

A review of misconduct risks within Department of Finance: Lessons for all government authorities

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OVERVIEW

- [1] The Department of Finance (Finance) is responsible for managing major state projects and leading government procurement for the community of Western Australia.
- [2] Considered a leader in government procurement, Finance drives whole of government policy and assists WA Government Authorities in a wide range of areas including projects, asset management and procurement.
- [3] This report outlines concerns in the action taken by Finance into three matters of alleged serious misconduct.
- [4] Notifications were received by the Corruption and Crime Commission (the Commission) between April 2021 and September 2022. All three were similar in nature and involved alleged serious misconduct involving conflicts of interest held by Finance staff involved in procurement processes.
- [5] Government Authorities are responsible for taking action on any alleged serious misconduct and mitigating wider serious misconduct risk.
- [6] A function of the Commission is to monitor the way in which agencies take action into allegations of serious misconduct.¹ One way the Commission achieves this is through the referral of allegations back to an authority for action and monitoring the action taken. Through this process, the Commission gains a greater understanding of the capacity of an authority to manage serious misconduct risk.
- [7] In this instance, all three matters were referred back to Finance for action, subject to Commission review.²
- [8] A review is not an investigation. A review examines the way an appropriate authority has dealt with an allegation of serious misconduct. The Commission considers whether the investigation was adequate and if the conclusions reached were reasonably open to be made.
- [9] The Commission's review considers the action taken by Finance into all three matters was inadequate.
- [10] The actions taken by Finance were limited. This resulted in some allegations not being addressed in a timely manner, or at all.

¹ *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 18(2)(d).

² CCM Act ss 33(1)(c), 37, 40 and 41.

- [11] Despite repeated breaches of policy and procedures, Finance's conclusions relied heavily on confidence in their internal controls to create a 'low-risk environment'.
- [12] A narrow focus was taken. Finance did not look past the alleged conduct of the individuals. Minimal consideration was given at the time to identifying and understanding potential system issues or broader agency risk.
- [13] Before reaching a final conclusion, the Commission gave Finance the opportunity to comment on a draft of this report. Where appropriate the Finance response has been incorporated into this report.
- [14] From Finance's perspective, these three matters are examples of individual conduct which contravene the expectations clearly outlined in their policies, procedures and reinforced by regular training.³
- [15] The Commission considers that in the absence of understanding how an individual's conduct has occurred, there is a missed opportunity to identify ongoing risk and prevent reoccurrence.
- [16] In the Commission's view, the actions taken should look beyond the conduct of the individuals to identify vulnerabilities that may be exposed or exploited again in the future. Otherwise, the serious misconduct risk remains.
- [17] Where concerns are identified in the capacity of an agency and there are wider learnings for the WA Government Sector, the Commission has a role to play in assisting Finance and all Government Authorities to increase their capacity to manage serious misconduct.⁴
- [18] Due to the similarity in allegations reviewed and potential of broader systemic risk, the Commission's conclusions have been consolidated in this report.
- [19] This report highlights the need for all Government Authorities to review their internal capability and processes, to ensure consistent and timely action is taken in response to any alleged misconduct.

³ Letter from Director General Finance to the Commission, Finance's response to the draft report, dated 23 January 2024.

⁴ CCM Act ss 18(4) and 21AB.

COMMISSION REVIEW

- [20] Between 2021 and 2022, the Commission received three notifications about alleged serious misconduct by Finance staff.
- [21] The matters involved breaches of procurement policies and procedures, and failures to report and/or manage conflicts of interest.
- [22] All three matters were referred to Finance for action and outcome, subject to Commission review.
- [23] Review of the actions taken has highlighted concern in Finance's capability to identify and address serious misconduct risks.
- [24] Across the matters, the Commission noted issues with Finance's ability to:
- identify misconduct;
 - report and act in a timely manner;
 - ensure allegations of misconduct were addressed appropriately; and
 - identify broader system issues and misconduct risks.
- [25] At times, Finance's actions or inaction reflected uncertainty or gaps within the internal processes to address allegations of misconduct. This appears to have contributed to some allegations not being appropriately identified, addressed or recorded.
- [26] All three matters raised significant concern surrounding the governance of Finance's procurement and conflict of interest processes.
- [27] The actions taken in response to all three matters focused on an individual's conduct. Limited or no consideration was given to understanding how the employee was able to bypass authorisation or supervisory processes or why the behaviours went undetected.
- [28] Finance's conclusions relied on confidence that internal controls, such as audit, data analytics and employee compliance with policies and procedures, creates a low-risk environment. Yet, these three matters alone demonstrate repeated breaches of policy, some going undetected for many years.
- [29] The concerns identified in these matters serve as a wider reminder to all Government Authorities about the importance of:
- a. Having clear internal processes to ensure a consistent and timely approach is taken in response to any alleged serious misconduct.

