit that adopting our recommendations will enhance the rigour of the State's contract management policies and practices, hopefully generating substantial public savings and freeing up resources to deliver important and critical public services for Western Australians.

We cannot stress enough how important it is to ensure we have the best possible contract management practices in place, as we are dealing with significant amounts of public funds. For example, one government report said that the State spent \$14.7 billion on goods and services in a single year, and the public health sector has contracts valued at about \$20 billion, with hundreds of staff directly involved in their management. Such figures reinforce the timeliness and importance of our report, and the need for government and the public service to give careful consideration to the changes we propose.

At a high policy and governance level, which this report is pitched at, we found that public sector contract management frameworks, policies and processes were fragmented, complicated and unevenly monitored and reported, with deficient support systems for the personnel managing contracts. We hope that the reforms being pursued by the Departments of Finance and Treasury in relation to procurement and contract management will contribute to a more coherent policy framework that should improve contract management outcomes.

Even allowing for the size and variability of the public sector, the framework surrounding contract management is overly complicated with significant variation in legislation, regulations, policies, frameworks, matrixes, international agreements, Treasurer's Instructions, Premier's Circulars and guidelines that contract managers might need to consult. We submit that this complication and variation is in large part due to the arbitrary distinction between types of contract that exists in the current system. This is far from ideal, as the type of entity involved can impact the expectations and policies involved.

It is disconcerting that we found inconsistency in oversight and monitoring of procurement and contract management. While the State Tender Review Committee and the Community Services Procurement Review Committee have significant roles in monitoring compliance with State Supply Commission policies there are knowledge gaps and an undue reliance on passive measures to monitor performance. However, we do recognise and acknowledge that since 2017 the State Supply Commission has been reviewing agency audits to assess their compliance with State Supply Commission policies. But more needs to be done to capture and analyse data around agency compliance. We believe that Treasury should increase the rigour with which it monitors and enforces agency compliance with the Strategic Asset Management Framework.

I would like to stress our recommendation that as part of ongoing public service reform programs, contract management plans, independently assessed for their rigour, should be made mandatory for all major contracts that are high value and high risk, or low value and high risk, whether they be for goods and services, capital works, or Government Trading Enterprises. Further, any decisions to self-exempt from such requirements should be independently interrogated by the Department of Finance and results of these assessments should be included in its annual reports.

Our inquiry and the findings in this report highlight concerns we have with the public sector's allocation of risk and accountability. We believe the Department of Finance should implement the Special Inquiry's recommendation to add litigation risk to compulsory contract register information. Further, there needs to be clearer guidance and process to determine when the State Solicitor's Office becomes involved in high value, high risk or significant contracts. We also recommend that Government should prohibit the contracting out of proportionate liability. In relation to accountability, we believe it would be wise for the Western Australian public service to look to the United Kingdom, where senior project managers are individually accountable for reporting outcomes of projects and contracts. In addition, if the State can become better at being a 'good client' it will assist contractors to better understand what they need to do and what they should expect from the State.

The Committee was concerned with the fragmented transparency around major contracts in Western Australia. There were no comprehensive cross-sector requirements to make contract information public. This resulted in insufficient information on contract performance and management being made easily accessible to Parliament and the public. Also, there appears to be no clear whole-of-government guidelines for dealing with issues of commercially-in-confidence and public disclosure. We believe that this information should be publicly available.

Submissions and information the Committee received from the public service and third parties within Western Australia and the United Kingdom raised the question of what we mean by 'value-for-money'. In Western Australia, low cost appears to still be the default measure for determining value. This approach can be problematic and Western Australia needs to follow the lead of other jurisdictions in providing clear and strong guidance for dealing with unusually low bids. We believe that the Department of Finance in developing the procurement reform program, should develop an 'unusually low bids' policy, taking into consideration similar initiatives in Queensland and the United Kingdom.

Further, in Western Australia there is little clear guidance to help agencies recognise, measure or report social value. This makes it difficult for agencies to include social or 'non-financial' measures in their procurement processes, and harder for contract managers to ensure they are being achieved. Given the potential for major government contracts to have a significant impact on the public, this is a significant deficiency in the management of contracts in the Western Australian public service. As noted by the Service Priority Review: 'The amount of WA's annual procurement expenditure means there is potential for its purchasing decisions to drive community benefits in other areas. This would require adjusting procurement policy settings beyond narrow conceptions of value towards a framework that allows the government of the day to include consideration of other legitimate government objectives.' Similarly, several witnesses to our Inquiry, such as the Department of Communities, the Auditor General and the Construction, Forestry, Mining Energy Union (CFMEU) submitted that a focus on cost, to the exclusion of other considerations, might not be the best decision for getting the best service or outcome for the community.

There are some government policies that go towards expanding the notion of best value to also include wider issues such as social impact, for example, the 'Western Australian Industry Participation Strategy' (which is given effect via the *Western Australian Jobs Act 2017*), the 'Buy Local Policy' and the 'Aboriginal Procurement Policy'. But more work needs to be done in this area. Western Australia should look to other jurisdictions such as the United Kingdom and the Australian Capital Territory in developing policies for measuring and giving greater importance to including social value criteria in contracts for major projects.

Finally, more needs to be done within the public service to recognise the importance of contract management and the ongoing development of relevant skills. Although we applaud the development of a Procurement Competency Matrix, which identifies the key competencies required by procurement professionals in Western Australia, we believe it should be made mandatory. Similarly, while some training programs have been developed they are also optional. This stands in stark contrast to the situation in the United Kingdom, where a set of professional qualifications and requirements have been developed and are now compulsory. The Western Australian government should follow the lead of the Victorian government which has turned to the United Kingdom in developing and implementing its training program.

This latest report by the Committee complements our previous work, other recent public sector reviews and current public sector reforms to the State's contract management

policies and practice. We respectfully submit that it is crucial that the recommendations within this report are carefully considered and positively acted on. This will be vital for the proper allocation and spending of public funds, and for the effective and efficient delivery of services and facilities for Western Australians.

A handwritten signature in blue ink that reads "Jony Buti". The signature is written in a cursive style with a large initial 'J'.

DR A.D. BUTI, MLA
CHAIR

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Executive Summary

Government in large part is in the business of delivering goods, services and facilities to the public. Some of that work is done directly by public servants employed through departments and other agencies. But an increasing amount is delivered through arrangements with other providers. Those providers come in all types and sizes. They can be commercial or not-for-profit organisations. They can be multi-national companies with substantial contracting divisions, ‘mum and dad’ companies, or volunteer organisations. Most importantly for our purposes, however, is the fact that every contract entered into by the State will need to be managed. This inquiry was led by our interest in ascertaining how well the State is prepared to get the most out the vast array of contracts it has entered into.

This inquiry follows an earlier inquiry we conducted into the Perth Children’s Hospital project, which led to a report that was tabled in March 2018. Over the course of that inquiry, we observed some notable shortcomings in the way that contract was managed. As a result, we resolved to understand how widespread these shortcomings were throughout the public sector, and, if wider issues were evident, what we might recommend to improve the situation. We were drawn by the realisation that good contract management is a crucial issue for our State, but one which has not always received the focused attention it deserves. We were also influenced by comments made by two other recent major reviews of the public sector. The Special Inquiry into Government Programs and Projects undertaken by former Under Treasurer, Mr John Langoulant, made several key observations about contract management, as did the Service Priority Review. We took these on board, but have not merely followed up on their implementation or otherwise.

In conducting this inquiry, the Committee heard much evidence showing there is an overwhelming focus on the particular and specific in this field. Agencies rightly worry about their own processes and performance, rather than what happens in the sector as a whole. There is a similar situation evident in the more collective or wide-ranging advice and guidance provided by central agencies. In the main, current guidance and requirements relate to individual contracts or projects. Even the requirement to register contracts and variations is based on noting each individual case. They do not require analysis or reporting of any trends over time or across an agency’s portfolio of contracts.

This atomised approach underplays the importance of taking a broad view, and looking for the bigger picture. Although the Department of Finance is in the midst of an important review of procurement, which we applaud and support, it needs to widen its particularised focus to think more on the broader challenges and possibilities it faces. Only then will Parliament and the public be able to take reasonable assurance that this integral facet of public sector activity is delivering what it should.

It is worth noting that this is an enormous and probably growing area of activity. One government report said that the State spent \$14.7 billion on outsourced activity in a single year. We learned that the public health sector has contracts valued at about \$20 billion, with

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hundreds of staff directly involved in their management. Any way you look at it, this activity warrants attention.

What we found was a situation that is coming from a long way back, without a clear idea of what good processes, guidance and contract management should look like. Getting a better idea of what 'good' is, for individual contracts and agencies and for the sector as a whole, will take time and involve significant effort. But not doing it will leave the State open to unnecessary repetitions of some of the problems we saw in the Perth Children's Hospital.

At a high level, we found that all aspects of contract management across the public sector were fragmented, complicated and unevenly monitored and reported. Worse, the role of contract manager was not afforded the importance it warrants, and support for people charged with managing contracts was underdeveloped. The Committee acknowledges and welcomes current efforts to improve the procurement situation in general and the contract management challenges in particular. The Department of Finance as lead agency and the Department of Treasury are working through the significant number of reforms recommended by the Service Priority Review Final Report and the Final Report of the Special Inquiry into Government Programs and Projects relating to procurement and contract management. Getting these done will contribute towards a more coherent policy framework that should improve contract management outcomes.

There is an overly complicated policy framework surrounding contract management, even when we take into account the size and variability of the public sector. While we expected some variation, we were concerned to find the wide variety of legislation, regulations, policies, frameworks, matrixes, international agreements, Treasurer's Instructions, Premier's Circulars and guidelines that contract managers might need to consult. In part this is driven by the somewhat arbitrary distinction between types of contract that exists in the current system.

Western Australia's procurement policy framework is split between the procurement of goods and services (which include things like fleet management, ICT, business and office materials), and capital works, (which includes roads, rail, ports, hospitals and other public buildings). As a result of this fragmentation, there is no overarching legislative or policy framework to guide all government procurement in Western Australia. Even the type of entity involved can impact the expectations and policies involved. Government Trading Enterprises, for example, are not required to meet many of the same policy directives that departments must follow. And individual agencies differ according to whether or not they have received an exemption from, for instance, State Supply Commission policies.

Beyond frameworks, we found that there is an inconsistent monitoring and oversight regime. Although there are some requirements to check what is going on, it is too situationally specific, and the various frameworks mean there is little consistency. The State Tender Review Committee and the Community Services Procurement Review Committee have important roles in monitoring compliance with State Supply Commission policies, but overall there are knowledge gaps and too much reliance on passive measures to monitor how well things are going. Recent years have seen an increased level of oversight which is a step in the right direction. In 2017 the Department of Finance began reviewing agency audits

to assess their compliance with State Supply Commission policies. This system is an advance on what went before. But more needs to be done to capture and analyse agency compliance.

A key part of contracting is the allocation of risk. Knowing which party is best placed to manage the various risks in delivering a service or product is a vital part of the procurement decision. We found that the public sector is not particularly good at allocating risk, and that this has and potentially will continue to lead to poor outcomes until the sector becomes better informed of good practice. In a connected issue, we found that Western Australia still allows agencies to contract out proportionate liability, which puts an onerous burden on contractors. Managing a contract well is in large part determined by having a good contract in the first place. We were surprised to find that there is no standard requirement for the State Solicitor to review major contracts. We understand that there will always be times when agencies will need to take specialist commercial legal advice, and that the State Solicitor will not always have the resources to provide advice to all agencies. Nonetheless, the current arrangement leads to uneven practice and has likely increased costs to the State.

Closely tied to questions of risk are those of accountability. While there were clear expectations about day-to-day responsibility for managing contracts and projects, we found little work has been done to determine accountability for projects and contracts. The experience in the United Kingdom with making senior project managers individually accountable for reporting outcomes of projects and contracts showed a way forward. Learning to be 'good client' would also help the State achieve more from its contracts, and provide contractors with better understanding of what they need to do and what they should expect from the State.

Transparency about major contracts in Western Australia is limited and fragmented, which diminishes the assurance that Parliament and the public can have in agency and sector performance. Again, there were no comprehensive cross-sector requirements to make contract information public, resulting in insufficient information on contract performance and management being made easily accessible to Parliament and the public. There was support from agencies for increased transparency, but they were unclear what that would entail. At one level, agencies believed that meeting their requirements under State Supply Commission Policy or Treasurer's Instructions meant they had fulfilled their transparency obligations. While meeting these requirements is a necessary component of good behaviour, it is not sufficient to providing transparency. We also found variation in how agencies dealt with questions of commercial confidentiality when making information public. We believe there is a need for clear guidelines on this, which should start from a position of making information available.

While making a good initial procurement decision is the first step to getting good outcomes, ensuring the contract delivers value is a central part of the contract manager's role. We found that more needs to be done to expand notions of 'value-for-money', and that low cost is still the default measure for determining value. While other jurisdictions had strong guidance for dealing with unusually low bids, Western Australia has not developed these, which we recommend should happen as soon as possible. We also found that there was little

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clear guidance to help agencies recognise, measure or report social value. This makes it harder for agencies to include social or 'non-financial' measures in their procurement processes, and harder for contract managers to ensure they are being achieved. Until better guidance is produced, the question of cost will remain overvalued in decision-making.

Lastly, but by no means least, we looked at how well supported contract managers are in their roles. We found that contract management has been underdeveloped, and that more needs to be done to give contract managers both the recognition and the skills they need. As in most areas, a start has been made. The Department of Finance and the Public Sector Commission have produced a Procurement Competency Matrix, which identifies the key competencies required by procurement professionals in the Western Australian public sector. However, its use is not compulsory. Similarly, we found a training program has been developed, but it is also optional. This differs considerably from the situation in the United Kingdom, where a set of professional qualifications and requirements have been developed and are now compulsory. We noted that Victoria has implemented a program based on the United Kingdom program, and believe that the Western Australian government should work towards a similar outcome.

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Public Accounts Committee directs that the Premier, the Minister for Finance and the Treasurer report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

Findings and Recommendations

Chapter 2 – There is an overly complicated policy framework

Finding 1

Page 6

There are at least 20 Acts, government policies, frameworks, matrixes, international agreements, Treasurer’s Instructions, Premier’s Circulars and guidelines that contract managers might need to consult.

Recommendation 1

Page 7

Wherever possible, the Minister for Finance should seek to simplify the policy framework for procurement and contract management.

Finding 2

Page 7

There are mixed views on the difficulty of working with the current procurement and contract management frameworks. While some agencies find the frameworks overly onerous and difficult to navigate, other agencies are satisfied with the current arrangements.

Finding 3

Page 8

The State’s procurement policy framework is fundamentally split between procurement of goods and services (such as cars, office equipment, ICT), and capital works, (such as transportation infrastructure projects and public buildings). This fragmentation means there is no overarching legislative or policy framework to guide all government procurement in WA.

Finding 4

Page 9

While Finance can be heavily involved in certain goods and services procurements, its involvement effectively ends after a contract is awarded, at which point the agencies take up the management of their contracts.

Finding 5

Page 11

WA is the only Australian State with no overarching legislation that applies to its Government Trading Enterprises.

Recommendation 2

Page 13

The Treasurer should have regard to the findings and recommendations of this report, and determine if and how they should apply to Government Trading Enterprises reform program.

Finding 6

Page 14

Finance and Treasury are working through the significant number of reforms recommended by the Service Priority Review Final Report and the Final Report of the

Special Inquiry into Government Programs and Projects relating to procurement and contract management.

Recommendation 3

Page 14

The Premier should ensure that the Department of the Premier and Cabinet's Public Sector Reform website includes a performance dashboard that clearly demonstrates the current status of all key procurement reform initiatives.

Recommendation 4

Page 14

The Government should ensure that the proposed Procurement Bill is given high priority in the Parliamentary timetable.

Chapter 3 – There is an inconsistent monitoring and oversight regime

Finding 7

Page 18

The current system of dispersed monitoring and oversight does not give enough assurance that contract management plans are in place for all relevant major contracts.

Recommendation 5

Page 18

As part of the ongoing reform programs, the Minister for Finance should ensure that contract management plans, independently assessed for their rigour, should be made mandatory for all major contracts (high value/high risk, or low value/high risk), for goods and services, capital works, and Government Trading Enterprises.

Any decisions to self-exempt from such requirements should be independently interrogated by Finance, and results of these assessments should be included in its annual reports.

Finding 8

Page 19

The State Tender Review Committee and the Community Services Procurement Review Committee are potentially crucial bodies for monitoring compliance with State Supply Commission contract management policies. However, the STRC's recommendations are non-binding and it does not routinely follow-up on its recommendations to agencies. Further, there are potential knowledge gaps in the recording of required contract management plans and a reliance on passive 'informal measures' to monitor receipt of agency contract management plans and contract variation memos.

Recommendation 6

Page 19

The Minister for Finance should ensure that Finance's reform program establishes a formal mechanism so that the State Tender Review Committee and the Community Services Procurement Review Committee have knowledge of all major, high value or high risk agency contracts to ensure they are receiving all required contract management plans.

Finding 9**Page 20**

State Supply Commission policies require agencies to undertake annual or biannual compliance audits. Finance has only received and recorded audit results since 2017.

Finding 10**Page 21**

With regard to procuring goods and services, the current system of reviewing agency audits is an advance on what preceded it. But improvements are required in data capture and analysis of agency compliance. Finance could not readily supply a disaggregated breakdown of the number and nature of all agency compliance breaches.

Recommendation 7**Page 21**

The Minister for Finance should ensure that Finance conducts routine analysis that provides a comprehensive picture of the number and nature of all agency compliance breaches.

Finding 11**Page 21**

With regard to procuring works, there is no equivalent monitoring and oversight system to that in place for goods and services procurement.

Recommendation 8**Page 21**

The Minister for Finance should ensure that Finance's procurement review ensures that existing compliance audit requirements for goods and services contracts are also applied to works contracts.

Finding 12**Page 22**

In the last 10 years there have been no reviews or cancellations of an agency's partial exemption status based on its contract management practices. The efficacy of the five consequences that agencies might face for non-compliance under Regulation 5 of the State Supply Commission Regulations 1991 has not been formally tested or applied. Rather, Finance prefers to work with and discuss identified issues of non-compliance with agencies.

Recommendation 9**Page 22**

The Minister for Finance should require that Finance report on its administration of Regulation 5 of the State Supply Commission Regulations 1991, dealing with the consequences of agency non-compliance with supply policies. The report should demonstrate Finance's rationale for its decisions to impose or not impose the various options available under Regulation 5.

Finding 13**Page 24**

Treasurer's Instruction 820, which requires a register of contracts, is mandatory for government agencies but not for Government Trading Enterprises.

Finding 14 **Page 24**

The rate of agency compliance with Treasurer’s Instruction 820 is not fully documented, and there are no formal penalties for non-compliance.

Recommendation 10 **Page 24**

The Treasurer should ensure that Treasury develops and implements a more rigorous process to record, monitor, and enforce agency compliance with Treasurer’s Instruction 820.

Finding 15 **Page 25**

There is no requirement under the Strategic Asset Management Framework for agencies to provide a contract management plan for major works contracts.

Finding 16 **Page 26**

While adherence to the Strategic Asset Management Framework is ‘encouraged’, there are no formal penalties for non-compliance.

Recommendation 11 **Page 26**

The Treasurer should ensure that Treasury increases the rigour with which it monitors and enforces agency compliance with the Strategic Asset Management Framework.

Chapter 4 – More work is needed to better manage risk and accountability

Finding 17 **Page 28**

The combination of agency processes and the common use arrangement for goods and services is appropriate for many standard purchases and service types.

Finding 18 **Page 28**

As also reported by the Special Inquiry and the Service Priority Review, we found that public sector contracting has a problem in fairly and effectively allocating risk. This can impact negatively on both government agencies and contracting entities.

Finding 19 **Page 31**

There is no requirement for agencies to seek State Solicitor’s Office advice on major contracts, leading to inconsistent practice and likely increased costs.

Finding 20 **Page 32**

The Special Inquiry’s recommendation to include litigation risk in major contract registers has not yet been implemented.

Recommendation 12 **Page 32**

The Minister for Finance should implement the Special Inquiry’s recommendation to add litigation risk to compulsory contract register information.

Recommendation 13**Page 32**

The Minister for Finance should ensure that there is a clear and logical process to determine when the State Solicitor's Office becomes involved in high value, high risk or significant contracts, with a minimum expectation that the State Solicitor's Office be informed of all such contracts.

Finding 21**Page 33**

Unlike other jurisdictions in Australia, Western Australia continues to permit agencies to contract out proportionate liability.

Recommendation 14**Page 33**

Government should prohibit the practice of contracting out of proportionate liability.

Finding 22**Page 34**

While responsibilities are generally clear for those managing individual contracts, accountability for major contract management is not.

Recommendation 15**Page 35**

The Minister for Finance should consider implementing the Appointment Letter process for the most significant projects.

Finding 23**Page 37**

There is no standardised approach to public sector agencies being 'good clients' or to ensuring contractors meet financial and social expectations.

Recommendation 16**Page 37**

The Minister for Finance should explore introducing 'model client' and/or 'supplier code of conduct' policy statements.

Chapter 5 – Transparency about major contracts is limited**Finding 24****Page 41**

Transparency of contract information is an important part of providing strong public accountability and assurance.

Finding 25**Page 42**

The absence of comprehensive cross-sector requirements to make contract information public has resulted in there being insufficient information on contract performance and management that is easily accessible to Parliament and the public.

Finding 26

Page 43

TendersWA holds important information about contracts and procurement, but not about actual expenditure, and the information is not widely shared.

Finding 27

Page 43

Agencies supported increased transparency but were unclear what that would entail. At one level, agencies believed that meeting their requirements under State Supply Commission policy or Treasurer's Instructions meant they had fulfilled their transparency obligations.

Finding 28

Page 44

There is no clear rationale for having different expectations about making information public based on the type of contract involved. Nor is there any clear benefit that results from the differentiation.

Recommendation 17

Page 45

The Minister for Finance should determine minimum standards for major contract reporting requirements for all agencies. That reporting should be based on risk and government need, not merely the type of contract involved.

Recommendation 18

Page 45

In setting minimum reporting standards, the Minister for Finance should consider adopting the United Kingdom's approach that all major contracts publicly report three Key Performance Indicators.

Recommendation 19

Page 45

The Minister for Finance should ensure that Finance determines and implements strategies to assess and analyse agency contract information and to make that information openly available to Parliament and the public. This should include ensuring that all contracts above a designated value are tabled in Parliament and made available on agency websites.

Finding 29

Page 45

Treasurer's Instructions 820 and 813 are important foundations for good practice in agencies, but provide limited transparency in themselves.

Recommendation 20

Page 45

The Treasurer should revise Treasurer's instruction 820 to ensure either that TendersWA becomes the repository for major contracts, or that equivalent structures are put in place.

Finding 30

Page 48

Routinely withholding information from the public only on the basis of commercial confidentiality undermines transparency.

Finding 31 **Page 50**

There is at present no whole-of-government supplier management framework for works contracts or goods and services contracts.

Recommendation 21 **Page 50**

The Minister for Finance should ensure that Finance establishes clear guidance for agencies to determine when information is or is not commercial-in-confidence. This should be based on the principle that withholding information from the public should be the exception rather than the rule.

Recommendation 22 **Page 50**

The Minister for Finance should ensure that Finance develops and implements a regime to assess contractor viability based on the total value of contracts with government held by that contractor.

