



# **CORRUPTION AND CRIME COMMISSION**

## **REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT IN RELATION TO THE PURCHASE OF TONER CARTRIDGES IN EXCHANGE FOR GIFTS OUTSIDE GOVERNMENT PROCUREMENT POLICIES AND ARRANGEMENTS**

**Tabled in the Parliament  
of Western Australia  
on 24 November 2011**

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### **Corruption and Crime Commission**

#### **Postal Address**

PO Box 7667  
Cloisters Square  
PERTH WA 6850

#### **Telephone**

(08) 9215 4888  
1800 809 000  
(Toll Free for callers outside the Perth metropolitan area.)

#### **Facsimile**

(08) 9215 4884

#### **Email**

[info@ccc.wa.gov.au](mailto:info@ccc.wa.gov.au)

#### **Office Hours**

8.30 a.m. to 5.00 p.m., Monday to Friday.

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## CORRUPTION AND CRIME COMMISSION

Hon. Barry House MLC  
President of the Legislative Council  
Parliament House  
Harvest Terrace  
PERTH WA 6000

Hon. Grant Woodhams MLA  
Speaker of the Legislative Assembly  
Parliament House  
Harvest Terrace  
PERTH WA 6000

Dear Mr President  
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, the Commission presents the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Purchase of Toner Cartridges in Exchange for Gifts Outside Government Procurement Policies and Arrangements*.

Yours faithfully

A handwritten signature in black ink, appearing to read "Mark Herron".

Mark Herron  
**ACTING COMMISSIONER**

18 November 2011



## ABBREVIATIONS AND ACRONYMS

“the ACCC”	Australian Competition & Consumer Commission
“the CCC Act”	<i>Corruption and Crime Commission Act 2003 (WA)</i>
“the Commission”	Corruption and Crime Commission
CUA	Common Use Arrangement
Fax	Facsimile
ICG	Integrity Coordinating Group
“the Local Government Act”	<i>Local Government Act 1995 (WA)</i>
“the PSM Act”	<i>Public Sector Management Act 1994 (WA)</i>
“the Local Government Regulations”	<i>Local Government (Administration) Regulations 1996 (WA)</i>
“the SD Act”	<i>Surveillance Devices Act 1998 (WA)</i>
“the Special Report”	<i>Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)</i>
“the SSC Act”	<i>State Supply Commission Act 1991 (WA)</i>
USA	United States of America
WALGA	Western Australian Local Government Association



## **GLOSSARY**

**Buy Local** — a State Government policy administered by the State Supply Commission requiring state public authorities to maximise the use of competitive local business in goods, services, housing and works purchased or contracted on behalf of government.

**Common Use Arrangement** — is a State Supply Policy for a whole of government standing offer arrangement for the provision of goods or services commonly used within government. CUAs are aggregated supply arrangements that enable a public authority to source goods and services. Where a CUA has been established, state public authorities must purchase under it in accordance with the relevant Buyers' Guide.

**The Company** — a Victorian-based corporate conglomerate consisting of an umbrella company and a number of subsidiaries (six of which are known) which sold toner cartridges for photocopiers and facsimile machines.

**Compatible Toner Cartridges** — the Company sold what can be termed “compatible” toner cartridges. That is, cartridges identified as “Tiger Brand” which were compatible with the original machine manufacturer’s product. In some cases, manufacturer’s machine warranties may be voided by the use of cartridges other than the original manufacturer’s product. However, some “compatible” toner cartridges can offer an alternative to the original manufacturer’s product with equivalent, consistent yields and print densities, and their use does not void manufacturer’s warranties.

**Discretionary Authority** — a public officer who has the ability to exercise discretionary authority can make decisions on behalf of a public authority, for example, purchasing officers.

**Gift** — in the context of this report, is something willingly given to a public officer without payment, as a consequence of their employment. The term “gift” can include, but is not limited to, gift certificates or store vouchers, movie passes, electrical goods, money, alcohol, accommodation, travel and other items.

**Gift Decisions Records** — an official record of the details of gifts received, or offered, to a public officer, and how that gift was managed (formerly “Gift Register”). Records contribute to a “Gift Decisions Register”.

**Gift Policy** — a policy established by a public authority mandating certain requirements with respect to gifts for those public officers employed by the authority. A policy statement or position is typically supported by procedures and guidelines articulating how it is to be enacted and managed.

**Gift Register** — a register that records the details of gifts received, and how that gift or offer was managed. Typically gift registers do not include gift-offers.

**Gift-Offerer/Gift-Giver** — a person, business or agency that offers or provides a gift.

**Gift-Recipient** — a person (a public officer) who receives or is offered a gift, whether on behalf of a public authority or as an individual.

**Improper Procurement** — procurement which does not adhere to established procurement policies, procedures or arrangements.