- b. Recognising the importance of internal controls, such as audit or employee compliance with policy and procedures, but not relying solely on them to mitigate all risk.
- c. Periodic review of internal capability and governance frameworks to manage and mitigate serious misconduct risk.

[30] All three matters are detailed in this report.

THE THREE NOTIFICATIONS

Senior Procurement Officer engages services of former spouse

- [31] In 2020, Finance conducted an internal audit.⁵ The results identified that a Senior Procurement Officer (the Officer) shared the same residential address as a business being used by Finance.
- [32] The business had been contracted to provide various services over a five-year period and had been paid over \$135,000.
- [33] The business was not an approved contractor on the Common User Agreement (CUA). Apart from its Australian Business Number registration, the sole trader business had no internet presence.
- [34] The procurement of, and all payments made to the business, had been arranged by the Officer.
- [35] Seventy payments were made via manual invoices and four were paid with the Officer's corporate purchasing card.
- [36] The Officer had not declared a conflict of interest and was the only person to engage this business to provide services to Finance.
- [37] The audit results and the Officer's conduct prompted involvement by Finance's Human Resource (HR) department.
- [38] In November 2020, HR personnel met with the Officer who confirmed the business in question belonged to their former spouse and had been used for 'low value work'.
- [39] In April 2021, Finance notified the Commission of the Officer's conduct.⁶
- [40] During its assessment the Commission advised Finance to continue with its actions.⁷
- [41] Finance did not progress the matter to formal investigation. During this time, the Officer continued their employment.
- [42] An acquittal process of the Officer's corporate credit card by Finance identified further concerns.

⁵ Department of Finance, *Procurement Analytics Review*. Conducted as part of the 2020 Internal Audit Review Program.

⁶ Pursuant to CCM Act s 28.

⁷ Advice provided on 16 August 2021, 11 October 2021 and 01 November 2021.

- [43] Between April 2021 and September 2021, the Officer had failed to acquit 32 transactions on their corporate credit card totalling approximately \$69,000. It was initially unclear what these transactions were and what project the Officer required the goods and/or services for.
- [44] On 23 November 2021, approximately six months after notifying the Commission, Finance wrote to the Officer about these concerns. The Officer did not respond.
- [45] Following this, Finance formally commenced a disciplinary investigation into the procurement of the business, as well as the newer issues identified regarding the alleged misuse of a corporate credit card.
- [46] On 29 November 2021, Finance issued a letter of allegation to the Officer who was suspended on full pay.
- [47] Once again, the Officer did not respond, and this time ceased all communication with Finance. It was unknown whether all 32 transactions on the Officer's corporate credit card related to Finance projects.
- [48] Following no further response from the Officer, Finance considered all available evidence and concluded their investigation.
- [49] Finance concluded the Officer had:
1. Corruptly used their position for benefit by allocating work to their former partner's company.
 2. Failed to declare a conflict of interest when they procured the services of the business to undertake work on behalf of Finance.
 3. Failed to acquit their Corporate Purchasing Card for 32 transactions.
- [50] The Officer's employment was terminated.

Commission Review

- [51] The Commission's review considers the conclusions reached by Finance were open to be made. Despite this, the actions taken by Finance are considered inadequate.
- [52] Following notification to the Commission, Finance did not take formal disciplinary action.

- [53] Finance advised that their practice at the time was to not commence formal investigation until the Commission's assessment of the matter was completed.⁸
- [54] This position was contrary to advice provided by the Commission. Unless otherwise advised by the Commission, Government Authorities should always continue taking action into alleged serious misconduct.
- [55] It took one year for Finance to progress the matter and put allegations to the Officer. During this time, the misconduct risk remained unaddressed.
- [56] No information was provided to explain how the Officer was able to engage their former spouse for five years, outside of process and in the absence of documentation or approvals.
- [57] The absence of any official documentation, to support the Officer's engagement of the business, meant it remains unclear:
- what work was required.
 - why the business was selected.
 - what services the business provided; and
 - if the services were completed.
- [58] In response to the Commission's draft report, Finance stated they had established that the work was required, and the services were completed to the standard expected. They noted the services provided were low value "handyman" and "general labour" activities which could not be completed in time for a project, and therefore the employee (inappropriately) sourced an alternative supplier to complete the activities.⁹
- [59] Despite this assertion, Finance was not able to provide sufficient evidence demonstrating that these works had been verified and how.
- [60] The Commission acknowledges that pro-active auditing by Finance identified the misconduct.
- [61] The same audit identified other control weaknesses within the manual invoicing process.