Chapter 6 – More needs to be done to expand notions of value-for-money**Finding 32** **Page 54**

There remains a tendency for public sector agencies to focus on considerations of price to the exclusion of other important factors. This focus can result in poor contract outcomes.

Finding 33 **Page 54**

Public sector procurement in Queensland and the United Kingdom now operate with policies to identify and scrutinise ‘unusually low bids’.

Recommendation 23 **Page 54**

The Minister for Finance should ensure that Finance’s procurement reform program establishes an ‘unusually low bids’ policy, taking into consideration similar initiatives in Queensland and the United Kingdom.

Finding 34 **Page 58**

There is no clear and coherent whole-of-government definition of social value to guide contract management, nor any established and comprehensive process for measuring and reporting on the outcomes of social value choices in contracting.

Finding 35 **Page 61**

A number of other jurisdictions in Australia and the United Kingdom are developing initiatives and policies relating to social value that could be applicable to Western Australia.

Recommendation 24 **Page 61**

The Minister for Finance should establish a clear definition of social value as it relates to procurement and contract management, and develop mechanisms both for meeting social value targets, and for measuring these outcomes. This should include a decision on

the need for whole-of-government legislation or frameworks for applying, measuring, and reporting on social value criteria in public contracts. In doing so the Minister should actively explore examples provided by the United Kingdom's *Public Services (Social Value) Act 2012*, the Victorian Social Procurement Framework, and the ACT's Secure Local Jobs Code.

Chapter 7 – There has been limited focus on improving contract management capability

Finding 36	Page 64
Well defined scope is a precedent to good contract management.	

Recommendation 25	Page 64
The Minister for Finance should ensure that Finance's reforms require agencies to engage contract managers at the earliest opportunity.	

Finding 37	Page 67
Agencies are facing contract management challenges due to the current deficiency in commercial capability, and in the relegation of contract management to a secondary or ancillary role.	

Finding 38	Page 67
Finance offers a range of procurement and contract management training opportunities to agencies, but these are not mandatory.	

Recommendation 26	Page 68
The Minister for Finance should ensure that under Finance's procurement reforms, goods and services procurement training initiatives and programs are extended to include works contracts. These or equivalent programs should be mandatory for people managing contracts above a pre-determined level of risk and/or value.	

Finding 39	Page 68
Finance provides ad hoc information sharing, but has no formalised system for sharing good practice on contract management.	

Finding 40	Page 69
Finance and the Public Sector Commission have produced a <i>Procurement Competency Matrix</i> , which identifies the key competencies required by procurement professionals in the WA public sector. However, Finance has not mandated its use by agencies.	

Recommendation 27	Page 69
The Minister for Finance should ensure that Finance make the use of the <i>Procurement Competency Matrix</i> compulsory for high value/high risk contracts, and that Finance record, measure, and evaluate the effectiveness of its use.	

Finding 41**Page 70**

Finance is piloting a new vocational program to develop public sector workers involved in procurement, with the option of attaining a Diploma of Procurement and Contracting.

Recommendation 28**Page 70**

The Minister for Finance should ensure that Finance establishes a minimum standard of commercial accreditation for all public sector staff employed as project and contract managers on major projects (including the relevant staff within Finance's Government Procurement, Strategic Projects, and Building Management and Works).

Recommendation 29**Page 71**

The Minister for Finance should consider establishing a 'centre of excellence' to support best practice in procurement and contract management.

Finding 42**Page 74**

Other jurisdictions have shown ways of implementing high-level training programs designed to both boost public sector capacity and capability, and raise the standing of contract management as a profession in the public sector in order to retain quality staff. In particular, the United Kingdom civil service has introduced mandatory training for managers of major projects, and minimum-level accreditation programs for contract management and commercial specialists.

Recommendation 30**Page 74**

The Minister for Finance should ensure that when developing a minimum standard of commercial accreditation for all public sector staff employed as project and contract managers on major projects, Finance closely monitors the results and developments of comparable programs undertaken by the United Kingdom Civil Service and other Australian jurisdictions.

Chapter 1

Introduction

I do not think that there are sufficient people within the public sector who know what 'good' looks like.

State Solicitor¹

- 1.1 This report looks at how the public sector manages its major contracts. This is a crucial issue for our State, and one that does not always receive the focused attention it deserves.
- 1.2 Contract management is often, if erroneously, thought of as simply the last phase in a larger process of procuring goods, services or capital works through competitive bidding. Earlier phases, including procurement planning, developing business cases and strategies, evaluating contract bids, and developing and awarding contracts, are all essential.² However, for reasons outlined in our report, the effective management of major government contracts is an area that requires closer scrutiny.³
- 1.3 As it is most commonly understood, contract management is a transactional exercise that follows the securing of a service. But it should also be much more than this. Seen from a wider angle, it is also a mechanism to influence the effective and efficient implementation of policy decisions.
- 1.4 At its best, contract management involves the creation and oversight of an appropriate and rigorous plan to achieve successful outcomes, the close and ongoing administration and monitoring of a contractor's performance, and the attentive and supportive management of a mutually-beneficial relationship. At its worst, contract management amounts to little more than passive box-ticking, and can result in inefficiencies and needless waste.
- 1.5 The Service Priority Review which reported in 2017 noted that the Western Australian (WA) Government spent approximately \$14.7 billion on goods and services in 2015-16, and that this accounted for almost half of its annual expenditure.⁴ The effective management of government contracts can mean the difference between a large procurement or project being delivered on time and to budget, and one that is delivered late and with excessive,

1 Mr Nicholas Egan, State Solicitor, State Solicitor's Office, *Transcript of Evidence*, Wednesday, 3 April 2019, p. 3.

2 Department of Finance, *Procurement Process*, accessed 6 August 2019 http://www.finance.wa.gov.au/cms/uploadedFiles/Government_Procurement/Guidelines_and_templates/Goods_and_service_procurement_practice_guide.pdf.

3 See the factors outlined in submission 1, Department of Finance, p. 10.

4 Service Priority Review, *Final Report to the Western Australian Government. Working Together: One Public Sector Delivering for WA*, Western Australia, October 2017, p. 68.

unnecessary or unplanned cost overruns. Large and high-value projects carry risks of costlier and high-profile failures than their smaller counterparts.

1.6 After meeting with leading major projects experts at Oxford University's Saïd Business School, we were left with the clear impression that time and cost overruns in major public projects remain all too frequent. These discussions and our broader review of the field led us to establish eight key factors contributing to effective contract management. Effective treatment of these factors cannot guarantee successful outcomes, but failing to recognise them or failing to deal with them appropriately will increase the likelihood of problems occurring. The factors are:

- A coherent and consistent policy framework;
- A rigorous compliance monitoring regime;
- An active approach to managing contracts;
- Transparency on contract data and commercial and legal information;
- A culture of clear accountability;
- The efficient allocation of risk;
- An understanding of value as more than the 'lowest price'; and
- A high standard of commercial capability.

1.7 By focusing on these factors we have sought a better understanding of *what good looks like* when it comes to public sector contract management. Although they do not systematically track the eight factors, the following chapters of this report address these aspects of good practice.

1.8 This inquiry follows an earlier inquiry into the Perth Children's Hospital project, which led to our report: *PCH: A Long Waiting Period*, tabled on 22 March 2018.⁵ Over the course of that inquiry, we observed some notable shortcomings in the way that contract was managed. We resolved to understand how widespread these shortcomings were throughout the public sector, and, if wider issues were evident, what we might recommend to improve the situation.

1.9 Over the course of 2019, we received submissions and heard evidence from a range of individuals and public and private bodies well placed to comment on the matter. A full list of submissions received and evidentiary hearings held is listed in Appendixes Two and Three.

1.10 Clearly, there is a vast range of contracts being managed within the WA public sector. The Department of Health (Health), for example, told us that the public health system has more than 2,200 active contracts valued at more than \$24 billion, managed by more than 500 staff.⁶ The Public Transport Authority manages around 1,100 contracts each year totalling

5 Public Accounts Committee, *PCH – A Long Waiting Period: A critique of the State's management and oversight of the Perth Children's Hospital project*, Report No. 3 March 2018.

6 Dr David Russell-Weisz, Director General, Department of Health, Transcript of Evidence, 14 August 2019, p. 1.

about \$7 billion at any time, with up to 100 considered high value.⁷ The Department of Education (Education) is responsible for 490 contracts valued at \$1 billion.⁸

- 1.11 Our inquiry focused on large contracts, which we defined as contracts valued at \$5 million and above. We acknowledge that there is no particular significance in the figure of \$5 million as a measure of a ‘major’ contract. It is a somewhat arbitrary measure, and there is no categorical difference between projects or contracts near or around that value. Nevertheless, it marked out, however imperfectly, a way of focusing our inquiry on activity that poses a reasonably high level of risk and significance, and imposes a high cost to the State.
- 1.12 While the Committee heard many concerns, and has been presented with examples of significant problems relating to contract management, we acknowledge that these issues are not universal. We wish to emphasise that in many ways the effective functioning of the State depends on the thousands of contracts that are managed to completion every year. We applaud the great many public servants working hard to play their part in this. We therefore wish to highlight the view expressed by the Auditor General that ‘every day in government, many, many services are delivered successfully under contract.’⁹
- 1.13 However, the Auditor General also told us that ‘[u]nfortunately, too often my Office identifies instances of agencies failing to follow their own approved practices or widely accepted good practice in contract management.’¹⁰ This was not an isolated view. The State Solicitor, while also recognising that there are well-managed contracts, told us that he has observed ‘poor contract management which is somewhat endemic across the sector.’¹¹
- 1.14 Likewise, the Department of Finance (Finance) told us that ‘[s]hortcomings of contract management appear to be embedded in the culture and processes within agencies.’ For this reason, a range of agencies saw the need to reform contract management, such that it becomes ‘a priority for the agency rather than a back office administrative function.’¹² There is, in other words, significant room for improvement.
- 1.15 We note that three recent major reports have examined contract management practices as one part of their own wide-ranging inquiries: *Public Sector Reform: the Service Priority Review* (Service Priority Review) and *Time to Change the Rules: A new way of thinking and working: Final Report* (by the CEO Working Group on Public Sector Efficiency) which both reported in October 2017, and the *Special Inquiry into Government Programs and Projects* (Special Inquiry), which reported in February 2018).¹³ Each of these reports made

7 Mr Mark Burgess, Managing Director, Public Transport Authority, Transcript of Evidence, 10 April 2019, p. 2.

8 Mr Jay Pickett, Executive Director, Financial and Commercial Service, Department of Education, Transcript of Evidence, 8 April 2019, p. 1.

9 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 19 June 2019 p. 3.

10 Submission 11, Office of the Auditor General, p. 1.

11 Mr Nicholas Egan, State Solicitor, *Transcript of Evidence*, 3 April 2019, pp, 1, 3.

12 Ms Jodi Cant, Director General, Department of Finance, Questions on Notice and Further Questions, 2 May 2019, p. 23.

13 *Service Priority Review, Final Report to the Western Australian Government. Working Together: One Public Sector Delivering for WA*, Western Australia, October 2017; CEO Working Group of Public Sector

observations about public sector contract management practices, as well as several recommendations. We have been informed by them in formulating our findings.

- 1.16 We also note that key public sector agencies are currently undertaking an ambitious program of reform in response to the recommendations of these reports. Most relevant to our inquiry, Finance has in its own words ‘been working flat out’ to reform by 2020, among other things, the policy frameworks that govern whole-of-government procurement and contract management.¹⁴
- 1.17 Under these proposed reforms, Finance will be the functional lead for all government procurement.¹⁵ Further to the reforms led by Finance, the Department of Treasury (Treasury) is leading the reform of Government Trading Enterprises (GTEs), to standardise and streamline their governance arrangements and operations. This reform will likely include the application of overarching government procurement policies to GTEs.¹⁶ While we discuss these reforms further in the following chapter, we were encouraged to hear of these significant and positive steps toward reforming the present system.
- 1.18 In this report, we seek to complement these recent reports and current public sector agency initiatives. We believe that our recommendations will assist in enhancing the rigour of the State’s contract management policies and practices. We have high hopes that the current reforms will generate substantial public savings and free up resources to deliver critical public services for Western Australians.

Efficiency, *Time to Change the Rules: A new way of thinking and working: Final Report*, West Perth, October 2017; Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Western Australia, February 2018.

14 Ms Jodi Cant, Director General, Department of Finance, *Transcript of Evidence*, 20 March 2019, pp. 1-2.

15 Submission 1, Department of Finance, p. 3.

16 Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, pp. 7-8.

Chapter 2

There is an overly complicated policy framework

In the absence of a centrally led procurement policy for works, it has been unnecessarily onerous for agencies to individually establish their own policies, processes and guidance for practitioners on how to conduct this type of procurement.

...it is onerous on agencies and practitioners to be aware of multiple procurement connected policies with ownership of those policies scattered across government, on different websites.

Ms Jodi Cant, Director General, Department of Finance¹⁷

Introduction

- 2.1 Procurement and contract management in Western Australia is a large and diverse enterprise. The very range of contracts that require managing increases potential for complexity. It should be the aim of the public sector to ensure that procurement and contract management frameworks are as coherent and user-friendly as possible. The more complicated the path, the greater the likelihood of getting lost.
- 2.2 A policy framework that is unclear, inconsistent or overly onerous risks inefficient outcomes. This chapter briefly outlines WA's current procurement and contract management policy frameworks, and shows them to be unnecessarily convoluted and fragmented. We cover matters dealing with agency compliance with current policies in the next chapter.
- 2.3 We note that in the whole-of-government policies and guidelines for the entire procurement process, more detail is provided for decisions leading up to procurement, with less specific focus thereafter on assessing whether the intended benefits of the procurement have been received, or on contract management itself. For this reason, we examine procurement policies in some detail.

Policy frameworks are convoluted and fragmented

- 2.4 This Committee concurs with previous government reviews, established by the current government, undertaken by the Service Priority Review and the Special Inquiry, which found that there is a complex array of Acts, policies, and guidelines relating to public sector contract management.
- 2.5 The range of legislation and policies relating to contract management makes it difficult for individual contract managers to fully identify and understand all the requirements of their role. As the Public Sector Commissioner observed, 'The role of a procurement professional is

¹⁷ Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, pp. 23-24.

well defined whereas the role of a contract manager may not be as clearly understood.¹⁸ A more coherent policy framework is likely to increase the efficiency of public sector contract management in WA.

- 2.6 There is a variety of legislative instruments and policies that can apply to different parts of the WA public sector and the approach public agencies take to procurement and contract management. Depending on the circumstance and nature of the procurement, approximately 5 pieces of whole-of-government legislation potentially impact on public sector contract management.¹⁹ This figure multiplies when, as with both capital works and GTEs, procurement is subject to agency-specific legislation.²⁰
- 2.7 There are, at a conservative estimate, more than 20 whole-of-government Acts, policies, frameworks, matrixes, international agreements, Treasurer's Instructions, Premier's Circulars, and sets of guidelines, emanating from a number of agencies, which contract managers might need to consult.²¹ We outline some of the more significant of these below, and will describe others in subsequent chapters.

Finding 1

There are at least 20 Acts, government policies, frameworks, matrixes, international agreements, Treasurer's Instructions, Premier's Circulars and guidelines that contract managers might need to consult.

- 2.8 Despite the volume and diversity of material and documentation that public sector contract managers might have to consult, we have concluded that current whole-of-government contract management policies lack precision and completeness, and have paradoxically created more complexity in its wake. We heard that, beyond whole-of-government policies, individual agencies create and implement their own internal procurement policies and guidelines.²²
- 2.9 There a number of possible reasons for this. They include the requirements of agencies' enabling legislation, the fact that they might sit outside central government, and the expectations that attach to large government entities and the nature of their major procurements.
- 2.10 Agencies might also feel that whole-of-government policies do not provide adequate detail for their specific procurement and contract management needs. They therefore take responsibility for filling a perceived gap in a highly complex and variegated policy area, thereby adding even more complexity into the system.

18 Submission 12, Public Sector Commission, n.p. [p. 1].

19 Submission 16, Department of Treasury, p. 2; Submission 1, Department of Finance, p. 3.

20 See for example Submission 9, Department of Health, p. 4; Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 8].

21 Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, pp. 4-5; Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, pp- 6-8, 17-18.

22 Ms Lisa Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 5; Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 13, Q. 14].

- 2.11 In any case, additional policies and guidelines add further layers of complexity, increasing the possibility of duplications and complications.²³ For this reason, we reiterate that wherever simplifications can reasonably be introduced, they should be.

Recommendation 1

Wherever possible, the Minister for Finance should seek to simplify the policy framework for procurement and contract management.

- 2.12 Witnesses noted the complexities of the current framework, though they expressed differing degrees of comfort with it. The Department of Transport (Transport), in response to our question asking whether the current frameworks were overly onerous and difficult to navigate, said they were. This was because ‘the documents do not contain enough detail and the overall collection of documents lacks structure’, and as a result of this, agencies must create their own documents.²⁴ Health, in answer to the same question, responded that although the state-wide policy environment is ‘somewhat fragmented’ there are mechanisms in place to support contract managers.²⁵
- 2.13 Other agencies took a different view. Education said it was ‘comfortable’ with the current frameworks, but also welcomed Finance’s proposed reform program as it would ‘harmonise and centralise all procurement and contract management policy in one place’.²⁶ The Department of Communities (Communities), also said it did not consider the current contract management frameworks to be onerous or too difficult for contract managers to navigate, and the ‘frameworks are written in plain English.’ Communities also noted the proposed reform program led by Finance.²⁷

Finding 2

There are mixed views on the difficulty of working with the current procurement and contract management frameworks. While some agencies find the frameworks overly onerous and difficult to navigate, other agencies are satisfied with the current arrangements.

- 2.14 We note the range of responses on this matter, and are gratified to hear that some agencies find the current arrangements acceptable. However, the fact that some agencies are satisfied with existing frameworks does not of course mean there is no room for improvement. We reiterate that the reform measures proposed by Finance, as we currently understand them, will be an improvement on the contract management frameworks now in place, and these will be of assistance to contact managers in public sector agencies.

23 See for example Submission 5, Main Roads, p. 1; Submission 9, Department of Health, p. 7.

24 Mr Richard Sellers, Director General, Department of Transport, Response to Questions on Notice and Further Questions, 6 April 2019, p. 1.

25 Dr David Russell-Weisz, Director General, Department of Health, Response to Questions on Notice and Further Questions, 20 September 2019, p. 3.

26 Ms Lisa Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 4.

27 Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 7].

There are different requirements for goods and services contracts and works contracts, and for Government Trading Enterprises

- 2.15 The State's procurement policy framework is fundamentally split between procurement of goods and services (such as cars, office equipment, ICT), and capital works, (such as transportation infrastructure projects and public buildings).²⁸ This fragmentation means there is no overarching legislative or policy framework to guide all government procurement in WA.
- 2.16 A number of key witnesses saw the need to improve this situation. The Director of Policy and Procurement Services at Finance said the fragmentation of procurement and contract management policies 'leads to a lack of consistency and a lack of standardisation ... It limits transportability of staff' and is 'inefficient in that individual agencies are developing their own works procurement frameworks'.²⁹ The Director General of the Department of the Premier and Cabinet (Premier and Cabinet), said this fragmentation creates 'anomalies that are problematic for government'.³⁰ This division also has flow-on effects that we outline below.

Finding 3

The State's procurement policy framework is fundamentally split between procurement of goods and services (such as cars, office equipment, ICT), and capital works, (such as transportation infrastructure projects and public buildings). This fragmentation means there is no overarching legislative or policy framework to guide all government procurement in WA.

Goods and Services

- 2.17 A core difference between the two types of government procurement is that, unlike that of capital works, goods and services procurement is guided by whole-of-government legislation and policies.³¹
- 2.18 The key piece of legislation is the *State Supply Commission Act 1991* (SSC Act), which provides for the State Supply Commission (SSC) to develop policies for, and arrange the supply of, goods and services for public authorities (though not for GTEs which, for legislative reasons, are not bound by the SSC Act).³²
- 2.19 The SSC is now administered by the Government Procurement business unit within Finance. Finance is therefore the functional lead agency for the State's whole-of-government approach to goods and services procurement policy. However, for practical reasons the SSC Act delegates procurement powers to agencies through partial or total exemptions.³³ So,

28 Submission 1, Department of Finance, p. 1.

29 Mr Anthony Halberg, Director, Policy and Procurement Services Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 2.

30 Mr Darren Foster, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 8 April 2019, p. 3.

31 Submission 1, Department of Finance, pp. 1-2.

32 *State Supply Commission Act 1991*, (WA), s. 5.

33 *ibid.*, ss. 19-21.

while Finance facilitates procurement and sets whole-of-government policy, individual agencies are responsible for their own purchases.

- 2.20 Moreover, while Finance can be heavily involved in certain goods and services procurements, its involvement effectively ends after a contract is awarded, at which point the agencies take up the management of their contracts.³⁴ This makes inconsistencies of approach more likely.

Finding 4

While Finance can be heavily involved in certain goods and services procurements, its involvement effectively ends after a contract is awarded, at which point the agencies take up the management of their contracts.

- 2.21 There are seven goods and services procurement policies that flow from the SSC Act.³⁵ The supply policy most directly relevant to our inquiry is the Procurement Planning, Evaluation Reports and Contract Management policy. In essence, it requires all procurements for goods and services, including those from a Common Use Arrangement, valued at \$5 million or above to include:
- a procurement plan;
 - an evaluation report, and;
 - a contract management plan.³⁶
- 2.22 These planning documents, and any contract variations valued at \$5 million or more, must be submitted to the State Tender Review Committee (STRC), the advisory body that reviews high value/high-risk procurement processes, or, if applicable, the Community Services Procurement Review Committee (CSPRC). This body reviews processes relating to procurement of community services from a not-for-profit organisations under the *Delivering Community Services in Partnership Policy*.³⁷
- 2.23 Agencies must engage Finance when procuring goods or services that are either valued at or above, or involve a variation of, \$250,000.³⁸ Finance, through Government Procurement, facilitates these procurements and provides advice and support to agencies through to the contract award stage. Agencies must also operate within the constraints of other policies, including Buy Local and Aboriginal Procurement policies.³⁹ In addition, agencies must meet

34 Submission 1, Department of Finance, p. 3.

35 Department of Finance, Government Procurement, *State Supply Commission Procurement Policies*, accessed 28 August 2019, https://www.finance.wa.gov.au/cms/Government_Procurement/Policies/State_Supply_Commission_Procurement_Policies.aspx.

36 State Supply Commission, *Supply Policy: Procurement Planning, Evaluation Reports, and Contract Management*, Government of Western Australia, 12 April 2019.

37 *ibid.*

38 Submission 1, Department of Finance, p. 2.

39 Department of Finance, *Aboriginal Procurement Policy*, accessed 23 August 2019, https://www.finance.wa.gov.au/cms/Government_Procurement/Policies/Aboriginal_Procurement_Policy.aspx; Department of Finance, *Other government policies impacting on procurement*, accessed 23 August 2019, <https://www.wa.gov.au/government/document-collections/other-procurement-policies>.

the requirements of Treasurer's Instruction 820, which requires them to keep a register for all contracts valued at \$50,000 or above.⁴⁰

2.24 Further whole-of-government instruction is provided by the *Procurement Practice Guide*, published by Finance.⁴¹ This guide is a more detailed document that offers 'an effective "how to" framework for public sector contracting for products and/or services' and is intended to be read alongside agencies' own internal policies.⁴²

2.25 As we discuss in subsequent chapters, there are a number of areas in the current policy frameworks for goods and services contract management where improvements can be made. However, we also note that, as a general principle, the whole-of-government approach that currently pertains to goods and services procurement and contract management has significant merit.