**Misconduct** — the term “misconduct” has a particular and specific meaning in the *Corruption and Crime Commission Act 2003* (“the CCC Act”) and it is that meaning which the Commission must apply when assessing and forming an opinion on the conduct of a public officer. “Misconduct” is defined by section 4 of the CCC Act.

*Misconduct occurs if —*

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*
- (d) *a public officer engages in conduct that —*
  - (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
  - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
  - (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
  - (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

*and constitutes or could constitute —*

- (v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or*

*not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

**Preferred Supplier** – a supplier, or suppliers, nominated through the WALGA Preferred Supplier program. The program, which operates in a similar aggregated manner as CUAs, is available to local public authorities.

**Purchasing Discretion** — a public officer with purchasing discretion is a public officer who is authorised to make or influence decisions about purchasing.

**Toner Cartridge** – a consumable component or product that forms part of a business machine, such as a photocopier, printer or facsimile machine. A toner cartridge is a replaceable cartridge containing toner in a powder, liquid or wax form. These products may be original, compatible/substitute or recycled.

**Value for Money** — the chief policy for the procurement of goods and services provided by the State Supply Commission. The *Value for Money* policy requires that purchasing officers need to consider whole-of-government policies (such as Common Use Arrangements, sustainability and free trade agreements) when making a procurement decision.



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# EXECUTIVE SUMMARY

## Introduction

- [1] This is a report on the 2008 and 2009 investigation by the Corruption and Crime Commission (“the Commission”) of alleged public sector misconduct in relation to the receipt of gifts by public officers in exchange for the purchase of goods outside proper procurement policies and arrangements. The investigation revealed a number of misconduct risks to the public sector and led to a review and analysis of the gift and procurement policies and practices of local and state public authorities<sup>1</sup> by the Commission.
- [2] The investigation by the Commission of alleged public sector misconduct was in relation to the purchase of toner cartridges outside government procurement policies and arrangements, and the offer of gifts to, and their receipt by, public officers, as a consequence of those purchases. The investigation highlighted the risks associated with gifts being offered to public officers during the course of their employment by companies intending to improperly affect their purchasing activities and decisions.
- [3] The Commission investigation focused on matters arising from the activities of a particular toner cartridge supply company (“The Company”). The Company, which is still in operation, was an umbrella company for a number of other subsidiary companies trading throughout Australia selling toner cartridges.
- [4] The Commission’s investigation found that in addition to certain high-pressured sales strategies adopted by Company sales representatives, gifts were offered as an inducement or reward, to cause public officers to act contrary to the public interest because of other personal interests. The Company provided gifts to public officers including digital cameras, GPS navigators, digital televisions, coffee makers and gift vouchers.
- [5] When questioned, one public officer told the Commission that over the course of one year he purchased approximately \$23,000 worth of toner cartridges from The Company. Had those purchases been made through an approved supplier, the same quantity would have cost just under \$5,000; a difference of \$18,000. The officer estimated the gifts he received during this same period, which included a “Microsoft Xbox 360”, a PlayStation game console, a thousand dollars worth of Harvey Norman store vouchers, a DVD player and a television, to have been worth about \$3,000.<sup>2</sup>
- [6] Of concern, despite the existence of procurement policies and arrangements, public officers were found to have made substantial purchases of toner cartridges outside these arrangements, often when no need for cartridges existed, and at prices greater than those of other, approved suppliers. Furthermore, they were able to do so often without query from, or detection by, their senior managers.

[7] One public officer, a level two purchasing officer, was able to purchase up to \$30,000 for a single transaction on his corporate credit card and told the Commission that no one questioned the quantity of toner he bought on his card. In total, between 2006 and 2009, he spent \$111,000 on toner cartridges from The Company when the same number purchased through an approved supplier would have cost approximately \$28,000; a difference of \$83,000<sup>3</sup> Another public officer told the Commission that they had “boxes upon boxes” of toner cartridges “stashed away”, “shoved in cupboards” and occupying rooms. When they calculated the excess stock, they had a supply of around four to five years.<sup>4</sup> Toner cartridges have a life span of approximately two years.

[8] The Commission’s investigation into toner cartridge purchases made from The Company by public officers revealed a substantial cost to Government both in terms of the exorbitant prices paid, and the numbers of excess cartridges purchased.

[9] Between 2006 and 2009, at least \$620,000 worth of toner was purchased by local and state public authorities from The Company. Had the same number of cartridges been purchased from approved suppliers, the cost to Government would have been significantly less, around \$205,000. In this regard, it is estimated that the total additional cost to Government on toner cartridge purchases was at least \$415,000.<sup>5</sup> However this additional cost does not take account of the volume of excess cartridges that were purchased when they were not needed, which further increases the additional cost wastage to Government.