⁸ Letter from Director General Finance to the Commission, Finance's response to the draft report, dated 23 January 2024.

⁹ Letter from Director General Finance to the Commission, Finance's response to the draft report, dated 23 January 2024.

- [62] In response to implementing and achieving compliance with Treasurer's Instruction (TI304), Finance advised that changes within their manual invoicing processes will assist in mitigating these risks.

Conflicts of interest identified within regional procurement

- [63] In mid-2021, the Commission received notifications¹⁰ from the Office of the Auditor General (OAG) following a review into Public Building Maintenance.¹¹
- [64] OAG's notification identified serious misconduct risks associated with several regional Finance employees, specifically, their conflict of interest and involvement in related procurement processes between October 2018-September 2019.
- [65] In February 2022, the Commission referred four allegations to Finance for action.¹²
- [66] In August 2022, Finance provided the Commission with a copy of a letter addressed to the OAG.¹³ The letter advised the matters had been investigated and found no evidence of fraud or corruption.
- [67] The letter acknowledged the difficulty in managing conflicts of interest and noted a heightened risk in regional areas. These risks have been addressed through the implementation of a new regional conflict of interest procedure and the establishment of a Regional Governance and Risk position.
- [68] The letter from Finance vaguely addressed the four allegations referred for action. The Commission was unable to see how Finance reached its conclusions and requested a detailed investigation report, including any supporting documentation.¹⁴
- [69] In response, Finance provided a document of summarised findings.¹⁵
- [70] Finance determined that all four subject officers required a conflict of interest declaration. While three officers had made declarations, these were mismanaged. The conflict of interest processes at the time were inadequate and as a result, new conflict of interest management plans were introduced.
- [71] Commission officers met with Finance to seek further clarity on their investigative actions.

¹⁰ CCM Act s 28.

¹¹ OAG Report '*Public Building Maintenance: Report 4: 2021-22*', 24 August 2021.

¹² CCM Act ss 33(1)(c) and 40.

¹³ Letter from Department of Finance, Director General to OAG, Assistant Auditor General, dated 24 May 2022.

¹⁴ CCM Act s 41(2).

¹⁵ Finance report '*04762564 Attachment A- Management of Public Sector Maintenance- Matters for Attention- Investigation Final Report*'.

- [72] Finance advised that the Risk and Audit department conducted a desktop review for the purpose of responding to the OAG. This included analysing data to identify transactions which may have stood out due to origin of the request (call centre or regional office), the value, the site it was performed, or the nature of the request.
- [73] Finance noted the risks associated with regional transactions was low because they occur through a call centre and there is limited ability for a regional officer to influence the allocation of transactions.
- [74] Risk and Audit did not determine there was a reasonable suspicion of misconduct. The matter was therefore not referred to the HR department, the area responsible for managing all Finance disciplinary investigations, including misconduct matters.
- [75] No further action was taken.

Commission Review

- [76] The Commission's review considers the actions taken by Finance and evidence relied upon to support their conclusions as inadequate.
- [77] The action taken by Finance was for the purpose of reporting back to OAG.
- [78] Upon receipt of the Commission's referral, no further enquiries or action was taken. The allegations referred by the Commission remain unaddressed.
- [79] Despite acknowledging the existence of conflicts of interest and management plans that required strengthening, no consideration was given to obtaining information to understand the role or influence each subject officer may have had in engaging a contractor with whom a conflict exists. In doing so, Finance did not explore all lines of enquiry or understand what, if any, system risks exist.
- [80] In response to requests from the Commission for further information, Finance advised they were unable to... *"detail the matters to the level being requested by the Commission. While some of these matters were considered, they were not documented and explaining these now so long after the investigation took place is not achievable without revisiting the whole investigation"*.¹⁶
- [81] Finance are unable to outline the actions taken, the analysis and evidence relied upon to support their conclusions. These actions are required to be transparent and capable of review.

¹⁶ Email from Finance Workforce Services to Commission, dated 13 December 2022.

[82] As a result the actions are not transparent and incapable of review.