Works

2.26 Unlike the case of goods and services, works procurement is not centrally led, and with limited exceptions there is no whole-of-government works procurement policy framework (although we note that works contracts must also respond to local purchasing and industry participation policies and policies to support Aboriginal businesses).⁴³ State Government agencies must also comply with Free Trade Agreements.⁴⁴

2.27 The main central policy that affects works procurement is the Treasury-administered Strategic Asset Management Framework (SAMF). All public sector agencies, including GTEs, are required to follow the SAMF, which 'provides policies and guidance for agencies to prioritise, invest in, manage and dispose of government assets.'⁴⁵

2.28 Finance is not involved with contract management for works projects other than its own. Rather, works agencies procure individually, under their own enabling legislation, and set their own procurement policies, though with guidance for major projects under, for example, the SAMF. Finance undertakes works projects through the *Public Works Act 1902*, but that Act does not outline procurement requirements. In response, Finance has created its own internal works procurement framework.⁴⁶ Other agencies operate similarly under their respective Acts.

2.29 Although individual agencies are generally responsible for undertaking capital works, the Building Management and Works (BMW) business unit, located within Finance, is a service provider and deliverer of the government's non-residential buildings valued below \$100

40 Submission 1, Department of Finance, pp. 4-5.

41 Department of Finance, Government Procurement, *Procurement Practice Guide: A Guide to Products and Services Contracting, for Public Authorities*, Western Australia, April 2019.

42 *ibid.*, p. 3.

43 Department of Finance, *Other government policies impacting on procurement*, accessed 23 August 2019, <https://www.wa.gov.au/government/document-collections/other-procurement-policies>; Ms Jodi Cant, Director General, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 8.

44 Department of Finance, *Free Trade Agreements*, accessed 23 August 2019, <https://www.wa.gov.au/government/publications/free-trade-agreement-guidelines>.

45 Submission 16, Department of Treasury, pp. 3-4.

46 Submission 1, Department of Finance, pp. 3, 5-7.

million.⁴⁷ Finance said that at any time 'BMW will have hundreds of projects underway, and BMW project managers will often be responsible for multiple projects.'⁴⁸

2.30 Also located within Finance is Strategic Projects, which, at the direction of the Expenditure Review Committee, plans and delivers major projects of significant importance to the State, typically valued at \$100 million or more. Strategic Projects is guided by the SAMF.⁴⁹

2.31 Finally, all major projects should also use the Gateway Review process. This is a series of reviews intended to provide assurance on, and support the planning, management and delivery of, infrastructure projects valued at \$100 million or more, and ICT projects valued at \$10 million or more.⁵⁰

Government Trading Enterprises

2.32 In WA, GTEs are arms-length government entities that receive most of their revenue from the commercial sale of goods and services.⁵¹ GTEs, including port authorities and energy and water corporations, represent a major part of WA's asset investment program, but are less directly accountable than public agencies, and must weigh State priorities with commercial imperatives.

2.33 WA is the only Australian State with no overarching legislation that applies to its GTEs.⁵² Though some whole-of-government policies like the SAMF apply to WA's 27 GTEs, most, including SSC policies, do not. This is mainly a result of the powers granted under each GTEs' enabling legislation.⁵³ This situation leads to further potential inconsistencies in the approach to procurement and contract management.

Finding 5

WA is the only Australian State with no overarching legislation that applies to its Government Trading Enterprises.

Previous reports

2.34 As we noted in Chapter 1, public sector agencies are implementing a key reform program in this field. In particular, they are working with recommendations made by the Special Inquiry,

47 Submission 1, Department of Finance, p. 6.

48 *ibid.*

49 *ibid.*, p. 8.

50 *Premier's Circular 2016/05: Improving the Outcomes of Major Projects through Gateway Reviews*, Government of Western Australia, 28 December 2016.

51 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Western Australia, February 2018, p. 34.

52 Different definitions of 'GTEs' produce slightly different figures. Mrs Chelsea Lim, Project Director, Government Trading Enterprise Reform, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p. 4.

53 Submission 18, Horizon Power, n.p. [pp.1-2]; Submission 10, Synergy, pp. 1, 3; Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, pp. 7-8. Likewise, Gateway Reviews are recommended for GTEs but do not strictly apply.

the Service Priority Review, and the Chief Executive Officer Working Group on Public Sector Efficiency (CEO Working Group).⁵⁴

- 2.35 The Special Inquiry reported that the legislative framework for government procurement was complicated and fragmented, and on that basis recommended it be streamlined into a single, cohesive Procurement Act. It further recommended that:

Consolidation of procurement leadership under the Department of Finance should provide a one-stop-shop for advice, support, education, resource allocation, provision of standards, policy and practice, the identification of collaboration opportunities, and the centralisation of data and information.⁵⁵

- 2.36 The Service Priority Review recommended that Finance '[d]evelop a whole-of-government procurement strategy that accounts for operational, economic and social outcomes, including regional outcomes.'⁵⁶ The report also recommended a functional leadership framework including for procurement.⁵⁷ The CEO Working Group Report also recommended simplifying and reducing the 'overall process' of procurement.⁵⁸

Current reforms

- 2.37 As we noted in the previous chapter, on the basis of the recommendations of the earlier reports outlined above, Finance is leading a reform program to consolidate legislation for goods and services and works into one procurement Act. Such an Act would provide a legislative basis for whole-of-government policies for all types of government procurement.
- 2.38 As part of this program, Finance will be the functional lead agency for all the State's goods and services and works procurement.⁵⁹ According to Finance, this reform program will provide it with authority over procurement policy and practice. This will provide consistency and certainty for both practitioners and providers, and strengthen governance arrangements and knowledge-sharing capabilities.⁶⁰
- 2.39 In August 2019, Finance released its Western Australian Contract Management Framework (WACMF) Principles. The WACMF Principles were designed in collaboration with agencies across the public sector and in response to the recommendations of the Special Inquiry and the Service Priority Review to guide whole-of-government contract management practices. The WACMF Principles fall under five themes: people, governance, practice, strategy, and performance.⁶¹ As the document says, 'importantly, improvements across all five areas are

54 Department of the Premier and Cabinet, *Roadmap for Reform: What we are doing and why*, accessed 26 August 2019, <https://www.wa.gov.au/government/public-sector-reform/roadmap-reform>.

55 Special Inquiry in Government Programs and Projects, *Final Report. Volume 1*, Western Australia, February 2018, p. 20.

56 Service Priority Review, *Final Report to the Western Australian Government. Working Together: One Public Sector Delivering for WA*, Government of Western Australia, October 2017, p. 157.

57 *ibid.*, p. 144.

58 CEO Working Group on Public Sector Efficiency, *Time to Change the Rules: A new way of thinking and working*. Final Report. State of Western Australia 2017, 31 October 2017, pp. 27-28.

59 Submission 1, Department of Finance, p. 3.

60 *ibid.*, p. 14.

61 Department of Finance, *Western Australian Contract Management Framework Principles*, State of Western Australia, 2019.

measurable.⁶² This document is the first step in a larger framework, intended for implementation by 2020.⁶³

2.40 Concurrently with the reforms being led by Finance, Treasury is leading a reform program to create consistent umbrella legislation for all GTEs in order to improve accountability and governance. This reform is designed to bring GTEs within the remit of state government policy requirements and to have, where feasible, whole-of-government contract management policies apply to GTEs.⁶⁴

2.41 According to Treasury, the program ‘aims to streamline the operations of GTEs, standardise governance and accountability and strengthen oversight.’⁶⁵ The program’s first stage began in mid-2018, and focused on developing the GTE Framework with the 16 GTEs thought ‘to have the strongest commercial focus, the most consistent current legislation, and the largest impact on State finances.’⁶⁶ The second stage will look to apply the Framework to all remaining GTEs.⁶⁷

2.42 We welcome these reforms, as we currently understand them, as a major step in the right direction. They are timely and important. As Finance said, contract management has been a long-term issue for the public service, and the impetus for the reform program is that ‘we have never really addressed the fundamental flaws with contract management within the public service.’⁶⁸ We are encouraged by how forthcoming agencies have been in identifying the issues relating to public sector contract management, accepting the need for contract management reform. We also acknowledge the hard work of the lead agencies and others in introducing these reforms.

Recommendation 2

The Treasurer should have regard to the findings and recommendations of this report, and determine if and how they should apply to Government Trading Enterprises reform program.

2.43 Premier and Cabinet’s website shows the status of the various reform initiatives.⁶⁹ This is appropriate, but at present these are very broad status updates, and there is no dashboard to detail the progress made toward key initiatives.

62 Department of Finance, *Western Australian Contract Management Framework Principles*, State of Western Australia, 2019, p. [2].

63 Ms Jodi Cant, Director General, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 2;

64 Ms Kate Ingham, Director Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 3.

65 Department of Treasury, *GTE Reform: frequently asked questions*, accessed 27 August 2019, <https://www.treasury.wa.gov.au/GTE-Reform/FAQs/>.

66 Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p 7.

67 *ibid.*, p 7.

68 Ms Kate Ingham, Director Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 2.

69 Department of the Premier and Cabinet, *Roadmap for Reform: What we are doing and why*, accessed 27 August 2019, <https://www.wa.gov.au/government/public-sector-reform/roadmap-reform>.

2.44 In its testimony to us, Finance said its framework would be implemented by 2020.⁷⁰ Treasury said key dates for its reforms included a bill relating to the GTE Framework ‘to be introduced into Parliament in the second half of 2019.’⁷¹ The second stage of the program is scheduled to begin around the same time.⁷² We look forward to receiving updates on the progress of both programs.

Finding 6

Finance and Treasury are working through the significant number of reforms recommended by the Service Priority Review Final Report and the Final Report of the Special Inquiry into Government Programs and Projects relating to procurement and contract management.

Recommendation 3

The Premier should ensure that the Department of the Premier and Cabinet’s Public Sector Reform website includes a performance dashboard that clearly demonstrates the current status of all key procurement reform initiatives.

Recommendation 4

The Government should ensure that the proposed Procurement Bill is given high priority in the Parliamentary timetable.

70 Ms Jodi Cant, Director General, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 2.

71 Mrs Chelsea Lim, Project Director, Government Trading Enterprise Reform, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p. 4.

72 Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p 7.

Chapter 3

There is an inconsistent monitoring and oversight regime

The State Supply Commission Policy framework is relatively brief in nature and does not explicitly cover the functions of contract management to the extent that agencies would have a comprehensive and robust compliance framework with which to manage [goods and services] contracts.

Public Transport Authority⁷³

The Department of Treasury's Strategic Asset Management Framework provides a set of policy principles for asset owners but there is a lack of practical implementation of the framework and governance around agency compliance with these principles.

Department of Finance⁷⁴

Introduction

- 3.1 In this chapter, we outline the key mechanisms for reporting on and monitoring agency compliance with WA public sector contract management policies, and assess their adequacy. Our overarching observations are:
- Agency compliance with procurement and contract management policies is variable;
 - As the lead agency for setting goods and services procurement policy framework, Finance can do more to ensure agency compliance with contract management policies;
 - There remains scope for improvement in data capture and analysis of agency compliance with contract management policies; and
 - There is a need for a more rigorous and consistent provision and interrogation of contract management plans.
- 3.2 The inconsistency of policy frameworks outlined in the previous chapter has flow-on effects for assessing agency compliance. Mechanisms and requirements for monitoring compliance with contract management policies differ according to whether the contract relates to goods and services procurement or works procurement. They also differ depending on whether the contract is managed by a public authority, which must comply with whole-of-government policies, or a GTE, which are usually not bound by the same policies.
- 3.3 Beyond these structural differences, there are inconsistencies in the level of rigour with which different policies are enforced. Even where whole-of-government policies apply, Finance takes a minimal role in the management of contracts, which remains the

73 Submission 6, Public Transport Authority, p. 4.

74 Department of Finance submission to Service Priority Review, *Public Submissions: Public Sector*, Government of Western Australia, October 2017, p. 6.

responsibility of the individual agencies. The interface between individual and central agency compliance monitoring is thus an important one.

- 3.4 Keeping our focus at the general level, we look first at the key policies governing compliance with SSC policies for goods and services contract management. We then look at the Treasurer's Instructions affecting contract management for goods and services and works procurements. Finally, we look at the oversight mechanisms of the framework guiding the management of the State's strategic assets. Given the reform programs now in progress, we have addressed our findings and recommendations to central agencies.

The current process does not ensure all relevant contract management plans are in place

- 3.5 There are two main interrelated aspects of agency compliance with policies for goods and services procurement and contract management. First, agencies are required to provide contract management plans for major contracts. Second, they are required to undertake reviews, or audits, to assess their compliance with SSC policies.
- 3.6 As discussed in the previous chapter, the main SSC policy relating to contract management is the Procurement Planning, Evaluation Reports and Contract Management policy. This stipulates, among other things, that agencies must submit a contract management plan for goods and services procurements valued at over \$5 million to the STRC or the CSPRC.
- 3.7 Despite this being a compulsory policy, exceptions can apply if the accountable authority determines the procurement will be a one-off purchase, or where the nature of the procurement means the plan would be of no benefit. Other exemptions might apply in 'exceptional circumstances'. However, it is unclear what these exceptional circumstances might be.⁷⁵ Contract management plans are designed to manage potential risks and to help ensure the delivery of a contract's expected outcomes.⁷⁶ While current policy does not mandate contract management plans in all instances, our assessment is informed by best practice principles. Finance told us that 'Best practice suggests agencies should establish a contract management plan to monitor contractor performance and obligations in accordance with the contract.'⁷⁷ According to the Australian National Audit Office (ANAO), best practice would suggest that:

Even for relatively simple, low-risk contracts, a contract management plan (or simple check list) will help to make sure that important obligations are not overlooked and the intent of the contract is achieved, although the level of planning should be commensurate with the value and risk of the contract.⁷⁸

75 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 12.

76 Australian National Audit Office, *Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money. Better Practice Guide*, Commonwealth of Australia, Canberra, 2012, p. 36.

77 Submission 1, Department of Finance, p. 5.

78 Australian National Audit Office, *Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money. Better Practice Guide*, Commonwealth of Australia, Canberra, 2012, p. 36.

- 3.8 Agencies with substantial experience in this area agreed. For example, Main Roads – which deals with numerous large scale contracts as a routine activity – told us that contract management plans ‘are an important risk management tool for ensuring that all relevant issues throughout the life of the contract are addressed.’⁷⁹
- 3.9 We have two main issues with the current processes for compliance with the requirement to submit contract management plans. First, recent examples of non-compliance suggest the requirement should be broadened. Second, there are potential shortcomings in the STRC process for assessing contract management plans.
- 3.10 A 2016 report from the Office of the Auditor General (OAG) found that Health had no contract management plan for a complex and high value centralised computing services contract. The OAG said that such a plan was needed to identify risks and risk-mitigation, as well as identifying the requirements for effective contract delivery.⁸⁰
- 3.11 Similarly, a 2018 OAG report on the WA Schools Public Private Partnership Project found that Education did not have a contract management plan in place for this high value, long-term contract.⁸¹ While Education accepted the audit report’s recommendation that a contract management plan be developed, it also said that, technically, the contract was not a goods and services contract and was not therefore bound by supply policies.⁸²
- 3.12 We acknowledge that Education’s response in this instance was technically accurate. However, our concern is that such examples demonstrate a shortcoming in the contract management policy framework as it stands. It raises the possibility that a number of important contracts are proceeding, or could in future proceed, without adequate planning.
- 3.13 On the evidence we received, we are satisfied that there is a high level of compliance with the contract management plan policy in some areas. But we also see the potential for future errors. The State Solicitor told us that although it was usual for standard contracts to have management plans in place, ‘I certainly have not seen a contract-management plan for the bespoke contracts that I deal with, which are high risk, high value or, alternatively, low value, high risk.’⁸³
- 3.14 These examples highlight gaps in the current system, and suggest that more rigorous assurance mechanisms are required to minimise the likelihood of oversights in the proper planning of high value/high risk contracts. As part of the current reform process, contract management plans should be mandatory for all major public service contracts, be they goods and services, or works.

79 Submission 5, Main Roads, p. 2. See also Submission 11, Office of the Auditor General, p. 3;

80 Office of the Auditor General Western Australia, *Health Department’s Procurement and Management of its Centralised Computing Services Contract: Report 1*, Perth, February 2016, p. 22.

81 Office of the Auditor General Western Australia, *WA Schools Public Private Partnership Project, Report 11*, Perth, June 2018, p. 8.

82 Lisa Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, pp. 7-8.

83 Mr Nicholas Egan, State Solicitor, State Solicitor’s Office, *Transcript of Evidence*, Wednesday, 3 April 2019, p. 3.

Finding 7

The current system of dispersed monitoring and oversight does not give enough assurance that contract management plans are in place for all relevant major contracts.

Recommendation 5

As part of the ongoing reform programs, the Minister for Finance should ensure that contract management plans, independently assessed for their rigour, should be made mandatory for all major contracts (high value/high risk, or low value/high risk), for goods and services, capital works, and Government Trading Enterprises.

Any decisions to self-exempt from such requirements should be independently interrogated by Finance, and results of these assessments should be included in its annual reports.

Current monitoring of agency contract management plans is insufficient

- 3.15 This leads to our second concern, regarding the processes to ensure that, unless exempted, individual agencies have prepared and submitted the necessary contract management plans to the STRC or CSPRC for review and assurance.
- 3.16 The STRC has a non-binding, advisory-only role and it cannot prevent procurements from going ahead. Ultimately, it falls to individual agencies to choose whether or not to accept the STRC's recommendations.⁸⁴ However, as a member of the STRC told another Committee, its recommendations are usually adopted, despite its inability to enforce them.⁸⁵ We also note that the STRC does not as matter of course follow up to see if agencies have adopted its recommendations.⁸⁶
- 3.17 Further, while Finance officers sometimes check whether agencies have submitted plans for large contracts involving Finance to the STRC, ultimate responsibility for submitting plans, again, sits with the individual agencies.⁸⁷
- 3.18 When asked how the STRC or CSPRC assure themselves that they have received all required contract management plans and contract variation memos, Finance told us that 'Informal measures exist that allow the Department to inform STRC and CSPRC whether or not some contract management plans and contract variation memoranda have been received.'⁸⁸
- 3.19 As examples of these informal measures, Finance said that since 2016 it has 'undertaken at least one cross-check' to assess if the relevant contract management plans had been

84 Ms Cassandra Ahearne, Deputy Chair, State Tender Review Committee, *Transcript of Evidence* [to the Joint Standing Committee on the Corruption and Crime Commission], 23 October 2019, pp. 1-2.

85 Mr Liam Carren, State Tender Review Committee, *Transcript of Evidence* [to the Joint Standing Committee on the Corruption and Crime Commission], 23 October 2019, p. 13.

86 Ms Kathryn Abbott, Executive Support and Policy and Practice Adviser, State Tender Review Committee, *Transcript of Evidence* [to the Joint Standing Committee on the Corruption and Crime Commission], 23 October 2019, p. 5.

87 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 13.

88 *ibid.*

submitted, and also if the relevant contract variations have been received. Importantly, Finance said '[t]his check would only identify discrepancies if the agency has published the contract variation on TendersWA.'⁸⁹

- 3.20 As we show below, we cannot be fully confident that TendersWA contains all relevant information that would ensure such 'cross checks' can provide the necessary assurance. Even leaving aside the question of TendersWA, however, we are not satisfied that such infrequent, informal measures are sufficient to prevent possible gaps in knowledge around contract management plans. We think more can be done to provide assurance in the recording and monitoring of compliance with this important policy.

Finding 8

The State Tender Review Committee and the Community Services Procurement Review Committee are potentially crucial bodies for monitoring compliance with State Supply Commission contract management policies. However, the STRC's recommendations are non-binding and it does not routinely follow-up on its recommendations to agencies. Further, there are potential knowledge gaps in the recording of required contract management plans and a reliance on passive 'informal measures' to monitor receipt of agency contract management plans and contract variation memos.

Recommendation 6

The Minister for Finance should ensure that Finance's reform program establishes a formal mechanism so that the State Tender Review Committee and the Community Services Procurement Review Committee have knowledge of all major, high value or high risk agency contracts to ensure they are receiving all required contract management plans.

There is a reasonable compliance audit framework, but Finance should do more with the information it produces

- 3.21 The evidence just covered led us to consider the adequacy of the process of auditing agency compliance with supply policies. As noted earlier, the SSC Act grants partial exemptions for agencies to undertake their own procurements. Finance is generally involved in goods and services procurements valued at \$250,000 or more, which provides a mechanism for monitoring agency compliance with SSC policies.⁹⁰
- 3.22 As a condition of their exemptions, agencies must perform annual or biennial internal audits (depending on the nature of their exemption), including a review of their compliance with supply policies. Reviews are to be undertaken by 'suitably qualified and experienced' internal or external auditors, and according to the *Procurement Compliance (Audit)*

89 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 14.

90 *ibid.*, p. 10.

*Framework Guidelines.*⁹¹ The audits are to examine ‘an appropriate sample’ of procurements, with all transactions over \$50,000 eligible for auditing.⁹²

- 3.23 We were encouraged to hear from agency witnesses who expressed confidence in their audit process. The Department of Communities, among others, said it had no concerns ‘about the capacity or capability of the internal audit function’, which ‘provides assurance’ that internal processes have been sufficient to manage risks and achieve outcomes.⁹³ Health said the new process helped identify instances where policy requirements had not been met.⁹⁴
- 3.24 It is, however, difficult to assess the effectiveness of the internal audits, as Finance has only collated and recorded the results of them since 2017. Before then, agencies did not send audit findings to a central agency. We are unclear as to why this was the case, but the change to a more centralised recording system is a positive development.
- 3.25 The audits themselves are not made publicly available as a matter of course, though they are subject to freedom of information requirements. When we requested an agency-by-agency breakdown of non-compliance with SSC supply policies identified by internal reviews, we were told this was not readily available.⁹⁵

Finding 9

State Supply Commission policies require agencies to undertake annual or biannual compliance audits. Finance has only received and recorded audit results since 2017.

- 3.26 According to Finance, ‘the current process provides a more rigorous review mechanism for the Department, on behalf of SSC, to review the actions of partially exempt agencies.’⁹⁶ That is to say, compared to when Finance apparently had no oversight of audits results, the process now in place is clearly a marked improvement. But, Finance also said that, given its recent implementation, the efficacy of the SSC audits are under review and are ‘undergoing continuous improvement’.⁹⁷ This is appropriate, as there are a number of unresolved questions around the working of the audit process.
- 3.27 It is unclear exactly how many instances of non-compliance related to contract management practices, or the size of the contract they related to. Only two years’ worth of results were

91 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 9.

92 Department of Finance, *Procurement Compliance (Audit) Framework: Guidelines*, Western Australia, March 2019, p. 2.

93 Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 10].

94 Dr David Russell-Weisz, Director General, Department of Health, Response to Questions on Notice and Further Questions, 20 September 2019, p. 5.

95 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 9.

96 *ibid.*

97 *ibid.*

available at the time of writing. Finance said the most recent (2017-18) procurement audits showed that: 'of the 55 agencies that responded, 18 had no instances of non-compliance.'⁹⁸

3.28 It would therefore seem, in other words, 37 of 55 agencies did have instances of non-compliance, which included 'a lack of involvement with Finance' and 'a lack of up-to-date records in contract and exemption/approval registers.'⁹⁹ Further, thirteen agencies had inadequate records published on TendersWA for contract variations, as required under the SSC policy relating to contract management.¹⁰⁰

3.29 This is clearly an area that requires improvement if we are to be assured that such issues are fully resolved. This is especially so since, as already observed, Finance appears to rely on TendersWA to cross-check whether contract management plans have been submitted. All this leads us to the conclusion that data collection relating to the audits must be more rigorous.

Finding 10

With regard to procuring goods and services, the current system of reviewing agency audits is an advance on what preceded it. But improvements are required in data capture and analysis of agency compliance. Finance could not readily supply a disaggregated breakdown of the number and nature of all agency compliance breaches.

Recommendation 7

The Minister for Finance should ensure that Finance conducts routine analysis that provides a comprehensive picture of the number and nature of all agency compliance breaches.

Finding 11

With regard to procuring works, there is no equivalent monitoring and oversight system to that in place for goods and services procurement.

Recommendation 8

The Minister for Finance should ensure that Finance's procurement review ensures that existing compliance audit requirements for goods and services contracts are also applied to works contracts.

Powers to deal with non-compliance with SSC policies

3.30 Regarding the consequences of non-compliance with supply policies, the State Supply Commission Regulations 1991 (SSC Regulations) set out conditions for reviewing agencies' partial exemption from section 19(1) of the SSC Act if major policy compliance concerns are

98 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 10.

99 *ibid.*, pp. 10-11.

100 *ibid.*, p. 11.

raised (Regulation 4). The regulations also outline five consequences of non-compliance with supply policies (Regulation 5).

- 3.31 In reviewing a partial exemption under Regulation 4, the SSC, through Finance, is to have regard to an agencies' compliance with supply policies.¹⁰¹ Since 2009, no reviews of partial exemptions have been undertaken as a result of an agency's contract management practices.¹⁰²
- 3.32 The five potential consequences for agency non-compliance identified in Regulation 5 provide for the SSC, through Finance, to take corrective actions. These actions range from giving written notice of the non-compliance to the public authority, through to the recommendation to the Minister that the agency's exemption under the Act be cancelled.¹⁰³
- 3.33 Finance told us that 'Since 2009, there have been no formal instances to test the adequacy of the consequences in [SSC] Regulation 5.'¹⁰⁴ Moreover, even in the event that agency non-compliance provided grounds to trigger Regulations 4 and 5, Finance preferred to discuss and address instances of non-compliance through a 'collaborative approach' in discussions with agencies.¹⁰⁵
- 3.34 This response caused us to reflect on the practical relevance of the SSC Regulations, which appear to be largely unused to encourage agency compliance. This impression was enforced by the fact that no agency raised them with us in their initial submissions to the inquiry. Compliance appears to be weakly enforced. Either there are no penalties for non-compliance, or penalties are not applied. We are left with questions as to the purpose and efficacy of the SSC Regulations.

Finding 12

In the last 10 years there have been no reviews or cancellations of an agency's partial exemption status based on its contract management practices. The efficacy of the five consequences that agencies might face for non-compliance under Regulation 5 of the State Supply Commission Regulations 1991 has not been formally tested or applied. Rather, Finance prefers to work with and discuss identified issues of non-compliance with agencies.

Recommendation 9

The Minister for Finance should require that Finance report on its administration of Regulation 5 of the State Supply Commission Regulations 1991, dealing with the consequences of agency non-compliance with supply policies. The report should

101 State Supply Commission Regulations 1991, (WA), r. 4.

102 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 9.

103 State Supply Commission Regulations 1991, (WA), r. 5. See also Department of Finance, *Procurement Compliance (Audit) Framework: Guidelines*, Western Australia, March 2019, p. 4-5.

104 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 11.

105 *ibid.*, pp. 11-12. On the agency side, see Ms Lisa Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 5.

demonstrate Finance's rationale for its decisions to impose or not impose the various options available under Regulation 5.

Monitoring compliance with Treasurer's Instructions

3.35 Two Treasurer's Instructions (TIs) specifically relate to contract management, and both are mandatory for government agencies, although not for GTEs. The first is TI 813 'Variances in Capital Expenditure'. TI 813 is designed to improve oversight of works and infrastructure contracts. For all such contracts valued at \$5 million or more:

accountable authorities must advise the Under Treasurer in writing of the variance between the pre-tender estimate and the tender outcome, and between tender outcomes and approved estimated total costs for each contract.

As well as this, accountable authorities must provide the Under Treasurer with practical completion reports.¹⁰⁶

3.36 The second key Treasurer's Instruction is TI 820, which was issued because Treasury was concerned about a lack of visibility of contracts among agencies.¹⁰⁷ TI 820 requires information including the contract manager's name and position, and the details around the contractor performance reviews, to be recorded on an agency's contract register.¹⁰⁸

3.37 Compliance with TI 820 has been required only since September 2016, and the rate of compliance with TI 820 is not fully documented.¹⁰⁹ The Auditor General in 2017 said that:

Maintaining a comprehensive contract register is essential for effective contract management and accountability. It enables agencies to better manage their contractual responsibilities as well as meet their financial reporting obligations. It assists management to monitor contracts, manage contract extensions and commence new procurement in a timely manner.¹¹⁰

3.38 This clearly shows why the introduction of TI 820 was so necessary. Yet the same report found that of those it audited, '[m]ost agencies' contract registers either did not have all key information required by Treasurer's Instruction 820 or had incorrect/incomplete data.'¹¹¹

3.39 Finance was clear that there were issues with agency performance in this area. It said:

agencies do not dedicate the time needed to procurement and contract management and, as a result, do not understand their procurement profiles as they

106 Submission 16, Department of Treasury, p. 3.

107 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p. 2.

108 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 15.

109 *ibid.*, p. 16.

110 Office of the Auditor General Western Australia, *Financial Controls – Focus Area Audits 2016-17, Report 20*, Perth, November 2017, p. 5. See also Office of the Auditor General Western Australia, *Tender Processes and Contract Extensions, Report 3*, Perth, April 2017, pp. 7-9

111 Office of the Auditor General Western Australia, *Financial Controls – Focus Area Audits 2016-17, Report 20*, Perth, November 2017, p. 5.

should. This is evident in agencies being unable to account for 100 per cent of spend and noncompliance with the requirements of TI 820.¹¹²

3.40 Further, there are no formal penalties for non-compliance with TI 820.¹¹³ Finance was of the opinion that the monitoring of performance was in practice left to the Auditor General:

The OAG principally monitors agency compliance with TI 820. Section 15(3) of the *Auditor General Act 2006* requires the Auditor General to issue an opinion on the controls exercised by the agency, and TI 820 was issued in response to an observed weakness in agencies' control frameworks.¹¹⁴

3.41 Finance did not inform us how those 'observed weaknesses' would be observed in the first place. It also tried to fall back on the broad powers of the Auditor General when it told us:

It is far more common for non-compliance with TI 820 to be reported in management letters issued by the Auditor General, and opinions on financial statements. The Auditor General may also issue reports on performance reviews on the topic or include remarks in its biannual 'Audit Results Reports'.¹¹⁵

3.42 But the Auditor General's power to audit Treasurer's Instructions does not in itself entail good practice on the part of agencies. While Treasury was certain that it 'has a role in raising awareness of the TIs and the need for accountable authorities to monitor and comply with the requirements of TIs', it appears it does not monitor compliance with them. Rather, it again pointed to the Auditor General's role.¹¹⁶

Finding 13

Treasurer's Instruction 820, which requires a register of contracts, is mandatory for government agencies but not for Government Trading Enterprises.

Finding 14

The rate of agency compliance with Treasurer's Instruction 820 is not fully documented, and there are no formal penalties for non-compliance.

Recommendation 10

The Treasurer should ensure that Treasury develops and implements a more rigorous process to record, monitor, and enforce agency compliance with Treasurer's Instruction 820.

112 Submission 1, Department of Finance, p. 10.

113 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 16.

114 *ibid.*, p. 15; Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p 4.

115 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 16.

116 Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p. 1.

Monitoring compliance with the Strategic Asset Management Framework

- 3.43 As we have already discussed, the SAMF, administered by Treasury, sets the basis for policy decisions for managing and disposing of government assets. The aim of the SAMF is to provide a common framework for monitoring and planning for potential asset needs that agencies will require to deliver their services.¹¹⁷ It requires, among other things, business cases for asset investment proposals valued at \$1 million or above.¹¹⁸
- 3.44 There is no explicit requirement under the SAMF for agencies to provide a contract management plan for major works contracts. Although the SAMF has little to say on the contract management phase of the procurement cycle, the successful management of a works contract is likely to be influenced by the soundness of the project planning and the business case at the outset.

Finding 15

There is no requirement under the Strategic Asset Management Framework for agencies to provide a contract management plan for major works contracts.

- 3.45 Compliance with the SAMF is measured through a Treasury KPI that quantifies the proportion of agencies which have provided strategic asset plans. This KPI is reported annually in Budget Paper 2 and Treasury's Annual Report.¹¹⁹ Treasury told us that 'the KPI has been relatively low' but 'is improving'. This improvement, we were told, is one aim of the current public sector reform program, which will also assess the strength of strategic asset plans, rather than simply whether or not agencies have submitted them.¹²⁰ We agree that this outcome of the reform program is cause for optimism, and we are pleased to hear that results have been improving. We look forward to seeing the further fruits of this reform.
- 3.46 The regime for monitoring and administering compliance with the SAMF appears weak. The Special Inquiry found there were missing and inadequate business cases, despite business cases being mandatory for agencies and GTEs for all investment proposals with a capital cost of \$1 million or more.¹²¹ The Special Inquiry reported that 'there must also be stricter compliance with the Strategic Asset Management Framework, including by Government Trading Enterprises.'¹²² We agree.

117 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p. 5.

118 Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p. 5.

119 Submission 16, Department of Treasury, p. 4; Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p. 8.

120 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p. 6.

121 Submission 16, Department of Treasury, p. 5; Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p 10-11.

122 Special Inquiry in Government Programs and Projects, *Final Report: Volume 1*, Western Australia, February 2018, p. 10.

- 3.47 Treasury accepts that there are compliance issues with the SAMF, and it notes the recent Special Inquiry showed there was room for further improvement.¹²³ While adherence to the SAMF is ‘encouraged’, there are no formal penalties for non-compliance. However, the extent of compliance is a factor when evaluating agency asset investment proposals.¹²⁴

Finding 16

While adherence to the Strategic Asset Management Framework is ‘encouraged’, there are no formal penalties for non-compliance.

Recommendation 11

The Treasurer should ensure that Treasury increases the rigour with which it monitors and enforces agency compliance with the Strategic Asset Management Framework.

123 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, pp. 5-6; Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p 10-11.

124 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 20; Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p. 8.

Chapter 4

More work is needed to better manage risk and accountability

Poorly developed contracts have led to inability to recover costs and poor allocation of risk between the government and contracted parties.

Special Inquiry¹²⁵

Introduction

- 4.1 Outsourcing services or works is a choice. To succeed best, that choice needs to be informed. Part of being well informed means making sure that procurement choices and contracting decisions are carried out fairly and appropriately. Getting these things right will depend on many factors, but we have focused on two. We believe that these two factors are where action is most likely to be achievable and to improve performance.
- 4.2 The first is the task of ensuring that any contracting decision reasonably and effectively allocates risk between the contracting parties. Having allocated the risks effectively, managing the contract should be easier for all parties. The second concerns accountability. This ties into other areas – frameworks and processes and capability for example – that we cover in Chapters 2 and 7. A focus on accountability also has an ancillary benefit in terms of transparency, which we discuss in Chapter 5. But our main interest is in the role that enhanced accountability can play in raising the perceived value and recognition of good contract management.
- 4.3 We begin this chapter discussing the notion, raised often in our research and in the evidence received in our inquiry, that the public sector does not understand or allocate risk well. We then look at the particular question of legal risk within contracted arrangements. Next we cover accountability for contracts. Then we discuss how the public sector needs to become a better client and some make some observations on the need to expand the types of contracting arrangements commonly used in the public sector.
- 4.4 Our overarching findings are:
- The public sector does not allocate contract risk well;
 - The provision of legal advice for contracts is inconsistent;
 - Legal liability is not well understood;
 - Accountability for contract management is under-developed; and
 - The public sector needs to consistently become a ‘good client’.

125 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, February 2018, p. 20.

The public sector does not allocate risk well

- 4.5 The key purpose of contracting out a service or work is to deal with the risk that the entity in question is not best placed to deliver the service or work. This is the key question that must be resolved before committing to a contract. If the agency could provide the service or work better, or at less risk, then all things being equal it should do so.
- 4.6 In many cases these decisions are straightforward and the outcome is satisfactory. In such cases, contracting is the best approach, and services (including works) and goods are provided to the State by those that can best provide them.
- 4.7 The Service Priority Review, for instance, found that ‘there are many good systems in place, particularly around common use contracting arrangements and tender probity’.¹²⁶ And as we heard, many agencies believe they have strong processes in place around their procurements. We agree that the common use arrangement for goods and services that was created to minimise cost and risk is appropriate for many standard purchases and service types.

Finding 17

The combination of agency processes and the common use arrangement for goods and services is appropriate for many standard purchases and service types.

- 4.8 However, it is clear to us that there is still a problem in allocating risk. In the first instance, too many agencies both here and in the United Kingdom (UK) believe the problem exists for us to think WA could be a special case. Even the Service Priority review was not completely sanguine about the issue. It noted that:

contracts and tenders are not always optimally designed, negotiated or managed well subsequent to contractual agreement to manage outcomes or protect the State from risk.¹²⁷

Finding 18

As also reported by the Special Inquiry and the Service Priority Review, we found that public sector contracting has a problem in fairly and effectively allocating risk. This can impact negatively on both government agencies and contracting entities.

- 4.9 One of the challenges in dealing with risk is the process of identifying what the risks are. The most obvious, and perhaps the one most often dealt with, is the risk of the service or work not being provided, otherwise known as project risk. Government agencies are most likely to be concerned with ensuring services are provided, rather than ensuring the contract is getting the best overall outcome. The Special Inquiry found that the ‘area of risk identification and management is another skill which is deficient across the public sector.’¹²⁸

126 Service Priority Review, *Working Together: One Public Sector Delivering for WA: Final Report to the Western Australian Parliament*, Perth, October 2017, p. 69.

127 *ibid.*

128 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, February 2018, p. 79.

4.10 Getting risk right happens in many ways. So does getting it wrong. Rather than only impacting on how agencies see risk, and worrying about whether government is not getting the best out of its contracts, a misapplied notion of risk can also become a limiting factor on who will choose to contract with government. The UK's Government Commercial Function (GCF), a cross-government body for procurement of government goods and services, believes that the problems in understanding risk are long-standing, and that commercial entities are cautious because of it. As its *Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions* (Outsourcing Playbook) puts it:

Inappropriate risk allocation has been a perennial concern of suppliers looking to do business with government and a more considered approach will make us a more attractive client to do business with.¹²⁹

4.11 One industry organisation that appeared before the Committee held similar views:

While public sector agencies may pass on risk under the (illusory) impression that they are protecting the taxpayer, their actions may actually serve to drive up prices, increase delays, and potentially invalidate the very insurance cover professional services firms rely on for their protection.¹³⁰

4.12 With a more direct experience in WA's public sector activity, it was noteworthy that Finance submitted that:

There are numerous contracts that result in the Government taking a disproportionate amount of the risk involved in a project or service delivery, and failure to manage suppliers and contracts results in poor value-for-money outcomes.¹³¹

4.13 The Committee noted that there are numerous prominent examples of high value contracts that have become problematic to some degree and that poor understanding of risk allocation and management was involved in all of them. In this inquiry we have referred to several examples that the Auditor General has reported on, including a major Health ICT procurement, the delivery of non-clinical services at Fiona Stanley Hospital, the Pilbara Underground Power Project, Education's Schools PPP project, and Main Roads' approach to maintenance contracting.¹³²

4.14 The evidence from witnesses, reports and our discussions with UK Civil Service and academic experts in contract management made it clear that there is a level of naivety in the public sector in understanding the implications of particular contractual decisions, even in large agencies which conduct many significant procurements. We accept that some negative

129 Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting*, UK Cabinet Office, 2019, p. 6.

130 Submission 8, Consult Australia, Model Client Policy, p. 12.

131 Submission 1, Department of Finance, p. 13.

132 Office of the Auditor General Western Australia, *WA Schools Public Private Partnership Project, Report 11*, Perth, June 2018; *Non-Clinical Services at Fiona Stanley Hospital, Report 14*, Perth, August 2017; *Maintaining the State Road Network – Follow-on Audit, Report 13*, Perth, June 2016; *Health Department's Procurement and Management of its Centralised Computing Services Contract, Report 1*, Perth, February 2016; *Pilbara Underground Power Project, Report 15*, Perth, August 2015.

outcomes are unavoidable in a field as immense as the public sector, with so many contracts and projects in play at any time. But our concern is that the examples we observed are more likely to indicate that there are systematic weaknesses in risk assessment and assignment across the sector.

4.15 We have noted elsewhere that there is a tendency on the part of public agencies to privilege the tender selection process over the ongoing management of a contract. And this is in some ways understandable. The initial choice of contractor has a huge impact on the outcome for the project or relationship. But we agree with the State Solicitor's assessment that the ongoing management of a contract plays is where risks are really managed. As he told us:

there needs to be a recognition that if [contracts] are properly managed there will be a reduction in contract risks such that the risks to government will be reduced. Those risks include a reduction in contract claims and a reduction in overpayments and underpayments, that there will therefore be contract savings, and that will result in improved service delivery by departments and agencies and result in improved organisational performance.¹³³

4.16 Consult Australia believes many of the problems occur because agencies think that they can remove risk by contracting it away. Instead, they believe that agencies are more likely to be merely shifting it to parties that cannot manage it well:

Less desirable practices are generally focused on one party offloading responsibility to another and considering the risk has been managed, when in actual fact it has not (and indeed may be allocated to a party unable to manage that risk).¹³⁴

4.17 We would note that the problem could manifest in either direction – agencies retaining risk they are not suited to manage, or shifting risk to contractors that are not able to manage it. Neither case increases the likelihood that services or works will be delivered effectively or efficiently.

The provision of legal advice is inconsistent and legal liability is not well monitored

4.18 Beyond the concept of project risk – that goods or services would not be delivered on time or cost – we were also interested in questions of legal, litigation and financial risks. These issues were raised by several witnesses, and we explore some examples in this section. As with many areas of this inquiry, opinions differed as to how well prepared the sector is for dealing with litigation and other risks. We believe there is scope to provide more certainty that contracts will be managed effectively, although this necessarily involves better planning and contracting processes.

4.19 As with most parts of this inquiry, individual agencies in general appeared fundamentally comfortable with their position and protection. However, and in line with the Special Inquiry

133 Mr Nicholas Egan, State Solicitor, *Transcript of Evidence*, 3 April 2019, pp. 2-3.

134 Submission 8, Consult Australia, Model Client Policy, p. 11.

and other experience, a broader view gives us less confidence. We agree that the Special Inquiry was right to raise concerns with the overall position in WA:

In the case of the State Solicitor's Office, the Special Inquirer noted with concern the tendency for agencies to engage legal advice independently of this Office and for the Office not to have universal access to legal positions being taken by agencies. This exposes the State to risks, especially financial risks.¹³⁵

Finding 19

There is no requirement for agencies to seek State Solicitor's Office advice on major contracts, leading to inconsistent practice and likely increased costs.

- 4.20 In large part the issue seems to grow from the permissive approach to legal advice. The place of the State Solicitor is determined not by need, but by practice. The State Solicitor was concerned that the current arrangement worked against consistency, and could not guarantee that the best fit was found or that the State's best interests were always achieved.¹³⁶ We accept his advice that there will be instances where the State Solicitor's Office (SSO) does not have the requisite specialist skills or resources needed to handle major litigation.¹³⁷ But we also believe that there should be a clear and logical process to determine when the SSO becomes involved in major contracts, with a minimum expectation that the SSO be informed of all major contracts.
- 4.21 The different procedures in place at the Public Transport Authority and Main Roads provide an interesting example of the inconsistent approach to SSO involvement. Although the two agencies operate in very similar areas, and both have many large works and services contracts in place, they have very different methods for taking legal advice. However, we did not find that this resulted in bad outcomes for the two agencies.
- 4.22 The Public Transport Authority told us that it has in-house legal capability, but that it also sources much of its legal advice from commercial legal firms. It rarely if ever used SSO advice. Main Roads, on the other hand, has a form of permanent secondment, where SSO legal staff are in effect permanently attached to Main Roads work.¹³⁸
- 4.23 The State Solicitor was concerned that this variability was not in the State's best interests. He told us that while there would always be times when commercial legal advice would be needed, and at times the most appropriate, the current arrangement worked against consistency, and could not guarantee that the best fit was found. The Public Transport Authority made the same point when it said that a contractor accepting unlimited liability did 'not necessarily result in a fair allocation of risk.'¹³⁹

135 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, February 2018, p. 71.

136 Mr Nicholas Egan, State Solicitor, *Transcript of Evidence*, 3 April 2019, p. 11.

137 *ibid.*, p. 9.

138 Mr Mark Burgess, Managing Director, Public Transport Authority, *Transcript of Evidence*, 10 April 2019, p. 3; Mr Peter Woronzow, Managing Director, Main Roads Western Australia, *Transcript of Evidence*, 10 April 2019, p.5.

139 Submission 6, Public Transport Authority, p. 6.

- 4.24 We share the concern of the Special Inquiry that there was no clear picture of the impact of this uneven and unmanaged access to legal advice and the ensuing contracts provisions:

All statutory authorities operate in ways which increase risk to the State but where the quantification of that risk is often unknown. For instance, there is no consistent practice across statutory authorities as to how they access legal advice and how that advice is briefed. The State's contingent liabilities from these practices are unknown.¹⁴⁰

- 4.25 The Special Inquiry recommended that litigation and other criteria for contracts should be included on the public register referred to in Chapter 2. The State Solicitor told us in April that this was:

in the process of going to cabinet in June or July of this year. It will include, necessarily, certain criteria for contracts to appear on the register or for litigation risks to appear on the register because otherwise the registers will be too significant, so they will probably have a contract value of somewhere between, as a minimum threshold, \$5 million and \$50 million.¹⁴¹

Finding 20

The Special Inquiry's recommendation to include litigation risk in major contract registers has not yet been implemented.

Recommendation 12

The Minister for Finance should implement the Special Inquiry's recommendation to add litigation risk to compulsory contract register information.

Recommendation 13

The Minister for Finance should ensure that there is a clear and logical process to determine when the State Solicitor's Office becomes involved in high value, high risk or significant contracts, with a minimum expectation that the State Solicitor's Office be informed of all such contracts.

- 4.26 The State Solicitor also told us that agencies' self-guided legal choices could cost the State more than going through the SSO. On the last point, he told us that the SSO had established special rates with particular legal firms, and that agencies going directly to them could not be assured of accessing them. They would, he said, be 'paying rack rate'.¹⁴²
- 4.27 The Public Transport Authority made a different but connected point when it said that a contractor accepting unlimited liability did 'not necessarily result in a fair allocation of risk.'¹⁴³ There was some concern, especially from industry, that legal practices themselves were increasing the unfairness of risk allocation, and that this was in turn limiting the pool of

140 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, February 2018, p. 62.

141 Mr Nicholas Egan, State Solicitor, *Transcript of Evidence*, 3 April 2019, p. 9.

142 *ibid.*, pp. 9-11.