Failed management of a reported Conflict of Interest

- [83] On 20 September 2022, the Commission received a referral from the Public Sector Commission (PSC).¹⁷ Finance had notified the PSC about a Senior Project Officer (the Officer) who breached their conflict of interest management strategy.
- [84] In March 2021, the Officer declared a conflict of interest after having \$500 of minor works undertaken by a contractor on their residential property.
- [85] In accordance with Finance's policies and procedures, a conflict of interest management strategy was endorsed by senior executives to manage any perceived conflict of interest.
- [86] The strategy precluded the Officer from overseeing any purchase orders or invoices for the contractor for a period of six months. It was noted that another Senior Project Officer would manage works with this contractor during this time.
- [87] In line with procedures at the time, Finance conducted a compliance audit 12 months later, which identified that during the six-month exclusion period, the Officer had been involved in further work orders for the contractor.
- [88] The Officer had submitted 15 work orders to Finance's call centre,¹⁸ who manually allocated work to the nominated contractor.
- [89] The combined sum of the work orders totalled just over \$11,000.
- [90] In August 2022, Finance commenced a disciplinary process and issued the Officer a letter of allegation. A subsequent interview was conducted during which the Officer advised:
- They were a regional employee and had known the contractor in question for over 14 years.
 - They declared a conflict of interest after using the contractor for minor personal works to manage any perceived conflict of interest.
 - A conflict of interest management plan was endorsed by their line manager and regional manager. However, no other Project Officer was identified to take over and business continued as usual.

¹⁷ CCM Act s 45M(d).

¹⁸ The call centre, operated by Surf Life Saving Association, manages the breakdown repair work allocations for Finance. Operators at the call centre use work allocation plans which prioritise a list of contractors/suppliers.

- In the six-month period, they contacted the call centre on 104 occasions to report the need for repairs and request assistance for clients by getting contractors in a timely manner.
- They did not consider that giving instructions to the call centre was providing approval. Invoices were being forwarded to the line manager to attest.

[91] Finance interviewed relevant line managers and reviewed the Officer's conflict of interest documentation, work orders and associated emails. The work orders of concern were reviewed and no irregularities with the allocations identified.

[92] The manual allocation of work, based on the Officer's contact with the call centre, was considered normal practice and not limited to this contractor only.

[93] It was established that had the Officer not been involved, it was likely the contractor would still have been allocated the work.

[94] Finance concluded the Officer had committed a breach of discipline by failing to comply with their agreed conflict of interest management strategy. Consequently, the Officer's employment was terminated.

Commission Review

[95] The Commission's review considers the conclusions reached by Finance were open to be made, as it is not disputed that the officer breached their conflict of interest management plan.

[96] However, Finance's actions were inadequate.

[97] The investigation focused solely on the Officer's failure to adhere to the conflict of interest management plan.

[98] The Officer appropriately declared the conflict of interest and a management plan was endorsed, but no ongoing supervision or support was provided to manage the risk.

[99] Limited consideration was given to the role and responsibility of the supervisor in managing the conflict of interest or any wider system issues that enabled the Officer to continue to engage with the contractor.

[100] These systemic failures could be considered mitigating factors to the officer's misconduct.

[101] All Government Authorities are reminded of the need to supervise and support staff when managing conflicts of interest.

CONCLUSION

- [102] The three Finance matters reviewed by the Commission involved breaches of policy and/or procedures relating to procurement processes and managing conflicts of interest.
- [103] From issues of timeliness through to a complete lack of action, the actions taken by Finance were limited. There was confusion and uncertainty as to who and when action should be taken.
- [104] Further, when action was taken, the focus was limited to the individual employee and not any wider system issues or risk. Without exploring and understanding the circumstances which enabled the conduct to occur, the risk of future misconduct remains.
- [105] Finance's actions in response to all three matters are considered inadequate.
- [106] In response to a draft of this report, Finance outlined several actions and strategies implemented to address broader agency risks. These include:
- Changes to manual payments process to comply with the 2019 amendments to the Treasurer's Instruction 304.
 - A series of actions responding to an OAG audit, which included the implementation of the Regional Governance and Risk position and Regional Conflict of Interest Procedure, as mentioned previously.
 - Two integrity audits undertaken in 2022 and 2023, these included review of conflicts of interest management across Finance.
 - Development and implementation of an Integrity Framework, approved in June 2023.
 - Changes to Accountable Ethical Decision-Making training and materials available for staff, launched in June 2023.
 - Establishment of a Register of Notifications (for matters of alleged misconduct) and monthly reporting.
 - Standing agenda items focussed on Integrity at Corporate Executive, and Audit and Risk Management meetings to identify any themes or systemic issues and assist with incorporating best practice into Finance's policies and procedures.
 - Raising staff awareness as to the importance of integrity, code of conduct and personal behaviours.

- Review of Integrity policies and standards every two years as part of a rolling review program across Finance. In addition to updates that are made when legislation and/or whole of sector policy changes are made.

[107] These actions are noteworthy and demonstrate positive steps taken by Finance. Some of these actions may address broader risks raised within the incidents.

[108] Although the initial investigations were deemed to be inadequate the Commission is encouraged by the response of Finance to the draft report and looks forward to assist Finance to build its capacity to prevent misconduct.

[109] This report serves as a reminder for all Government Authorities to review their governance frameworks and internal capability to appropriately identify, and respond to misconduct risks in a timely manner.