143 Submission 6, Public Transport Authority, p. 6.

potential contractors available to the public sector. It was particularly concerned that Western Australian contracts routinely sought to 'contract out' of proportionate liability. This was an unfair practice, it believed, that made it easier for the State to litigate the contractor.

4.28 The effect continued the practice of joint and several liability, which Consult Australia believed reduced the ability of service professionals to access affordable indemnity insurance. This in turn reduced the 'pool' of contractors able to contract with government. It noted that this practice was expressly prohibited in Queensland.¹⁴⁴ We note that a 2017 Commonwealth Parliament Committee reported similar issues at the national level.¹⁴⁵

Finding 21

Unlike other jurisdictions in Australia, Western Australia continues to permit agencies to contract out proportionate liability.

Recommendation 14

Government should prohibit the practice of contracting out of proportionate liability.

Accountability for managing major contracts is underdeveloped

4.29 Throughout this report we observe a complex relationship between the particular and the general. This also appears when we look at questions of accountability. On the one hand, we found that there is a concern about the capability of individuals charged with managing major contracts and projects. On the other we have considered important possibilities to bring together whole-of-sector training and transparency processes (Chapters 5, 7). However, we heard little locally about ways to improve accountability for major projects.

4.30 The Special Inquiry reported that the State Solicitor had raised numerous issues about accountability:

- A lack of defined responsibilities and accountabilities for contract managers.
- A low level of capability and understanding of the requirements of good contract management.
- Reluctance of contract managers to enforce the contract, manage supplier performance and apply abatement when required.
- Failure of agency leaders to interrogate the management of contracts and the performance of contract managers.¹⁴⁶

144 Submission 8, Consult Australia, p. 4, Model Client Policy, p. 17.

145 Joint Select Committee on Government Procurement, *Buying into our Future: Review of amendments to the Commonwealth Procurement Rules*, Parliament of the Commonwealth of Australia, Canberra, June 2017, p. 41.

146 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, February 2018, p. 111.

Finding 22

While responsibilities are generally clear for those managing individual contracts, accountability for major contract management is not.

4.31 In this section we are interested in the relationship between the first and fourth points of this list. We believe there is reasonable understanding of the responsibilities involved in managing major contracts, although how well the knowledge is put into action is variable. For example, the Water Corporation told us that it employs:

Contract Managers to act as Superintendents to administer major works contracts. The Superintendents are contractually required to administer the contracts reasonably and in good faith, and act to ensure the parties adhere to their contractual obligations.¹⁴⁷

4.32 While this is right and proper, it exemplifies what we see as a weakness in how accountability is understood in the WA public sector. No doubt there is an internal accountability attached to the role as discussed by the Water Corporation, but there is no public accountability thus described. And we think that the absence of a more open accountability feeds the potential for the ‘failure of interrogation’ in the State Solicitor’s fourth point.

4.33 We also came to the opinion that the absence of clear accountability plays into weaknesses in finalising and renewing contracts, a problem which, as we describe in the following paragraphs, was raised by several witnesses and respondents to the inquiry. A better and more clear level of accountability would make it difficult to reach the end of a contract without making good arrangements to replace, extend, or renew it.

4.34 For instance, the Auditor General’s Office told us it had found agencies were unprepared and unready to make good decisions when the time came to renew or extend contracts.¹⁴⁸ Similarly, the State Solicitor was concerned that contracts are often rolled over ‘more frequently than they should be’, and that this meant the State missed out on aspects of ‘competitive tension that you would otherwise get if you went to market.’¹⁴⁹

4.35 The UK has introduced an increased level of accountability for the most major projects and contracts. Under this system, for designated ‘government major projects’ the senior responsible owner (SRO) is formally accountable to Parliament.¹⁵⁰ The mechanism for this is an Appointment Letter that should set out:

- The point at which the senior responsible owner becomes accountable for the project
- The time they are expected to commit to the project
- The tenure of the role, linked to key milestones on the project

147 Submission 2, Water Corporation, p. 5.

148 Ms Sandra Labuschagne, Deputy Auditor General, Office of the Auditor General, *Transcript of Evidence*, 19 June 2019, p. 10.

149 Mr Nicholas Egan, State Solicitor, *Transcript of Evidence*, 3 April 2019, p.16.

150 HM Government, *Government Functional Standard GovS 002: Project Delivery*, 2018, p. 10.

- The extent and limit of their accountability
- A clear statement of the status of the project, identifying material issues and constraints
- The SRO's objectives and performance criteria, covering delivery of the project, projected outcomes and required benefits
- Decision powers, controls and delegated authority
- Key interfaces and relationships, particularly with the business owner of the delivered project
- Any expected development or other requirements of the SRO.¹⁵¹

4.36 In these designated cases, the formal Appointment Letters must be published on the agency website. This process aims at very high value/risk projects, especially with direct accountability to Parliament. But the principles hold for all projects. Stakeholders to this new approach in London told us that they believed it had changed how responsibility and accountability were seen. One part of this was the possibility of being brought before Parliamentary committees, or being the subject of an Auditor General's audit.

4.37 We believe this approach should be considered by Finance as part of the broader capability enhancement required under the procurement review.

Recommendation 15

The Minister for Finance should consider implementing the Appointment Letter process for the most significant projects.

The public sector needs to be a 'good client'

4.38 Contracts are always at least two-party mechanisms. While this inquiry has focused on what the public sector needs to do to manage its contracts well, we have inevitably been drawn at times to the processes involved in making a contract.

4.39 For the most part the focus on good contracting has involved proper and necessary effort at inward-looking improvement, led by Finance. Throughout the inquiry we also came to see that more effort is needed looking outwards. In particular, individual agencies and the sector as a whole need to understand how they are perceived by potential contractors. Part of this will involve a change of mindset. In particular, it will mean moving from being predominantly self-protective to becoming a 'good' or 'model' client.

4.40 Consult Australia was particularly interested in the notion. It proffered a framework for model client behaviour, building on existing 'model litigant' practice. It believed this approach would improve the position for consultants and government together:

151 Infrastructure and Projects Authority, *Project delivery: guidance: the role of the senior responsible owner*, 2019, p. 14.

Adopting a model client approach is essential in providing better overall outcomes on infrastructure works, including improving current poor procurement and contract management practices, in the State.¹⁵²

4.41 The CFMEU also believed in the benefits of adopting a similar approach. It said that government needed to become an 'informed purchaser of infrastructure'.¹⁵³

4.42 In the UK, this desire has resulted in an overarching policy that outlines the requirements and expectations placed on both government and contracting entities. The *Supplier Code of Conduct* is designed:

to build trusting and open relationships between government and suppliers in order to drive improved performance throughout government supply chains. This Supplier Code of Conduct acts in a reciprocal way in respect of our suppliers and sets out the behaviours we would expect of each other.¹⁵⁴

4.43 Part of being a good client means being open to various forms of contracting arrangement, and using those that best suit the project or service type. Consult Australia and the CFMEU both understood that better performance would come from less traditional types of contracting. The CFMEU believed that alliance arrangements, like the one involved in the construction of Fiona Stanley Hospital, was less combative and led to better outcomes. Consult Australia identified seven types of arrangement that could be entered into:

- Construct Only – agencies separately and directly engage designers and contractors;
- Design and Construct – agencies engage a contractor, who engages a consultant to undertake design work;
- Managing contractor – agencies engage a managing contractor, who is responsible for engaging all other parties;
- Construction Management – agencies directly manage the project and engage designers, constructors and other service providers;
- Early Contractor Involvement – agencies undertake concept and design work in collaboration with consultants, before a second 'design and construct' stage;
- Alliance – a new entity is formed comprising the client and service providers, with risk and reward is shared and collaboration is encouraged; and
- Public Private Partnership – a private sector entity carries out the project and thereafter may own, operate or maintain the infrastructure in return for user charges or a government payment.¹⁵⁵

4.44 St John Ambulance raised issues of contracting 'style' in its submission to our inquiry. It told us that the approach taken by Health was detrimental to good outcomes, and failed to incentivise better performance.¹⁵⁶ We note their concern, but also note the Auditor

152 Submission 8, Consult Australia, p. 2.

153 Submission 3, CFMEU WA Construction and General Division, p. 11.

154 Government Commercial Function, *Supplier Code of Conduct v2: Delivering better public services together*, February 2019, p. 4

155 Submission 8, Consult Australia, Model Client Policy, p. 8.

156 Submission 4, St John Ambulance Western Australia, pp. 2-3.

General's observations that St John's relationship with the public sector is 'in many ways unique', and that improving that contract has been a protracted and ongoing exercise.¹⁵⁷

4.45 Although we recognise that Finance has introduced several important contract management policies and guides, we found nothing that positioned government in its overall relationship with suppliers and providers. On a detailed level, we would add that part of building a positive relationship with the pool of suppliers is to recognise good performance. We note that Building Management and Works within Finance told us it is working towards better engagement with industry to recognise good performance, through regular reviews and annual awards for outstanding contractors and consultants.¹⁵⁸

Finding 23

There is no standardised approach to public sector agencies being 'good clients' or to ensuring contractors meet financial and social expectations.

Recommendation 16

The Minister for Finance should explore introducing 'model client' and/or 'supplier code of conduct' policy statements.

157 Office of the Auditor General Western Australia, *Delivering Western Australia's Ambulance Services – Follow-up Audit, Report 3*, Perth, July 2019, p. 4, passim.

158 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p.21.

Chapter 5

Transparency about major contracts is limited

[There] is a lack of centrally held procurement data that can be used to identify and analyse procurement patterns and to evaluate the effectiveness of tenders across the sector.

Service Priority Review¹⁵⁹

Contracting information should not be confidential unless there is a sound reason, informed by legal principle, for maintenance of the confidentiality of that information.

Australian National Audit Office¹⁶⁰

Introduction

- 5.1 In this chapter, we expand upon the questions of compliance we examined in Chapter 3 to look at broader questions of transparency. We look at the expectations and practicalities of making contract information public with WA public sector contract management policies, and assess their effectiveness. Overall, we concluded that:
- Transparency around contract information is a good in itself that should be promoted;
 - There is no overarching approach to whole-of-government collecting, collating and making information public in this space;
 - The focus until now has been inward-looking, aiming to ensure individual agencies follow good practice, rather than on assessing performance across the sector;
 - There is a generic concern that commercial confidence matters are given too much weight in making contract information public; and
 - As the lead agency for procurement transformation, Finance should do more to formalise standard reporting requirements for contract information.
- 5.2 The complicated and uneven policy and compliance frameworks that we have looked at in previous chapters are fundamentally replicated when transparency and public information is considered. We concur with the many reviewers and agencies who believe that transparency is a positive goal for public sector information. However, the approach to assessing contract management information is currently focused on individual agencies and individual contracting arrangements. There is no coordinated approach to collecting, collating or reporting information across the sector. Nor is there a clear method to assess performance

159 Service Priority Review, *Working Together: One Public Sector Delivering for WA: Final Report to the Western Australian Parliament*, Publisher, Perth, October 2017, p. 69.

160 Australian National Audit Office, *Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money. Better Practice Guide*, Commonwealth of Australia, Canberra, 2012, p. 42.

or guide its improvement. Determining the best way to resolve these issues will be an important job for Finance as its procurement reform process reaches maturity.

- 5.3 In this chapter we first make some observations about the recognised need to promote transparency in this area. We then look at the requirements for making information available. Next we consider the place of questions about commercial confidentiality. These include numerous observations about possible ways to formalise and regularise transparency matters across the sector. In doing so we make recommendations to enhance the level of transparency that Ministers and Parliament should be able to expect.

Transparency about contracts is a good in itself

- 5.4 Transparency is an important part of achieving appropriate public accountability. The more information is made available, the greater the chances of strong oversight and more informed decision-making. As the UK Public Accounts Committee has noted, 'Transparency is fundamental to accountability, and supports scrutiny of both government and its contractors.'¹⁶¹ This is true within particular agencies, across the public sector as a whole, for Parliament, and for members of the public.
- 5.5 At individual agencies, senior officers need clear information on how particular contracts are being managed and are performing. They also need the same view across the portfolio of contracts within their agency. They need to know they are getting what they have paid for, and also know if their own policies and procedures are being followed.¹⁶²
- 5.6 Beyond the needs of individual agencies, it is also important that central agencies, Parliament and the public can get a clear picture of how major contracts are being managed and are performing across the public sector. Finally, increased availability of information about approaches to and experiences in managing major contracts will be important to improving capability across the sector, which we deal with in Chapter 7.
- 5.7 While we support increased transparency, we recognise that 'more' is not the same as 'better' when it comes to requiring information from contractors. The UK GCF makes the point that having more than 15 key performance indicators (KPIs) per service 'will lead to over-complicated contracts and ambiguity with suppliers.'¹⁶³ Nobody's best interests were served, for example, by the situation identified by the Auditor General's report on non-clinical services at Fiona Stanley Hospital, where 1,000 reporting obligations across 25 services generated 12,000 pages of reporting each month.¹⁶⁴
- 5.8 Nonetheless, ensuring there is appropriate transparency of this information is important. As the Special Inquiry reported in 2018:

161 House of Commons Committee of Public Accounts, *Transforming contract management, Twenty-third Report of Session 2014-15*, London, November 2014, p. 19.

162 Australian National Audit Office, *Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money. Better Practice Guide*, Commonwealth of Australia, Canberra, 2012, p. 73.

163 Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting*, UK Cabinet Office, 2019, p. 29.

164 Auditor General of Western Australia, *Non-Clinical Services at Fiona Stanley Hospital: Report 14*, Perth, August 2017 p. 9.

Providing Western Australian taxpayers with open, honest and complete information through continuous disclosure about government projects is a useful way to promote trust.¹⁶⁵

5.9 As we took evidence throughout this inquiry, there was a strong if not always clearly described commitment from agencies to the value of transparency. This showed us that questions of transparency are not often high on agencies' list of priorities. While this is understandable in practical terms, we believe it is important to make the case for the value of transparency, to allow Ministers, Parliament and the public a better understanding of how well contracts are being managed for the State.

5.10 Education's response when asked about the benefits of transparency was perhaps the best example of this position:

The Department does not have a specific view on how to improve transparency, however it would be willing to support any whole-of-Government review on how to improve transparency on large value contracts so the public and parliament are better informed.¹⁶⁶

Finding 24

Transparency of contract information is an important part of providing strong public accountability and assurance.

There are no overarching requirements for making contract information public

5.11 So far this report has examined the various frameworks and policy settings for contract management across the public sector. In it we have found that there are complicated and varying requirements for individual agencies and the sector as a whole, in part determined by the type of contract involved.

5.12 Not surprisingly, given this high level of complexity, we also observed that there is no simple or clear-cut set of requirements for collecting, collating and making public information about contracts and their performance. And while agencies generally agree that making information public is important, there was no consensus view on what that entailed.

5.13 To reiterate one of the recurring themes of this report, we found that the requirements and expectations for transparency are disjointed and not comprehensive. This is especially true at the whole-of-government level. Many agencies told us of detailed internal reporting requirements, and that they were confident that they met their statutory requirements, as we note in Chapter 3. Nonetheless, in assessing the information provided in this inquiry, it was clear to us that there is there is insufficient collection, collation and reporting of information across the sector.

165 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, 2018, p. 16.

166 Ms Lisa Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 8.

Finding 25

The absence of comprehensive cross-sector requirements to make contract information public has resulted in there being insufficient information on contract performance and management that is easily accessible to Parliament and the public.

5.14 While the high level of complexity is not surprising given the complex organisational framework in place across the public sector, it should not go unquestioned. We believe that part of the task facing Finance in its efforts to improve performance across the sector comes from improving its own access to quality information about that performance.

5.15 The Special Inquiry made several findings and recommendations about the importance of, and need to improve, transparency around major contracts in the public sector. The information we received from agencies and specialists, alongside what we learned from our hearings, confirms our support of those findings and recommendations. In particular, we concur with the Special Inquiry's recommendation that:

Information about Government programs and projects should be open for scrutiny. Based on shared principles, the Government should develop a transparency framework for reporting details of major projects. The framework must require continuous disclosure.¹⁶⁷

5.16 One of the most commonly mentioned aspects of transparency related to information held by TendersWA. As we noted in Chapter 3, all agencies (but not GTEs) are required to provide information to TendersWA, which is then made public. However, we were not convinced that the current arrangements provide the most suitable access to information.

5.17 As we were told several times, the information on TendersWA relates to estimates of contract values, not the actual amounts committed through contracts. Finance noted that it gets 'financial information about their contracts because they are required to enter those details into our Tenders WA system, so we do have access to the high level amounts spent on contracts and variations.' But it also noted that this information was based on estimates rather than actual expenditure.¹⁶⁸

5.18 Health raised another issue that we find compelling about the information on TendersWA. It summarised the impact of the particularised or atomistic approach behind the collection of information, and the lack of focus on the bigger picture. In its submission to the inquiry, Health said:

While these measures address public concerns about transparency and accountability in relation to fairness of process, information about contract performance and outcomes is generally not captured and shared publicly.¹⁶⁹

5.19 Premier and Cabinet believed that part of Finance's reform was to 'increase the uptake and use of TendersWA, as a central source of publicly available information on procurement

167 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, 2018, p. 17.

168 Mrs Stephanie Black, Executive Director, Building Management and Works, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 5.

169 Submission 9, Department of Health, p. 15.

opportunities and awarded contracts.¹⁷⁰ While this is an admirable notion, it was not supported by any guidance on mechanisms to improve that information's uptake or use. Further, the idea that the information held by TendersWA should be better utilised carries an implicit acknowledgement that the information is currently not being used to its fullest extent.

Finding 26

TendersWA holds important information about contracts and procurement, but not about actual expenditure, and the information is not widely shared.

Finding 27

Agencies supported increased transparency but were unclear what that would entail. At one level, agencies believed that meeting their requirements under State Supply Commission policy or Treasurer's Instructions meant they had fulfilled their transparency obligations.

5.20 Beyond the requirement to include particular information on TendersWA, several agencies told us that they reported some contract information, although there appeared to be no real consistency in how, or what, information was provided. For instance, Communities told us that:

While the Housing Authority publishes some Key Performance Indicator data on its Head Maintenance contract, no other data relating to major contracts is published by the Department of Communities (Communities) or any of its agencies.¹⁷¹

5.21 Similarly, Education provide limited information:

In accordance with SSC Policy, the Department publishes the contract award details for all contracts valued at \$50,000 or higher, which includes contract term and total contract value of the successful bid. The Department is also required to publish details of any contract variation that increases the total contract value by more than \$50,000. The Department does not publish any other data on its major contracts.¹⁷²

5.22 Even when agencies operate as part of the same department there were differences in the types of information made public. For example, Main Roads told us that its 'Annual Report includes information on project/contract cost and time performance, which is available publicly.' However, the Public Transport Authority told us that it published information on some of its services, but not on capital projects. In particular, it included in its annual report:

170 Mr Darren Foster, Department of the Premier and Cabinet, Response to Questions on Notice and Further Questions, 14 May 2019, p. 3.

171 Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 16].

172 Ms Linda Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 8

KPI data such as on time running, patronage and passenger satisfaction results for trains, buses and ferries in the Transperth system as well as results for Transwa rail and coach services.¹⁷³

- 5.23 It is invaluable that the Public Transport Authority publishes the service performance information on trains, buses and ferries, and it is good that Main Roads publish contract information. And we do not question the propriety of the decisions of either agency about making information public, noting as we have that the system differentiates between services and capital projects. But we are not convinced that there is any obvious or logical reason that we should expect less information based on the type of activity involved.

Finding 28

There is no clear rationale for having different expectations about making information public based on the type of contract involved. Nor is there any clear benefit that results from the differentiation.

- 5.24 While Education was supportive of improved transparency, it did not believe that individual agencies should be made responsible for developing any new approach. Indeed, it was the 'Department's view is that it should be a whole-of-Government policy decision to publish data beyond what the current SSC Policy requires.'¹⁷⁴
- 5.25 Finance told us that it had been working thus far on strengthening processes to enable individual agencies to better manage contracts and procurement. But it also told us that it had not reached a decision on whether or not it should itself be auditing this information or providing advice.¹⁷⁵
- 5.26 Beyond the question of 'auditing' agency performance, we believe that Finance should establish expectations of what reporting it requires from agencies, and how it plans to make that information available to the public and Parliament. One option that Finance should consider is that now in place in the UK, whereby three KPIs from every new major contract will be made public.¹⁷⁶
- 5.27 There is no question that more information could be provided routinely on the progress of major projects and major contracts. As the Special Inquiry reported, both the UK and New Zealand require and receive regular reporting on major projects. In New Zealand this includes reporting to Cabinet on the 'confidence relating to delivery, the position of the project in its lifecycle, expenditure to date and the expected whole cost.'¹⁷⁷

173 Mr Richard Sellers, Director General, Department of Transport, Response to Questions on Notice and Further Questions, 6 April 2019, pp. 9-10.

174 Ms Linda Rodgers, Director General, Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 8.

175 Miss Kathryn Ingham, Director Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 20 March 2019, pp. 5-6.

176 Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting*, UK Cabinet Office, 2019, p. 6.

177 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, 2018, p. 87.

Recommendation 17

The Minister for Finance should determine minimum standards for major contract reporting requirements for all agencies. That reporting should be based on risk and government need, not merely the type of contract involved.

Recommendation 18

In setting minimum reporting standards, the Minister for Finance should consider adopting the United Kingdom's approach that all major contracts publicly report three Key Performance Indicators.

Recommendation 19

The Minister for Finance should ensure that Finance determines and implements strategies to assess and analyse agency contract information and to make that information openly available to Parliament and the public. This should include ensuring that all contracts above a designated value are tabled in Parliament and made available on agency websites.

Compliance with Treasurer's Instructions does not provide transparency

5.28 Another common response to our questions about transparency was that agencies were required to maintain registers of major contracts to comply with TI 820, as we noted in Chapter 3. This provides an avenue for internal understanding, but does little in itself to make the information available across the sector. Treasurer's Instructions are an important part of financial accountability for the sector and for agencies. But they are not panaceas. As Treasury told us, 'TIs prescribe requirements at a minimum level to achieve sound financial management.'¹⁷⁸

5.29 We agree with the intent of a suggestion from Premier and Cabinet that TI 820 be revised to 'explicitly allow TendersWA to serve as a register of contracts.'¹⁷⁹ But we would go further, and ask that the Minister for Finance work with the Treasurer to ensure that this or equivalent changes are made.

Finding 29

Treasurer's Instructions 820 and 813 are important foundations for good practice in agencies, but provide limited transparency in themselves.

Recommendation 20

The Treasurer should revise Treasurer's instruction 820 to ensure either that TendersWA becomes the repository for major contracts, or that equivalent structures are put in place.

178 Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p. 1.

179 Submission 14, Department of the Premier and Cabinet, Appendix B, p. 2.

5.30 A number of agencies referred to the Auditor General's power to audit TIs, and to undertake performance audits about particular activity, and to then report on performance as part of the compliance and transparency for the system.¹⁸⁰ These are important functions of the Auditor General, and are part of the broader accountability framework. But in themselves they cannot ensure good practice on the part of agencies. Nor do they provide a comprehensive view of performance across the sector.

5.31 As Finance noted, the Auditor General has an ad hoc role regarding agency compliance.¹⁸¹ In practical terms, the Auditor General said it well when she told us that 'auditors are not there oversighting the delivery of every single contract and at every single point.'¹⁸² A former Auditor General has elsewhere noted that:

While the auditor will endeavour to assist, the Executive [and we take this to include individual agencies and the sector as a whole] cannot become reliant on the auditor to relieve itself of accountability for programme delivery.¹⁸³

5.32 While Treasury told us that it 'has a role in raising awareness of the TIs and the need for accountable authorities to monitor and comply with the requirements of TIs',¹⁸⁴ it was not clear on how it monitors compliance with them, nor how it makes this information available to Parliament or the public. We note, however, that the material is available. As Treasury told us, TI 813 requires agencies to 'provide the Under Treasurer with a practical completion report for each contract.'¹⁸⁵ Drawing that information together and making it public should not be insurmountable.

5.33 With regard to SAMF, we have noted that Treasury reported publicly on a KPI to measure agency implementation of SAMF. However, that KPI was itself weak, and did not provide good information for Parliament or the public. Treasury reports on 'the proportion of Ministerially-endorsed Strategic Asset Plans received by the due date from agencies that account for 90% of the Government's total budgeted Asset Investment Program across the current financial year.'¹⁸⁶ Treasury informed us that this generally involved about the top 25 agencies, excluding GTEs, in any year.¹⁸⁷

180 Submission 1, Department of Finance, p. 12; Submission 5, Main Roads, p. 2; Submission 6, Public Transport Authority, p.3; Submission 9, Department of Health, p.1; Submission 17, Department of Communities, p. 5.

181 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 15.

182 Ms Caroline Spencer, Auditor General, Office of the Auditor General, *Transcript of Evidence*, 19 June 2019, p. 6.

183 Des Pearson AO, 'Partnering with the Auditor-General's Office to improve the effectiveness of a Public Accounts Committee', in Zahirul Hoque (ed.), *Making Governments Accountable: The role of public accounts committees and national audit offices*, Routledge, Oxford, 2015, p. 25.

184 Mr Michael Barnes, Under Treasurer, Department of Treasury, Response to Questions on Notice and Further Questions, 30 May 2019, p. 1.

185 *ibid.*, p. 10.

186 Submission 16, Department of Treasury, p. 4.

187 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, Session 2, pp. 5-6.

The public sector is overly focused on the effect of commercial confidentiality, and not well informed about legal liability

- 5.34 Throughout this inquiry we came across numerous comments about the nature and potential impact of commercial confidentiality on making information more public. Again, there was no overriding position presented. As we discuss below, some agencies were confident that commercial confidentiality did not limit their ability to make information available. Others were more cautious. And others had apparently not seriously considered the matter.
- 5.35 We drew two broad conclusions from this part of our inquiry. First, we are concerned that perceptions about commercial confidentiality have an indefinite but real and negative impact on transparency. This was shown by agencies' repeated concerns that breaching this confidentiality could harm future contracting choices, and even have legal implications for listed companies.
- 5.36 Our discussions with experts in this field during our visit to the UK reinforced the view that in many respects the 'problem' of commercial-in-confidence as a limiting factor for public transparency is one created by the public sector, not one driven by commercial entities. We noted that UK government policy is based on principles that support:

the proactive release of information under the government's existing commitment to publish contract information. They set a presumption in favour of disclosure, to encourage both government and suppliers to consider the information that should be made available when government signs a contract with a supplier.¹⁸⁸

- 5.37 Previous government reviews and reports have also already made valuable contributions in this area, and we broadly agree with their observations and recommendations. The Special Inquiry found that 'the default response to requests for contract and commercial information is to claim "commercial-in-confidence"'.¹⁸⁹ It based its findings and recommendations on the principle that:

Withholding information from the public on the basis of 'commercial-in-confidence' should be the exception, not the rule and reflect a very tight definition around trade secrets and harm to the public interest.¹⁹⁰

- 5.38 The ANAO explained the position well:

Contracting information should not be confidential unless there is a sound reason, informed by legal principle, for maintenance of the confidentiality of that information.¹⁹¹

188 Gov.UK, *Transparency of suppliers and government to the public*, 24 March 2015, accessed 26 September 2019, www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public. [N.B. this document was withdrawn on 15 November 2019].

189 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, 2018, p. 89.

190 *ibid.*, p. 91.

191 Australian National Audit Office, *Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money. Better Practice Guide*, Commonwealth of Australia, Canberra, 2012, p. 42.

5.39 The Special Inquiry also identified a key step in making that principle work:

Government needs a precise working definition of commercial-in-confidence approved by Cabinet. The definition will need to be well understood and agreed to by the Government and the public sector and be understandable to the community.¹⁹²

Finding 30

Routinely withholding information from the public only on the basis of commercial confidentiality undermines transparency.

5.40 We were pleased to see that the question of commercial confidentiality has come to the attention of senior government officers. The Director General of Premier and Cabinet informed us that one central purpose of Finance’s current review of contracting was to review the ‘confidentiality position in standard contracting templates.’¹⁹³ We also note that Treasury’s reform of GTEs is in part determined to ‘provide full transparency to government’. It recognises that the idea of commercial-in-confidence must be distinguished from the availability of information for government.¹⁹⁴

5.41 Some agencies were clear in their position. The Public Transport Authority, for instance, was clear that commercial and legal confidentiality did not inhibit effective reporting on contracts.¹⁹⁵ Health told us it has no issues with commercial-in-confidence.¹⁹⁶ The Water Corporation informed the Committee that ‘Commercial and legal confidentiality issues have not affected the Water Corporation’s capacity to report on its contracts.’¹⁹⁷

5.42 Of course, we must be cautious not to infer too easily that what agencies regard as ‘effective reporting’ is the same as what we think should be in place. But we again make clear that we have no issue with any particular position taken by agencies on individual contracts.

5.43 Other agencies were similarly clear in their view, but took a different line. Communities told us that commercial-in-confidence matters helped determine what information could be shared.¹⁹⁸ Horizon Power held a similar position. It described itself as being ‘mindful of its obligation to maintain commercial-in-confidence information’. Interestingly, it took this concern a step further, and favoured ‘industry forums and workshops to more public reporting.’¹⁹⁹

5.44 Main Roads was against the idea of making public information about any incentive payments of abatements arising from contracts. It told us that such information ‘is not published externally from Main Roads due to the commercial nature of the contractor’s performance.

192 Special Inquiry into Government Programs and Projects, *Final Report: Volume 1*, Perth, 2018, p. 90.

193 Mr Darren Foster, Department of the Premier and Cabinet, Response to Questions on Notice and Further Questions, 14 May 2019, p. 3.

194 Department of Treasury, *GTE Reform Program, Principles and Scope*, n.d., p. 1.

195 Submission 6, Public Transport Authority, p. 4.

196 Submission 9, Department of Health, p. 8.

197 Submission 2, Water Corporation, p. 3.

198 Submission 17, Department of Communities, p. 3.

199 Submission 18, Horizon Power, n.p. [p.3].

Publishing this information also jeopardises agency contract management negotiating positions.²⁰⁰

5.45 The Public Transport Authority was concerned that:

some of these contractors are publicly listed companies and publishing the information ... particularly in relation to significant losses incurred on a major contract, may influence shareholder confidence/decisions which may breach Australian Stock Exchange requirements for list entities.²⁰¹

5.46 Education was of the view that:

there would be issues related to commercial confidentiality and legal privilege amongst other things that would need to be resolved to enable such [increased] reporting. The Department expects that the DoF [sic] would be responsible for taking the lead to resolve such issues.²⁰²

5.47 In addition, it became clear through our inquiry that while agencies were more or less concerned about the day-to-day issues raised by commercial confidentiality, they had rarely thought about the concept itself. Although it had clearly reflected on many questions around transparency, Communities told us it:

will consider whether a commercial-in-confidence policy at an agency level would assist with providing agency staff a clear definition of the term and guidelines around appropriate use of the term in relation to sharing contract information.²⁰³

5.48 There were two further questions of transparency we explored. First was whether or not agencies and Parliament have enough information or insight into the contractors engaged in major contracts. The UK government requires particular monitoring and assessment of the financial sustainability of contracting organisations.²⁰⁴ During our discussion with practitioners in the UK we were told that all entities with contracts totalling £100 million must be assessed annually.

5.49 We note that the Water Corporation told us that even good financial standing is no guarantee of success. As it said:

200 Mr Richard Sellers, Director General Department of Transport (Main Roads), Response to Questions on Notice and Further Questions, 6 April 2019, p. 9.

201 Mr Richard Sellers, Director General, Department of Transport (Public Transport Authority), Response to Questions on Notice and Further Questions, 6 April 2019, p. 10.

202 Ms Lisa Rodgers, Director General Department of Education, Response to Questions on Notice and Further Questions, 13 June 2019, p. 8.

203 Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 17].

204 Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting*, UK Cabinet Office, 2019, pp. 42-3; *Assessing and Monitoring the Economic and Financial Standing of Suppliers: Guidance Note*, July 2019, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816634/20190710-Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers.pdf accessed 26 September 2019.

The major challenge to efficient contract management encountered by the Water Corporation in the preceding 12 months has been the failure of companies with previously excellent financial standing...²⁰⁵

- 5.50 Finance also told us that there is currently ‘no whole-of-government supplier management framework for works or goods and services.’²⁰⁶ We understand that the current procurement reform program will involve working to find ways to share knowledge about supplier performance. We encourage this development.

Finding 31

There is at present no whole-of-government supplier management framework for works contracts or goods and services contracts.

Recommendation 21

The Minister for Finance should ensure that Finance establishes clear guidance for agencies to determine when information is or is not commercial-in-confidence. This should be based on the principle that withholding information from the public should be the exception rather than the rule.

Recommendation 22

The Minister for Finance should ensure that Finance develops and implements a regime to assess contractor viability based on the total value of contracts with government held by that contractor.

- 5.51 The final observation we made in this area was connected to the questions of viability and openness. We note that on the evidence we received there appears to be no single or standardised accounting or reporting system across the public sector.
- 5.52 We agree with Finance that it will be a ‘a big piece of work’ to establish such a standardised system and that there is ‘no magic wand’ to make it happen.²⁰⁷ Nor do we believe a single system solution is required or even necessarily the best option. However, we do believe that a systematic approach to collecting, collating and reporting information about major public contracts will improve transparency for Parliament and the public, allow Finance to better focus its review program, and raise the standing and responsibilities of contract managers across the sector.

205 Submission 2, Water Corporation, p. 4.

206 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 25.

207 Ms Jodi Cant, Director General, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 7.

Chapter 6

More needs to be done to expand notions of value-for-money

[T]he question of lowest price is easy to justify, but it may not be at all the best value for money.

Ms Caroline Spencer, Auditor General for Western Australia²⁰⁸

Introduction

- 6.1 Within public sector procurement, contract managers are tasked with delivering value for money. Value-for-money is, as the Special Inquiry put it, ‘the cornerstone of effective government procurement.’²⁰⁹ However, exactly what constitutes ‘value’ in public sector procurement is less certain. While value-for-money closely aligns with achieving cost efficiency, there are, increasingly, more capacious definitions of what value could or should mean to the public sector.
- 6.2 In this chapter we outline how value-for-money is currently defined in the WA public sector policy framework, and note other policies that influence ideas of value. We then look at how value has been defined in other jurisdictions. Finally, we offer our view of how value-for-money might be redefined for WA public sector contract managers. Our overarching observations are:
- The current definition of value-for-money is narrowly focused;
 - The default position for many agencies is to simply choose the lowest bid; and
 - There is scope for an expanded definition of value to include indicators for social and community value.

Current definitions of ‘Value for Money’

- 6.3 One of the seven mandatory SSC policies for goods and services procurement in WA is entitled ‘Value for Money’. In addition to this supply policy, the SAMF also aims to help agencies achieve value for money from government capital works projects.²¹⁰
- 6.4 The SSC Value for Money policy requires that a ‘public authority must ensure that its procurement of goods and services achieves the best value for money outcome.’²¹¹ It says that to achieve this outcome at a corporate level, a public authority must align its

208 Ms Caroline Spencer, Auditor General, Office of the Auditor General Western Australia, *Transcript of Evidence*, 19 June 2019, p. 10.

209 Special Inquiry in Government Programs and Projects, *Final Report: Volume 1*, Western Australia, February 2018, p. 29.

210 Submission 16, Department of Treasury, p. 3.

211 State Supply Commission, *Supply Policy: Value for Money*, Western Australia, 28 December 2007, p. 1.

procurement activities with Government policies, objectives and strategies, while actively supporting whole-of-government initiatives.

6.5 At the level of individual purchases, under the SSC policy a public authority must consider as part of its assessment, 'cost and non-cost factors, where relevant, and make a value judgement about the best outcome.'²¹² It also notes the complexity of different procurement decisions will influence the level of rigour demanded to assess value-for-money. The 'non-cost factors' listed in the policy include:

- fitness for purpose;
- technical and financial issues;
- supplier capability, sustainability, and risk exposures;
- availability of maintenance;
- compliance with specifications; and
- ease of inspection, communication and delivery.²¹³

6.6 We of course agree that value-for-money is a necessary focus of public sector procurement, and of particular concern to successful contract management. However, we were struck by two aspects of the current policy.

6.7 First, the requirement that a public authority 'considers' the relevant cost and non-cost factors seemed to us unnecessarily imprecise. We were left unsure as to what requirements this 'consideration' entailed, and how it should be weighed, measured and enforced in the final judgement.

6.8 Second, even if the listed non-cost factors are not directly and explicitly cost-related (though clearly many would indirectly affect costs), they remain overwhelmingly issues of practical implementation. That is, necessary though they are, these factors amount to a restricted definition of value.

6.9 As a final contextual point, we acknowledge that understanding value-for-money is particularly important when agencies are establishing the need for services or selecting the best provider. However, those choices and those definitions of value do not come to fruition just by being selected. As the ANAO told a Commonwealth Committee in 2017, 'managing the contract is where the value for money actually comes from'.²¹⁴

Low bids

6.10 As we heard in our discussions with contract management experts and stakeholders, a cultural problem arises with attempts to expand on how value is measured in the public

212 State Supply Commission, *Supply Policy: Value for Money*, Western Australia, 28 December 2007, p. 1.

213 *ibid.*

214 Joint Select Committee on Government Procurement, *Buying into our Future: Review of amendments to the Commonwealth Procurement Rules*, Parliament of the Commonwealth of Australia, Canberra, June 2017, p. 86.

sector. There appears to be an ingrained inclination to see the lowest bid as the most risk-averse option.²¹⁵

- 6.11 A number of high-profile project failures at home and abroad, including the collapse of the major British construction company, Carillion, have led to a heightened sense of caution when reviewing low bids. There is, or there should be, growing motivation for considering factors beyond price.
- 6.12 We can also draw on the experience of this Committee in reporting on the Perth Children's Hospital project. In that case, the State accepted an extremely competitive bid, with very little room for error built into the contract, and from a company with no prior experience in managing a project comparable to the Perth Children's Hospital.²¹⁶ As we noted in that report, in cases where the State knowingly enters into high-risk contracts, it should be expected that contractual structures will mitigate risks arising out of the contractor's performance.²¹⁷ In this current inquiry, our point is that low bids alone are not a sufficient basis to award a contract, and can come with complex, and costly, flow-on effects.
- 6.13 Witnesses in our inquiry expressed concerns about the tendency to go for low cost contracts. Consult Australia, for example, warned of the 'race to the bottom' that occurs when industry is pressured to lower prices and then find other ways to recoup costs, a race that ultimately does not deliver value for taxpayers.²¹⁸
- 6.14 The CFMEU suggested that 'around 70 per cent of all government projects are based purely on price.'²¹⁹ It also submitted that 'Competition on cost alone has driven adversarial relationships in the construction industry, with companies looking to drive down labour costs.'²²⁰ The CFMEU's view was that the State 'must take the lead in determining best practice procurement models which allow the community to be assured that projects are being delivered not only at lowest price but at greatest dividend.'²²¹
- 6.15 Similarly, the Auditor General noted the 'tendency to justify value in terms of dollars alone.' One reason for this, according to the Auditor General, was expediency, and the fact that assessing bids according to factors beyond cost takes time.²²² In this sense, the Auditor General said, simply securing the lowest price is a form of 'risk aversion'.²²³
- 6.16 A primary focus on cost can result in negative outcomes. Such outcomes might include reduced quality of contract results. It might also tempt potentially well-suited and high-

215 See UK Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decision*, Cabinet Office, U.K., February 2019, p. 44.

216 Public Accounts Committee, *PCH – A Long Waiting Period: A critique of the State's management and oversight of the Perth Children's Hospital project*, Report No. 3 March 2018, p. 6-7.

217 *ibid.*, p. 60.

218 Mr Steven Coghlan, State Manager, Western Australia, Consult Australia, *Transcript of Evidence*, 26 June 2019, p. 5.

219 Mr Michael Buchan, State Secretary, Construction and General Division, CFMEU, *Transcript of Evidence*, 26 June 2019, pp. 7.

220 Submission 3, CFMEU, p. 3.

221 *ibid.*, p. 11.

222 Ms Caroline Spencer, Auditor General, Office of the Auditor General Western Australia, *Transcript of Evidence*, 19 June 2019, p. 10.

223 *ibid.*, p. 11.

quality suppliers to opt out of a bid if they are unwilling to compromise their reputation by dropping their price beyond a certain level. A more immediate risk is that the low bid will not be deliverable, and result in an unexpected and unapproved final expenditure beyond original estimates.²²⁴

- 6.17 These points show how difficult it is for agencies to secure the right balance in achieving a contract's outcomes. It also indicates the need to rethink a public sector culture where, in practice, price outweighs other important factors, even when it does not ultimately achieve the best results. Our concern is that an overemphasis on the lowest bid is short-sighted, and can cost more in the long run.

Finding 32

There remains a tendency for public sector agencies to focus on considerations of price to the exclusion of other important factors. This focus can result in poor contract outcomes.

- 6.18 We heard of some models to mitigate this problem. Consult Australia noted that Queensland had a policy on unreasonably low bids, in which the cost of a bid that is substantially below average triggers a review process. The purpose of this policy is to flag any concerns about a potential contract. The review process is intended to assess the reasons for an unusually low bid rather than simply rejecting it. This is to avoid the possibility of inadvertently curtailing real efficiency gains made through, for example, technological innovation.²²⁵

- 6.19 Similarly, in February 2019, the UK GCF's Outsourcing Playbook noted the risk of a low cost bias for complex services, and suggested the use of 'Should Cost Models', as well as requiring departments to refer any 'abnormally low bid' to central scrutiny.²²⁶ In evaluating ways to avoid a low cost bias, it asks whether 'wider social, economic and environmental benefits' have been accounted for.²²⁷

- 6.20 These policies appear to us to be practical, reasonable and sensible steps to take for public sector agencies to assure themselves that they are weighing any risks attached to highly competitive bids.

Finding 33

Public sector procurement in Queensland and the United Kingdom now operate with policies to identify and scrutinise 'unusually low bids'.

Recommendation 23

The Minister for Finance should ensure that Finance's procurement reform program establishes an 'unusually low bids' policy, taking into consideration similar initiatives in Queensland and the United Kingdom.

224 For one example, see Office of the Auditor General Western Australia, *Pilbara Underground Power Project, Report 15*, Perth, August 2015.

225 Mr Steven Coghlan, State Manager, Western Australia, Consult Australia, *Transcript of Evidence*, 26 June 2019, p. 6.

226 UK Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions*, Cabinet Office, U.K., February 2019, pp. 44, 46.

227 *ibid.*, p. 29.

Looking beyond cost

- 6.21 Our inquiry, and previous government inquiries on related topics, have held concerns about ways of measuring and assessing value. In many cases, the concern rested on how to look beyond cost, and how contracts could bring value to communities as a whole.
- 6.22 In its submission to the Service Priority Review, Communities noted the need for:
- ... a shift from a narrow obsession with ‘good procurement’ based on probity, price and value for money towards ‘sound investment’ based on public value, which includes the value of relationships, local knowledge, co-design, co-production, and shared risk.²²⁸
- 6.23 Indeed, the Service Priority Review itself concluded that:
- The amount of WA’s annual procurement expenditure means there is potential for its purchasing decisions to drive community benefits in other areas. This would require adjusting procurement policy settings beyond narrow conceptions of value towards a framework that allows the government of the day to include consideration of other legitimate government objectives.²²⁹
- 6.24 Witnesses to our inquiry expressed similar views. The CFMEU, for example, criticised the current definition of value-for-money as ‘very narrow’, and argued for ‘a broader measure of value.’²³⁰ The Auditor General told us that this focus on cost, to the exclusion of other considerations, carries potential flow-on effects for quality and local community benefits. That is, the easiest procurement decision to justify might not be the best decision for getting the best service or outcome for the community.²³¹
- 6.25 A witness from Communities told us value-for-money was ‘about both social and economic outcomes and a combination of cost, quality and sustainability [...] so I am not just referring to price and money in isolation.’²³² The submission from St John Ambulance also noted that the value it provided ‘add[ed] up to much more than the dollar value of the individual components of the ambulance contract’.²³³ In its submission to our inquiry, Communities said ‘Social impact investment is a worthy consideration and could be an innovative mechanism for funding solutions to complex social problems to generate social and financial returns’.²³⁴
- 6.26 We heard evidence of real-world negative impacts that can result from too narrow a definition of ‘value’. The Kimberley Community Legal Services said maintenance contracts in

228 Department of Communities submission to Service Priority Review, *Public Submissions: Public Sector*, Government of Western Australia, October 2017, p. 9.

229 Service Priority Review, *Final Report to the Western Australian Government. Working Together: One Public Sector Delivering for WA*, Government of Western Australia, October 2017, p. 72.

230 Submission 3, CFMEU WA, p. 13.

231 Ms Caroline Spencer, Auditor General, Office of the Auditor General Western Australia, *Transcript of Evidence*, 19 June 2019, pp. 10-11.

232 Ms Penny Kennedy, Acting Director, Stewardship, Department of Communities, *Transcript of Evidence*, 8 April 2019, p. 9.

233 Submission 4, St John Ambulance WA, p. 4.

234 Submission 17, Department of Communities, p. 6.

remote communities were ‘delivered from regional hubs, rather than by people living and working in those communities’ and this led to ‘a redistribution of income and wealth within regions away from remote communities’. Further, ‘aside from the direct economic damage done to these places, the loss of workers from remote communities also means a loss of positive role models for young people, loss of community skills and capabilities, and a loss of spirit and hopefulness.’²³⁵ As they told us, these kind of effects tend to fall outside of narrow definitions of value-for-money.

- 6.27 While an exclusive focus on cost is problematic, there are public sector policies that go some way towards a broader conception of value. Though listed in the Value for Money policy as a non-cost factor, ‘sustainable procurement’ is also a separate supply policy.²³⁶ It:

involves an organisation meeting a need for goods and services in a way that achieves value for money and generates benefits not only to the organisation, but also to society and the economy, while minimising damage to the environment.²³⁷

Further, the policy says sustainable procurement should be ‘considered’ at several points in the procurement cycle, including when measuring a supplier’s contract performance.²³⁸

- 6.28 The Western Australian Industry Participation Strategy (WAIPS), which gives effect to the *Western Australian Jobs Act 2017*, applies to all agencies, and to both goods and services contracts and works contracts. The WAIPS is designed ‘to provide local businesses with full, fair and reasonable opportunity to access and win State Government supply contracts.’²³⁹ It aims to promote ‘social benefits such as job creation, training and apprenticeships outcomes.’²⁴⁰ The WAIPS notes the importance of value-for-money in making procurement decisions, and that this ‘includes both financial and non-financial costs and benefits and must be considered in achieving outcomes for the State.’²⁴¹ It does not say what these ‘non-financial’ costs and benefits are.

- 6.29 The Buy Local Policy and the Aboriginal Procurement Policy also apply to all forms of procurement and all agencies. The Buy Local Policy is intended to increase the level of government purchases and contracts of all kinds going to local businesses. In essence: ‘All government agencies must adopt a philosophy of buying as close to home as possible.’²⁴² Similarly, the Aboriginal Procurement Policy, effective from 1 July 2018, prioritises Aboriginal businesses for all types of procurement. It sets compulsory targets (3 per cent by 2021) for

235 Submission 13, Kimberley Community Legal Services, p. 12.

236 State Supply Commission, *Supply Policy: Sustainable Procurement*, Western Australia, 27 June 2014, p. 1.

237 *ibid.*

238 *ibid.*

239 WA Industry Link, *The Western Australia Industry Participation Strategy*, [no date], accessed 17 August 2019, <https://industrylink.wa.gov.au/about/western-australian-industry-participation-strategy>.

240 Department of Jobs, Tourism, Science and Innovation, *Western Australian Industry Participation Strategy (WAIPS)*, Government of Western Australia, Perth, April 2018, p. 5.

241 *ibid.*

242 Government of Western Australia, *Buy Local Policy: A Western Australian Government commitment to supporting local businesses*, Government of Western Australia, Perth, July 2002, p. 2.

agencies to contract with Aboriginal businesses.²⁴³ Progress toward these targets will be reported on.

- 6.30 A related policy, applying to all agencies buying community services, is the Delivering Community Services in Partnership Policy, which seeks to build ‘a genuine partnership between the public and not-for-profit community services sectors in the policy, planning, purchasing and delivery of sustainable Community Services in Western Australia.’²⁴⁴ Importantly, it defines outcomes as ‘the changes, benefits, learnings or effects that occur for an individual or the community as a result of service delivery.’²⁴⁵
- 6.31 More recently, the Priority Start Policy, in effect since 1 April 2019, replaced the Government Building Training policy. According to the Finance website, the aim of this policy is ‘to ensure a sustainable construction trades workforce for WA by increasing the overall numbers of apprentices and trainees in the building and construction industry.’ It therefore ‘requires companies awarded State Government building construction, civil construction and maintenance contracts valued over \$5 million (including GST) to meet the industry’s average target training rate for apprentices and trainees.’²⁴⁶
- 6.32 We heard evidence that some agencies are looking into more rigorous implementation of a social impacts framework. Witnesses from Main Roads told us it was ‘trailing the use of liquidated damages for not meeting certain social initiative targets set within its contracts such as Aboriginal Employment, Traineeships under Priority Start and Ethical procurement.’²⁴⁷
- 6.33 For capital works projects, Treasury said many agencies would outline the social benefit attaching to the project in their business case, during the decision-making process for infrastructure projects.²⁴⁸ However, the extent to which this happens, or is enforced, is unclear. Treasury also accepted that measuring these social benefits is ‘difficult’.²⁴⁹ We question whether mechanisms to record and measure these benefits exist, especially at a central government level.
- 6.34 The policies and initiatives identified here are encouraging. But more can be done. Finance gave testimony that although economic modelling of the social benefits resulting from local contracts would be desirable and could improve decision making processes, no such modelling currently exists.²⁵⁰ We believe this should be followed up as a long-term part of

243 Government of Western Australia, *Aboriginal Procurement Policy*, Government of Western Australia, Perth, 2017, p. 2.

244 Government of Western Australia, *Delivering Community Services in Partnership Policy: A Policy to Achieve Better Outcomes for Western Australians through the Procurement of Community Services*, Government of Western Australia, Perth, October 2018, p. 6.

245 *ibid.*, p. 11.

246 Department of Training Workforce Development, *Priority Start Policy*, [no date], accessed 17 September 2019, <https://www.dtwd.wa.gov.au/prioritystart>.

247 Mr Richard Sellers, Director General, Department of Transport, Response to Questions on Notice and Further Questions, 6 April 2019, p. 13.

248 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p. 2.

249 *ibid.*

250 Ms Kate Ingham, Director Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 23.

procurement reform, as a basis for Finance developing more analytical capability to monitor cross-sector performance.

- 6.35 There are currently several ways to track social value, particularly in Aboriginal employment figures, and in the number of local businesses contracted. But we are not satisfied that agencies have fully embraced the opportunities to focus on and measure different aspects of social value as part of a broader understanding of getting value-for-money out of a contract. We are also unsure how rigorous the setting and monitoring of targets across these areas is. We note that our follow-up of the Auditor General's report on the Ord East Kimberley development project found that measuring social outcomes was an ongoing issue for the Departments involved.²⁵¹

Finding 34

There is no clear and coherent whole-of-government definition of social value to guide contract management, nor any established and comprehensive process for measuring and reporting on the outcomes of social value choices in contracting.

Other jurisdictions have more formal social value requirements

- 6.36 Developments in other jurisdictions show that it is possible to provide opportunities and processes to assess decisions concerning value-for-money. In our meetings with a range of government agencies and think tanks in the UK, including the UK Public Administration and Constitutional Affairs Committee, the Government Commercial Function, and Audit Scotland, we heard of the increasing importance placed on building measureable social value criteria into contracts for major projects.
- 6.37 For example, the UK GCF's Outsourcing Playbook sets out good practice guidelines and principles for all stages of the procurement lifecycle. It outlines government policy for awarding contracts according to their value for money, which it defines as 'the best mix of quality and effectiveness for the least outlay over the period of use of the goods/ services bought.' But it says this 'is not about minimising up front costs.'²⁵² Although it recognises the importance of cost in such decisions, it states that 'the expectation is that quality will be weighted higher than cost in a complex outsourcing, recognising the importance of delivering quality public services.'²⁵³
- 6.38 Beyond cost, the Outsourcing Playbook also discusses what it terms 'Social Value', as used in the UK's *Public Services (Social Value) Act 2012*. This Act was introduced after concerns were raised about price outweighing other factors when Government agencies were considering competitive bids. The Act requires relevant public authorities, when entering into contracts, to consider 'how what is proposed to be procured might improve the economic, social and

251 Public Accounts Committee, *Where to from here? The status of the Ord-East Kimberley Development Plan (Follow-up of agency response to Auditor General's Report No. 20 of 2016): Report 9*, Perth, March 2019.

252 UK Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decision*, Cabinet Office, U.K., February 2019, p. 44.

253 *ibid.*, p. 45.

environmental well-being of the relevant area’ and also ‘how, in conducting the process of procurement, it might act with a view to securing that improvement.’²⁵⁴

- 6.39 An official guide to the 2012 Act offers a range of examples social value benefits across social, economic, and environmental categories. Some examples include monitoring labour standards throughout the supply chain, taking approaches that encourage mental health, and taking into account water consumption management, reduction in landfill waste, carbon reduction, and heritage protection.²⁵⁵ The guide also provides a series of practical tips for using the requirements in the Act.²⁵⁶
- 6.40 The Outsourcing Playbook states that applying the concept of social value should ‘enable departments to use public procurement to support common societal goals’, including:
- the protection of the environment, energy efficiency, combating climate change, promoting innovation, employment and social inclusion, and ensuring the best possible conditions for the provision of high quality social services.²⁵⁷
- 6.41 Similarly, the UK GCF’s *Supplier Code of Conduct* states that it will ‘seek to award contracts based on value for money that includes price and quality, including appropriate social value criteria.’ Further, it says it will ‘measure supplier performance on relevant and proportionate indicators and apply proportionate contractual remedies for non-compliance.’²⁵⁸
- 6.42 Australian jurisdictions offered comparable examples. The Victorian Government’s 2018 Social Procurement Framework, for example, was described by that Government as introducing the first Australian whole-of-government approach to social procurement.²⁵⁹
- 6.43 The Social Procurement Framework seeks to use the Victorian Government’s buying power to increase ‘job opportunities for under-represented groups and providing greater support for businesses that prioritise social impact alongside the delivery of competitively priced, high-quality construction projects, goods and services.’²⁶⁰ In other words, it aims to ensure value-for-money will extend beyond considerations of price to ‘encompass opportunities to deliver social and sustainable outcomes that benefit the Victorian community.’²⁶¹
- 6.44 The Victorian Framework also aims to embed social procurement across the Victorian Government in a way that is standardised, consistent, simple to adopt, and, importantly, measurable.²⁶² As the Framework states, ‘Government departments and agencies subject

254 *Public Services (Social Value) Act 2012*, Chapter 3, (UK), s. 3.

255 UK Department for Digital, Culture, Media & Sport, *The Public Services (Social Value) Act 2012: An introductory guide for commissioners and policymakers*, London, 2018, p. 3.

256 *ibid.*, pp. 6-9.

257 UK Government Commercial Function, *The Outsourcing Playbook: Central Government Guidance on Outsourcing Decision*, Cabinet Office, U.K., February 2019, p. 45.

258 UK Government Commercial Function, *Supplier Code of Conduct v2: Delivering better public services together*, London, February 2019, p. 8.

259 Hon Ben Carroll MP, Minister for Industry and Development, *Social Procurement to Create Jobs for All Victorians*, media release, 26 April 2018.

260 Victoria State Government, *Victoria’s social procurement framework: Building a fair, inclusive and sustainable Victoria through procurement*, Victorian Government, Melbourne, 2018, p. 2.

261 *ibid.*, p. 3.

262 *ibid.*, p. 4.

to the Standing Directions are required to report on their social procurement activities in their annual reports under this framework.’ Moreover, ‘[r]eporting against the framework and delivery against the outcome priorities is required against individual contracts and at the department or agency level.’²⁶³

6.45 The Victorian Government’s procurement objectives bring together a range of policies aimed at creating opportunities for Aboriginal people, disadvantaged and disabled people, people living in the regions, promoting women’s equality, environmentally sustainable business practices, and implementing climate change policy objectives.²⁶⁴

6.46 Evidence submitted to our inquiry also drew on other Australian jurisdictions to propose ways of improving procurement in the WA public sector. One example was government approaches to Aboriginal Housing in the Kimberley submitted by the Australian National University’s Centre for Aboriginal Economic Policy Research. It pointed to government pronouncements in South Australia that suggested a shift toward public value theory, whereby ‘services will be judged in terms of the value of the overall outcomes delivered to the public they are intended for...’ However, the same paper noted that ‘no such shift is occurring in WA’.²⁶⁵

6.47 The CFMEU saw the Victorian Government’s above-mentioned Social Procurement Framework as a positive development, and believed that it would encourage companies to employ disadvantaged groups.²⁶⁶ It also held up the ACT’s Secure Local Jobs Code (the Code) arising out the ACT *Government Procurement (Secure Local Jobs) Amendment Act 2018* as a model for WA to emulate, so that infrastructure and assets are ‘built up to a standard, not down to a price.’²⁶⁷

6.48 The *Secure Local Jobs Act* came into effect on 15 January 2019 and aims to ensure ‘that ACT Government contracts are awarded to business that meet the highest ethical and labour standards.’ It established new contract oversight requirements for ACT entities and is intended to ensure compliance with the Code ‘by establishing a prequalification audit regime.’²⁶⁸

6.49 The Code therefore aims, alongside the Local Industry Participation Policy, to make the creation of secure local jobs a key consideration when awarding Territory-funded work, to promote job security, to ensure contracted entities comply with obligations to treat workers

263 Victoria State Government, *Victoria’s social procurement framework: Building a fair, inclusive and sustainable Victoria through procurement*, Victorian Government, Melbourne, 2018, p. 36.

264 *ibid.*, pp. 7-8.

265 Submission 7 (Attachment), Dr Janet Hunt, Interim Director Centre for Aboriginal Economic Policy Research, Australian National University, ‘“Normalising” Aboriginal Housing in the Kimberley: Challenges at the interface of new public management approaches’, p. 8.

266 Submission 3, CFMEU WA, p. 13.

267 Mr Michael Buchan, State Secretary, Construction and General Division, CFMEU, *Transcript of Evidence*, 26 June 2019, p. 2.

268 *Government Procurement (Secure Local Jobs) Amendment Bill 2018, Explanatory Statement*, Australian Capital Territory, Legislative Assembly, p [2].

fairly and safely, to promote diverse and inclusive workplaces, and promote ‘constructive relationships between employers, employees and their representatives in the Territory’.²⁶⁹

6.50 Further, businesses tendering for certain kinds of work must meet workplace standards set in and have gained a Secure Local Jobs Code Certificate. For worked valued at over \$25,000, they also need to complete a Labour Relations, Training and Workplace Equity Plan. And, from 7 November 2019, businesses providing services to the ACT Government valued at over \$200,000 must also have a Code Certificate and Plan.²⁷⁰

6.51 Communities gave evidence about jurisdictions using Social Impact Investments (SIIs), which are designed to generate and measure social returns, and it suggested WA can learn lessons from how these jurisdictions used this approach.²⁷¹ One such type of SII is the social impact bond, ‘a financial instrument that pays a return based on the achievement of agreed social outcomes.’²⁷² Communities also noted that ‘In addition to social impact bonds, many government agencies are already exploring and using different types of investments including outcomes-focused grants and payment-by-results mechanisms.’²⁷³

Finding 35

A number of other jurisdictions in Australia and the United Kingdom are developing initiatives and policies relating to social value that could be applicable to Western Australia.

Recommendation 24

The Minister for Finance should establish a clear definition of social value as it relates to procurement and contract management, and develop mechanisms both for meeting social value targets, and for measuring these outcomes. This should include a decision on the need for whole-of-government legislation or frameworks for applying, measuring, and reporting on social value criteria in public contracts. In doing so the Minister should actively explore examples provided by the United Kingdom’s *Public Services (Social Value) Act 2012*, the Victorian Social Procurement Framework, and the ACT’s Secure Local Jobs Code.

269 ACT Government, *Government Procurement (Secure Local Jobs) Code 2019*, Australian Capital Territory, 30 April 2019, p. 6.

270 ACT Government, *Secure Local Jobs*, undated, accessed 25 October 2019, <https://www.procurement.act.gov.au/supplying-to-act-government/securelocaljobs>.

271 Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 4].

272 *ibid.*

273 *ibid.*

Chapter 7

There has been limited focus on improving contract management capability

With the increased focus on contract management after recent whole-of-government reports, it is recognised that the contract management capability in the public sector needs development.

Department of Finance²⁷⁴

Introduction

- 7.1 As we have suggested in earlier chapters, if consistently good public sector contract management is the goal, public servants should know what good looks like. A high standard of commercial capability for contract managers is crucial to the success of the current procurement reform program. Without the required expertise, the State will remain susceptible to poor project outcomes.
- 7.2 This need is well understood among the central agencies. In its submission, Finance said the ‘ability to properly manage a contract and the performance of the supplier relies on the strength of the contract itself and the capability and capacity of the nominated contract manager.’²⁷⁵
- 7.3 This chapter looks at the state of public sector commercial capacity, including the resources required to support the effective management of major contracts. It also looks at capability, by which we mean the skills required by contract managers to effectively fulfil their roles.
- 7.4 First, we outline best practice for commercial capability. Second, we look at existing WA policies and practice guiding capability building and knowledge-sharing relating to procurement and contract management. Third, we look at what we have learned about current commercial capability and capacity in WA. Fourth, we look at actions currently underway to address the issues identified. Finally, we look briefly at some initiatives from other jurisdictions to deal with deficient commercial capability and capacity.
- 7.5 Our overarching observations are:
- The required commercial and contract management skills are now deficient across the sector;
 - Finance sees the capability deficit as among the most pressing issues to address through the procurement reform program; and
 - Ideas drawn from initiatives in other jurisdictions should be considered for use in WA.

274 Submission 1, Department of Finance, p. 4.

275 *ibid.*, p. 13.

Better practice commercial capability for contract managers

- 7.6 Throughout our inquiry we have encountered good practice principles from other jurisdictions, and from reform initiatives in WA. Our analysis has been informed by both.
- 7.7 The UK National Audit Office's 2016 *Good Practice Contract Management Framework* says a contract manager or management team should have:
- Early involvement in the contract award process;
 - Detailed knowledge of the contract and related issues;
 - The appropriate contract management and general commercial skills and training;
 - Accurate and appropriate role descriptions and career paths;
 - Clear objectives and be subject to performance management processes; and
 - Appropriate authority to manage the contract.²⁷⁶
- 7.8 These are sound and practical principles to adopt, and, to summarise them further, we can say that effective contract managers must have the opportunity to gain appropriate knowledge of their subject, and the institutional support to allow them to effectively implement this knowledge.
- 7.9 Finance, in setting up its reform program, is clearly taking such lessons on board. Its recently released *Western Australian Contract Management Framework Principles* (WACMF) include the need for contract managers to be involved early in the procurement process to maintain continuity. It also recommends that agencies use a *Procurement Competency Matrix* to promote shared understandings of procurement roles and expectations, provide consistent standards, and address capability gaps.²⁷⁷
- 7.10 The need for early involvement was recognised by other witnesses to our inquiry. The Deputy Under Treasurer, for example, told us current processes would be improved by ensuring that contract managers of complex projects were involved in the earliest stages and understood the business case, which would improve their ability to manage the contract.²⁷⁸ The Committee agrees, and would add that including contract managers in all parts of the contracting process is important to limiting the risk of 'scope creep' in major projects.

Finding 36

Well defined scope is a precedent to good contract management.

Recommendation 25

The Minister for Finance should ensure that Finance's reforms require agencies to engage contract managers at the earliest opportunity.

276 UK National Audit Office, *Good practice contract management framework*, London, UK, December 2016, p. 9.

277 Department of Finance, *Western Australian Contract Management Framework Principles*, State of Western Australia, 2019, p. [5].

278 Mr Michael Court, Deputy Under Treasurer, Department of Treasury, *Transcript of Evidence*, 8 April 2019, p 9.

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- 7.11 In addition to *when* contract managers become involved, it matters greatly *how* contract managers approach their role. Fundamentally, we agree with the State Solicitor who saw the need for ‘a shift in the mindset of departments and agencies at senior levels as to the importance of contract management.’²⁷⁹ In practice this must involve attitudinal changes. These changes will be necessary first to increase the likelihood of an engaged and active approach to managing contracts, such that contract managers prioritise the development of ongoing and sustainable working relationships between governments and suppliers. Second, these changes are necessary also in order to build a culture where good people are attracted and retained.
- 7.12 There are at least two parts to implementing such a shift. First, the appropriate training for particular skills is required, the importance of which is self-evident. To achieve that, managers responsible for major contracts and projects must be encouraged to expand their thinking about the value of contract management as a role, and of contract managers as highly valued individuals in the public service.

Previous inquiries and reports have identified issues around capability

- 7.13 The need to build capability in procurement generally, and contract management in particular, was a clear message of reports produced by the Service Priority Review and The Special Inquiry.
- 7.14 In 2017 the Service Priority Review called on agency heads to ensure contracts were managed by officers ‘at an appropriate level and with suitable expertise and experience’, and stated that Finance held a central role in building whole-of-government procurement capability.²⁸⁰ It also said there was ‘an overwhelming case’ for Finance ‘to strengthen the levels of commercial acumen in major procurement decisions, and in managing contracts once they are finalised.’²⁸¹
- 7.15 The Service Priority Review made a number of recommendations which included the strengthening and development of contract management skills²⁸², the improvement of employee capability through ‘talent management’²⁸³, and the establishment of an ‘agency capability improvement framework’.²⁸⁴ It also suggested that Finance ‘develop a formal internal strategy or plan to ensure a whole-of-sector step up in procurement negotiation and contract management capability.’²⁸⁵

279 Mr Nicholas Egan, State Solicitor, State Solicitor’s Office, *Transcript of Evidence*, 3 April 2019, p. 2.

280 Service Priority Review, *Final Report to the Western Australian Government. Working Together: One Public Sector Delivering for WA*, Government of Western Australia, October 2017, pp. 69-70.

281 *ibid.*, p. 70.

282 *ibid.*, p. 75.

283 *ibid.*, p. 105.

284 *ibid.*, p. 148.

285 *ibid.*, p. 70.

- 7.16 The Special Inquiry found that the ‘level of understanding’ in a number of commercial areas, including procurement and contract management was ‘deficient and needs strengthening at all levels of government.’²⁸⁶
- 7.17 Further, the Special Inquiry was clear that the ‘availability of skills across the public sector in key areas of project management, contract management, procurement and financial management appear to have diminished in a relatively short time frame.’²⁸⁷ Most pertinently, the Special Inquiry saw a ‘low level of capability and understanding of the requirements of good contract management’.²⁸⁸ The Special Inquiry recommended that public sector training be enhanced.²⁸⁹

Evidence from agencies confirms the continuing issue

- 7.18 As our inquiry has shown, many of the issues identified in these earlier reports persist. The State Solicitor gave perhaps the strongest view not only of what the problem was, but how it had come about.
- 7.19 The State Solicitor said simply that there was an insufficient number of public sector people working in contract management ‘who know what “good” looks like.’²⁹⁰ He believed it was ‘extremely unusual’ for contract managers to be involved in the procurement phase, and that they were therefore not familiar with what the contract entailed. They may even, he said, disagree with parts of the contract that they must nevertheless administer.²⁹¹
- 7.20 The perspective from industry was similar. Consult Australia expressed concern over the consistency of public sector procurement capability and expertise, suggesting that in recent years ‘some of those skills have been lost.’²⁹² Finance stressed the dual nature of the problem. While it accepted that capability is an issue for public sector contract management, it also emphasised the lack of agency capacity. This meant that staff were assuming contract management responsibilities as simply one aspect of their broader job. In such cases, Finance said, contract managers ‘are just doing admin; they are just paying bills and ticking off things. They are not actually getting the most value out of that [contract].’²⁹³ Similarly, Horizon Power said the ‘the root cause behind ineffective contract management is a combination of capacity and capability.’²⁹⁴
- 7.21 There are structural issues involved with improving capacity and capability. Given the relatively small population of WA, we recognise the difficulty in having, as the Director

286 Special Inquiry in Government Programs and Projects, *Final Report: Volume 1*, Western Australia, February 2018, p. 67.

287 *ibid.*, p. 79.

288 *ibid.*, pp. 111, 113.

289 *ibid.*, p. 81.

290 Mr Nicholas Egan, State Solicitor, State Solicitor’s Office, *Transcript of Evidence*, Wednesday, 3 April 2019, p. 3.

291 *ibid.*, p. 16.

292 Mr Steven Coghlan, State Manager, Western Australia, Consult Australia, *Transcript of Evidence*, 26 June 2019, p. 3.

293 Ms Kate Ingham, Director Strategic Advisory Services, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 13. See also Submission 18, Horizon Power, n.p. [p. 2].

294 Submission 18, Horizon Power, n.p. [p. 2].

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General of Premier and Cabinet put it, 'an expert in every topic in every agency.' But we also endorse the statement of the same witness that the State must 'get better at having agencies that build up that skill and expertise supporting agencies that do not have it.'²⁹⁵

7.22 Individual agencies also agreed. Education said it experienced 'challenges in achieving effective contract management practices due to the skills and experience of some contract managers'.²⁹⁶ Communities likewise said the 'challenge is developing the contract management skills and expertise of people who undertake contract management as a secondary role.'²⁹⁷

7.23 Among the key factors causing contract management problems, the Public Transport Authority cited the '[l]ack of consistent or inadequate training' for contract managers,²⁹⁸ along with issues of capacity whereby the 'management of a contract is a peripheral function of a position, thereby not allowing sufficient time/resources to perform the activities required to adequately manage the contract.'²⁹⁹

Finding 37

Agencies are facing contract management challenges due to the current deficiency in commercial capability, and in the relegation of contract management to a secondary or ancillary role.

There are some initiatives to improve capacity and capability, but they are limited and not compulsory

7.24 There are at present several initiatives to build procurement and contract management capability, and to enable the sharing of relevant knowledge in the WA public sector. However, these initiatives are largely limited or unenforceable.

7.25 The Government Procurement business unit within Finance offers a range of training opportunities relating to procurement and contract management, as do individual agencies. However, in testimony before another Committee in June 2018, a witness for Finance explained that although WA agency staff attendance was encouraged at contract management training sessions, it was not mandatory.³⁰⁰

Finding 38

Finance offers a range of procurement and contract management training opportunities to agencies, but these are not mandatory.

295 Mr Darren Foster, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 8 April 2019, p. 5.

296 Submission 15, Department of Education, p. 3.

297 Department of Communities, Response to Questions on Notice and Further Questions, 7 June 2019, n.p. [Q. 7]. See also submission 9, Department of Health, p. 12.

298 Submission 6, Public Transport Authority, p. 5.

299 *ibid.*

300 Ms Kate Ingham, Director, Strategic Advisory Services, Department of Finance, *Transcript of Evidence* [to the Joint Standing Committee on the Corruption and Crime Commission], 27 June 2018, pp. 1-2.

Recommendation 26

The Minister for Finance should ensure that under Finance’s procurement reforms, goods and services procurement training initiatives and programs are extended to include works contracts. These or equivalent programs should be mandatory for people managing contracts above a pre-determined level of risk and/or value.

- 7.26 Finance also mentioned a number of informal ways by which relevant knowledge is shared. These included issuing bulletins, holding quarterly forums for procurement leaders, team meeting, training sessions, and generally enabling teams working within particular portfolios to share expertise.³⁰¹
- 7.27 However, Finance sees itself more as a supporter or facilitator of this process of exchange rather than a regulator. It said that ‘there is no formalised method of sharing expertise and good practice relating to contract management across the various forms of procurement.’³⁰²
- 7.28 In addition, Finance also provides a range of tools and templates useful for public sector procurement. Agencies are encouraged to use these, but these resources too are not mandatory and their use is not measured or recorded.³⁰³

Finding 39

Finance provides ad hoc information sharing, but has no formalised system for sharing good practice on contract management.

- 7.29 The *Procurement Competency Matrix* (PCM) mentioned above was produced by Finance and the Public Sector Commission in collaboration with other WA public sector agencies. The purpose of the PCM is to identify and define the technical procurement competencies required by procurement professionals in the WA public sector.³⁰⁴
- 7.30 The PCM refers to the *State Supply Commission Act 1991*, but its principles could also be applied to procurement under other legislation, including the *Public Works Act 1902*.³⁰⁵ One part of the PCM explicitly addresses criteria for contract management professionals and is a useful summary of desirable attributes.³⁰⁶ Yet, as Finance informed us, there is no current requirement to apply the PCM, though its use is encouraged. Further, its use is not currently recorded or measured for effectiveness.³⁰⁷
- 7.31 Finance told us it is ‘considering’ other resources to support the use of the PCM, including the development of ‘an implementation and communication plan to ensure effective

301 Submission 1, Department of Finance, p. 11. See also submission 9, Department of Health, p. 13.

302 Submission 1, Department of Finance, p. 11.

303 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 18.

304 Western Australian Government, *Procurement competency matrix for procurement professionals*, Department of Finance, 2018, p. 5.

305 *ibid.*, p. 5 n1.

306 *ibid.*, p. 11.

307 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, pp. 17-18.

There has been limited focus on improving contract management capability

uptake'.³⁰⁸ Both the PCM itself and further supportive measures appear to be positive developments. However, in the absence of any evaluative data we cannot say how effective these measures are.

Finding 40

Finance and the Public Sector Commission have produced a *Procurement Competency Matrix*, which identifies the key competencies required by procurement professionals in the WA public sector. However, Finance has not mandated its use by agencies.

Recommendation 27

The Minister for Finance should ensure that Finance make the use of the *Procurement Competency Matrix* compulsory for high value/high risk contracts, and that Finance record, measure, and evaluate the effectiveness of its use.

- 7.32 We have already noted that as part of its reform program, Finance has established the Contract Management Interdepartmental Steering Group to establish best practice guidelines for contract management across all government procurement. Part of this will include measures for working with agencies to improve skills and capability.³⁰⁹
- 7.33 The WACMF, which will underpin the subsequent WA Contract Management Framework, have recently been released. We were told that supporting resources and a contract management training suite, based on the WACMF, are being developed for release in late 2019.³¹⁰
- 7.34 Finance is also developing a Framework and Capability Development Program featuring a contract management capability self-assessment tool, and a contract management capability benchmarking assessment process. It expects that there will be a 2-3 year roll-out for these initiatives. Further, 'Ongoing specialist contract management training workshops will be developed as capability needs are identified as the program matures.'³¹¹
- 7.35 In addition to these measures, Finance is piloting a new vocational program to develop public sector workers involved in procurement. The program consists of 'five two-day modules which when completed in conjunction with the optional assessments build towards a Diploma of Procurement and Contracting.' It is designed to develop 'the practical skills and knowledge required for those working in procurement and contract management roles within the public sector'.³¹²

308 *ibid.*, p. 17.

309 Submission 1, Department of Finance, p. 4; Ms Jodi Cant, Director General, Department of Finance, *Transcript of Evidence*, 20 March 2019, p. 1.

310 Ms Jodi Cant, Director General, Department of Finance, Response to Questions on Notice and Further Questions, 2 May 2019, p. 30.

311 *ibid.*

312 Department of Finance, *Procurement and Contracting Vocational Program*, undated, accessed 25 August 2019, https://www.finance.wa.gov.au/cms/Government_Procurement/Capability_and_training/Public_sector/Procurement_and_Contracting_Vocational_Program.aspx.

Finding 41

Finance is piloting a new vocational program to develop public sector workers involved in procurement, with the option of attaining a Diploma of Procurement and Contracting.

7.36 In a hearing before the Committee, the Auditor General emphasised the importance of central agencies taking the lead in providing expert education and support to develop agency capacity and capability.³¹³ We agree, and are encouraged by the efforts of Finance in working with agencies to do this. However, at this stage of the reform program we cannot say whether these measures are adequate to solve problems that most witnesses in our inquiry agreed are restricting the efficacy of public sector contract management practices.

7.37 What we can say is that the proposed solutions should meet the significance of the problem. It seems reasonable to suggest that the level of training suggested by the proposed diploma be made mandatory for managers of contracts above a certain value or complexity.

Recommendation 28

The Minister for Finance should ensure that Finance establishes a minimum standard of commercial accreditation for all public sector staff employed as project and contract managers on major projects (including the relevant staff within Finance's Government Procurement, Strategic Projects, and Building Management and Works).

Centre for Excellence

7.38 In its Final Report, the Service Priority Review identified a role for Finance to become a 'centre of excellence' for supporting capability in procurement.³¹⁴ This idea was supported by a number of witnesses to our inquiry. The State Solicitor expressed enthusiasm for some version of a centre of excellence.³¹⁵ The Director General of Premier and Cabinet also saw potential for a central leading agency to be the hub for individual agency training and support. For procurement and contract management, he saw Finance as the natural home for this.³¹⁶

7.39 Main Roads also discussed the now defunct Centre for Excellence and Innovation in Infrastructure Delivery (CEIID). It believed that CEIID had allowed the main WA infrastructure agencies to 'form a centre of expertise' with administrative support from Finance. It told us CEIID 'was a great initiative where we all came together and tried to drive some commonality'. For this reason, Main Roads suggested we consider the idea further.³¹⁷

7.40 There are different ways that establishing such a 'centre of excellence' might be approached. But the essential idea would be for one entity, equipped with the necessary experience and

313 Ms Caroline Spencer, Auditor General, Office of the Auditor General WA, *Transcript of Evidence*, 19 June 2019, p. 8.

314 Service Priority Review, *Final Report to the Western Australian Government. Working Together: One Public Sector Delivering for WA*, Government of Western Australia, October 2017, p. 73.

315 Mr Nicholas Egan, State Solicitor, State Solicitor's Office, *Transcript of Evidence*, 3 April 2019, p. 12.

316 Mr Darren Foster, Director General, Department of the Premier and Cabinet, *Transcript of Evidence*, 8 April 2019, p. 7.

317 Mr Peter Woronzow, Managing Director, Main Roads, *Transcript of Evidence*, 10 April 2019, p. 4.

expertise, to offer whole-of-government support on matters relating to contract management. This advice would include both high-level principles and practical support on major projects in which agencies do not possess specialist knowledge. In this way, a central support unit could ensure a consistent and coherent approach to building the right kind of capacity and capability in individual agencies.³¹⁸

- 7.41 Finance has begun to view its role along these lines. We think there is good reason that it should develop this approach further.

Recommendation 29

The Minister for Finance should consider establishing a 'centre of excellence' to support best practice in procurement and contract management.

Other jurisdictions have established accreditation systems

- 7.42 Finally, we turn to the experience of other jurisdictions. Situations of course differ, and we cannot expect to simply import processes from a much larger jurisdiction like the UK. However, we believe there is much to learn and adopt from what is happening elsewhere.

UK training programs

- 7.43 The Major Projects Leadership Academy (MPLA) is an 18-month course (requiring up to 40 contract days) to build the skills of senior project leaders across the UK Civil Service. In particular, the course is targeted at Senior Responsible Owners and Project Directors accountable for delivering the Government Major Projects Portfolio, the most complex and strategically important government projects.
- 7.44 First piloted in 2012, the MPLA was established amid concerns over repeated failures in delivering major UK Government projects. The MPLA is delivered by Oxford University's Saïd Business School and the UK Cabinet Office's Infrastructure and Projects Authority (IPA), the government's centre of expertise for infrastructure and major projects.
- 7.45 The MPLA is designed to strengthen the ability of government to deliver major projects by boosting project leadership capability within the Civil Service, and to acknowledge 'the status of project leadership professionalism in Central Government.'³¹⁹ It is delivered across three modules, the second of which focuses on commercial capability, including contracting.³²⁰ The UK *Civil Service Reform Plan* (2012) set a 2014 target for all leaders of projects in the Government Major Projects Portfolio to begin training through the MPLA by the end of 2014.³²¹

318 See for example, submission 6, PTA, p. 6; Mr Richard Sellers, Managing Director, Department of Transport, *Transcript of Evidence*, 10 April 2019, p. 15.

319 University of Oxford and Infrastructure and Projects Authority, *Major Projects Leadership Academy*, Saïd Business School, p. 8.

320 *ibid.*, pp. 12, 17.

321 HM Government, *The Civil Service Reform Plan*, June 2012, p. 18; UK Cabinet Office, Guidance: Privacy notice for Government Major Projects Portfolio (GMPP), 25 March 2019, accessed 28 October 2019

7.46 As well as the MPLA, the Saïd Business School has developed the Orchestrating Major Projects (OMP) program, launched in 2016 and aimed at Departmental heads. The idea is that key aspects of major project delivery, such as shaping the operating environment to enable project success, lie outside the remit of Senior Responsible Officers and Project Directors.³²²

7.47 The OMP is a bespoke programme that focuses on the leadership issues faced by Director Generals and other senior leaders and decision makers.³²³ The OMP focuses on setting up major projects for success by taking a lead in shaping the operating environment and fostering the requisite leadership capabilities.³²⁴

Australian training programs

7.48 Beginning in 2019, the Saïd Business School accepted the first cohort of students of the Victorian Major Projects Leadership Academy (VMPLA). This is a unique Australian executive leadership program based on the UK MPLA discussed above.³²⁵

7.49 A 12-month program, the VMPLA aims to enhance the knowledge and skills of current project leaders working on major infrastructure projects across all Victorian infrastructure delivery agencies.³²⁶ Although Oxford has contracted with Victoria, we understand from our discussions with program leaders in the UK that the first VLMPA module was attended by participants from other states. It is also our understanding that other Australian jurisdictions are considering undertaking similar initiatives.³²⁷

7.50 It is too early to draw conclusions on the success or otherwise of the MPLA, VMPLA, and OMP programs. But early indications are promising. As noted above, we see the principle of mandatory high level accreditation for senior officers responsible for major projects as a sound one.

United Kingdom Accreditation Program

7.51 We have already mentioned the UK's GCF, one of 10 core 'functions' operating across the Civil Service. The GCF, chaired by the Government Chief Commercial Officer, is a cross-government network of 4,000 commercial staff who support Departments in procuring goods and services for the Government and managing key commercial contracts.³²⁸

<https://www.gov.uk/government/publications/privacy-notice-for-government-major-projects-portfolio-gmpp/privacy-notice-for-government-major-projects-portfolio-gmpp>.

322 University of Oxford and Infrastructure and Projects Authority, *MPLA - Orchestrating Major Projects: A Programme for Director Generals*, Saïd Business School, p. 3.

323 *ibid.*

324 *ibid.*, p. 4.

325 University of Oxford, Ernst & Young, and Office of Projects Victoria, *Victorian Major Projects Leadership Academy: Participant Handbook*, Victoria State Government, p.1.

326 *ibid.*

327 See for example Jenny Wiggins, 'NSW infrastructure boom to get even bigger', *Australian Financial Review* (web-based), March 25 2019, accessed 28 October 2019,

<https://www.afr.com/companies/infrastructure/nsw-infrastructure-boom-to-get-even-bigger-20190325-p5179j>.

328 Government Commercial Function, *About Us*, undated, accessed 28 October 2019,

<https://www.gov.uk/government/organisations/government-commercial-function/about>.

There has been limited focus on improving contract management capability

- 7.52 In order to develop a high level of consistency and capability across the sector, the GCF Assessment Development Centre (ADC) provides a minimum accreditation for specialist commercial roles. The ADC assesses an individual's commercial expertise, skills, and capabilities against the GCF's standards for senior commercial professionals working in Government.³²⁹ These standards are set out in the *People Standards for the Profession*.³³⁰
- 7.53 Participants assessed as 'Level A' receive immediate accreditation for their specific role (e.g. Commercial Specialist, Senior Commercial Specialist). Those assessed as 'Level B' are retained, but go on further training programs to address identified shortcomings. Those assessed as 'Level C' are 'encouraged to have a talent conversation' with their manager, and they might be moved from commercial roles to other positions in the Civil Service.³³¹
- 7.54 Accreditation is also required for recruitment into the Government Commercial Organisation's (GCO) pool of specialised senior commercial staff. Sitting within and supporting the GCF, the GCO was established in 2017 to draw together 'the best commercial talent across government', and provide 'centralised commercial accreditation'.³³² These specialists are deployed to assist agencies with complex and major goods and services contracting needs.
- 7.55 The GCO uses the ADC to establish a top tier of specialists.³³³ People assessed as 'Level A' are more likely to be recruited into the GCO.³³⁴ From our conversations with senior UK civil servants, it appears that the more lucrative terms and conditions offered to GCO recruits, and the complexity and bespoke nature of some of the work, has increased the appeal of the GCO as a career path to civil servants and some private sector practitioners.³³⁵
- 7.56 Again, it seems too early to say how successful the ADC accreditation program has been. Our point is that these programs represent a concerted effort to ensure that people responsible for major projects and high value or high risk contracts have appropriately high level and consistent training to carry out their roles effectively.
- 7.57 Further, these programs are attempting to go beyond simply providing skills. They seek to effect a qualitative change in the culture associated with contract management within the public service. Collectively, these programs aim to improve the status of a career in procurement and contract management, professions that have not traditionally carried the prestige they deserve given their importance to government.

329 UK Government Commercial Function, *Commercial Assessment and Development Centre*, Cabinet Office, May 2018, p. 7.

330 Government Commercial Function, *People Standards for the Profession: Version 2.0*, 2016.

331 UK Government Commercial Function, *Commercial Assessment and Development Centre*, Cabinet Office, May 2018, p. 25.

332 UK Government Commercial Function, *Government Commercial Organisation*, Cabinet Office, May 2018, p. 4.

333 UK Government Commercial Function, *Commercial Assessment and Development Centre*, Cabinet Office, May 2018, p. 5.

334 *ibid.*, pp. 19, 27.

335 See also *ibid.*, p. 7; Matt Foster, *New Government Commercial Organisation to employ "hundreds" of senior commercial staff on better pay and terms*, 21 June 2016, accessed 28 October 2019, <https://www.civilserviceworld.com/articles/news/new-government-commercial-organisation-employ-hundreds-senior-commercial-staff-better>.

Finding 42

Other jurisdictions have shown ways of implementing high-level training programs designed to both boost public sector capacity and capability, and raise the standing of contract management as a profession in the public sector in order to retain quality staff. In particular, the United Kingdom civil service has introduced mandatory training for managers of major projects, and minimum-level accreditation programs for contract management and commercial specialists.

Recommendation 30

The Minister for Finance should ensure that when developing a minimum standard of commercial accreditation for all public sector staff employed as project and contract managers on major projects, Finance closely monitors the results and developments of comparable programs undertaken by the United Kingdom Civil Service and other Australian jurisdictions.

Appendix One

Committee's functions and powers

7.58 The Public Accounts Committee inquires into and reports to the Legislative Assembly on any proposal, matter or thing it considers necessary, connected with the receipt and expenditure of public moneys, including moneys allocated under the annual Appropriation bills and Loan Fund. Standing Order 286 of the Legislative Assembly states that:

7.59 The Committee may -

- 1 Examine the financial affairs and accounts of government agencies of the State which includes any statutory board, commission, authority, committee, or trust established or appointed pursuant to any rule, regulation, by-law, order, order in Council, proclamation, ministerial direction or any other like means.
- 2 Inquire into and report to the Assembly on any question which -
 - a) it deems necessary to investigate;
 - b) (Deleted V. & P. p. 225, 18 June 2008);
 - c) is referred to it by a Minister; or
 - d) is referred to it by the Auditor General.
- 3 Consider any papers on public expenditure presented to the Assembly and such of the expenditure as it sees fit to examine.
- 4 Consider whether the objectives of public expenditure are being achieved, or may be achieved more economically.
- 5 The Committee will investigate any matter which is referred to it by resolution of the Legislative Assembly.

Appendix Two

Submissions

No.	Name	Position	Organisation
1.	Ms Jodi Cant	Director General	Department of Finance
2.	Mr David Moore	Head of Contracts	Water Corporation
3.	Mr Mick Buchan	State Secretary	CFMEU WA Construction and General Division
4.	Ms Michelle Fyfe APM	Chief Executive Officer	St John Ambulance
5.	Mr Richard Sellers	Director General, Department of Transport	Main Roads WA
6.	Mr Richard Sellers	Director General, Department of Transport	Public Transport Authority
7.	Dr Janet Hunt	Interim Director, Centre for Aboriginal Economic Policy Research	Australian National University
8.	Mr Steven Coghlan	State Manager	Consult Australia (WA Division)
9.	Dr David Russell-Weisz	Director General	Department of Health
10.	Mr Jason Waters	Chief Executive Officer	Synergy
11.	Ms Caroline Spencer	Auditor General	Officer of the Auditor General
12.	Ms Sharyn O'Neill	Public Sector Commissioner	Public Sector Commission
13.	Mr Chuck Berger	Manager	Kimberley Community Legal Services
14.	Mr Darren Foster	Director General	Department of the Premier and Cabinet
15.	Ms Lisa Rodgers	Director General	Department of Education
16.	Mr Michael Barnes	Under Treasurer	Department of Treasury
17.	Ms Michelle Andrews	Director General	Department of Communities
18.	Mr Mike Houlahan	Acting Chief Executive Officer	Horizon Power

Appendix Three

Hearings and briefings

Date	Witness	Position	Organisation
20 March 2019	Ms Jodie Cant	Director General	Department of Finance
	Mr Philip Helberg	A/Deputy Director General, Building Management & Works	
	Ms Stephanie Black	Executive Director, Government Procurement	
	Ms Kate Ingham	Director, Strategic Advisory Services	
	Mr Anthony Halberg	Director, Policy and Procurement Services	
3 April 2019	Mr Nicholas Egan	State Solicitor	State Solicitor's Office
8 April 2019	Mr Darren Foster	Director General	Department of the Premier and Cabinet
	Ms Emily Roper	A/Deputy Director General, Policy and Reform	
	Mr Greg Italiano	Government Chief Information Officer	
8 April 2019	Mr Michael Court	Deputy Under Treasurer	Department of Treasury
	Mr Neil Hunter	A/Director, Infrastructure and Public Sector Reform	
	Ms Chelsea Lim	Project Director, GTE Reform	
	Mr Anthony Smith	Principal Financial Advisor, Infrastructure and Finance	
8 April 2019	Mr Jay Peckitt	Executive Director, Finance and Commercial Services	Department of Education
	Mr John Fischer	Executive Director, Infrastructure	
	Ms Corinne Roberts	Specialist Advisor, Commercial Services	

Appendix Three

Date	Witness	Position	Organisation
8 April 2019	Ms Michelle Andrews	Director General	Department of Communities
	Mr Greg Cash	Assistant Director General, Commercial Operations	
	Mr Brad Jolly	A/Assistant Director General, Commissioning and Sector Engagement	
	Ms Penny Kennedy	A/Director, Stewardship	
	Mr Robert Rye	Strategic Procurement Manager	
	Mr Garry Young	Manager, Remote Essential Municipal Services Program	
10 April 2019	Mr Richard Sellers	Director General	Transport agencies (Main Roads WA and Public Transport Authority)
	Mr Mark Burgess	Managing Director (PTA)	
	Mr Peter Woronzow	Managing Director (Main Roads) Acting Executive	
	Mr John Chung	Acting Chief Finance Officer (PTA)	
	Mr Ross Hamilton	Executive Director, Major Projects Unit (PTA)	
	Mr Philip D'Souza	Director, Finance and Commercial Services (Main Roads)	
19 June 2019	Ms Caroline Spencer	Auditor General	Office of the Auditor General
	Ms Sandra Labuschagne	Deputy Auditor General	
26 June 2019	Mr Steve Coghlan	State Manager, WA Division	Consult Australia
	Mr Sheldon Krahe	WA Division Committee Chair	
26 June 2019	Mr Mick Buchan	State Secretary, Construction and General Division	CFMEU WA Division

Date	Witness	Position	Organisation
14 August 2019	Dr David Russell-Weisz	Director General	Department of Health
	Mr Mark Thompson	Chief Procurement Officer, Health Support Services	
	Mr Amanda Jean Jalleh	Executive Director, Resourcing and Purchasing	
	Mr Jeffrey Moffet	Chief Executive, WA Country Health Service	
	Mr Paul Forden	Chief Executive, South Metropolitan Health Service	

Appendix Four

Glossary

ANAO	Australian National Audit Office
BMW	Building Management and Works
CSPRC	Community Services Procurement Review Committee
GCF	Government Commercial Function (UK)
GCO	Government Commercial Organisation (UK)
GTE	Government Trading Enterprise
KPI	Key Performance Indicator
MPLA	Major Projects Leadership Academy (UK)
VMPLA	Victorian Major Projects Leadership Academy
OAG	Office of the Auditor General
PCM	Procurement Competency Matrix
PTA	Public Transport Authority
SAMF	Strategic Asset Management Framework
STRC	State Tender Review Committee
SSC	State Supply Commission
SSO	State Solicitor's Office
TI	Treasurer's Instruction
WACMF	Western Australian Contract Management Framework
WAIPS	Western Australian Industry Participation Strategy



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