[10] As a consequence of the Commission investigation, during 2010 the Commission undertook a review of the procurement and gift policies, arrangements and practices of state and local public authorities. The purpose of this was to:

- assess the policy and procedural environment in which the improper practices relating to procurement and gifts, brought to light through the investigation, had occurred;
- consider the extent to which the policies and systems of the sector allowed those practices to occur and go undetected; and
- examine the degree to which Western Australian public authorities are resilient or potentially exposed to companies such as The Company, and the types of sales strategies it employed.

[11] The Commission found that generally, the gift policies, gift register arrangements and accountability mechanisms for public authorities did not sufficiently address the misconduct risks associated with improper gift practices. The policy and procedural environments in which local and state public authorities operated was such that the risk of public officers engaging in misconduct in relation to procurement and gifts was considerable.

[12] The Commission identified 25 variations of gift policies covering all state and local public authorities, one of which related to local public authorities. Commission analysis of the critical elements of the policies revealed that:

- 8.7% were “excellent”;
- 21.8% were “good”;
- 13.0% were “average”; and
- 56.5% were “poor”.

[13] This analysis demonstrates that misconduct risks associated with gift decisions were not well managed in the Western Australian State and local government public sectors.

[14] It was clear from the Commission’s activities, that the matters highlighted were not simply the result of isolated acts of improper practice by individual public officers, but rather they were aided by an ill-founded policy and procedural approach to gifts across the state and local government public sectors, particularly in the context of procurement. In the Commission’s opinion a more effective approach is one where policies and procedures focus on:

- gift-offers, rather than just gifts received;
- the relationship between the gift-offerer/gift-giver and the gift-receiver, rather than the monetary value of the gift given; and
- the misconduct risks inherent in the areas of procurement and the offering of gifts to public officers.

[15] Despite the significant misconduct risks posed by gifts and gift-offers made to public officers, there is no mandatory whole of government requirement for, or approach to, the recording and management of these. Responsibility for managing, regulating and monitoring this high risk area resides with individual public authorities.

[16] Accordingly, this report makes seven recommendations for improvements in gifts and procurement policies and practice, in order to minimise the risks to public officers and public authorities in the future, and to reduce the adverse effect improper practices can have on the state’s finances.

## **Findings**

[17] The Commission made the following findings in relation to the procurement policies and arrangements for state and local public authorities, gift-offers to and gift acceptance by public officers in the context of purchasing activities, and the business strategies and sales tactics of The Company.

- The purchase of goods from companies outside Western Australian Government CUAs and other procurement

policies, by public authorities, can result in the supply of goods which are inconsistently or exorbitantly priced, and/or do not meet the standards at which they are marketed and sold. This can have repercussions for the efficient and economic operations of public authorities and Government.

- Public officers acted contrary to state and local government procurement and gift policies and arrangements in purchasing goods from The Company, outside procurement policies and arrangements, and in receiving personal benefits from The Company as a consequence of their purchasing activities.
- When public officers breach procurement or gift policies in circumstances such as they did, these breaches may go undetected where systems are inadequate and accountability mechanisms do not exist.
- In the face of pressured sales tactics and strategies, such as those employed by The Company, less than robust procurement and gift policies, and less than rigorous adherence to, or compliance with them, leaves public authorities and public officers vulnerable to the risk of misconduct occurring.
- In terms of the risk of misconduct occurring, the monetary value of an offered gift is a relevant, but not necessarily determinative factor. The overriding, critical factor is the relationship between the gift-offerer/gift-giver and gift-recipient, particularly in the context of purchasing and procurement.
- Generally, the gift policies, gift register arrangements and accountability mechanisms for public authorities did not sufficiently address the misconduct risks associated with the inappropriate offering and/or acceptance of gifts by public officers.

## Recommendations

### **Recommendation One**

It is recommended that state and local public authorities ensure adherence to procurement and supply policies and arrangements by having in place robust policies, procedures, training and accountability mechanisms, which take account of the misconduct risks associated with procurement.

### **Recommendation Two**

It is recommended that state and local public authorities reinforce the systems in place to ensure that before a purchase order or credit card purchase is authorised, the purchase is in accordance with the relevant purchasing policy or purchasing arrangement.

### **Recommendation Three**

It is recommended that the Department of Finance consider a more structured approach to informing public authorities of electronic management services and credit card search facilitates, such as FlexiPurchase, offered by financial institutions that may assist them in ensuring accountability and effective controls with respect to government purchasing.

### **Recommendation Four**

It is recommended that gift policies for state and local public authorities set out procedures and guidelines which, as a minimum, contain the core gift policy and record of gift decisions outlined in the Appendices of this report, including that:

- (a) records be made in response to gifts offered, as well as the decisions made in response to those offers;
- (b) records of gifts offered, and the decisions made in response to those offers, be audited on a regular basis; and
- (c) where there is the capacity for the offer of a gift to either directly or indirectly influence a discretionary decision, particularly in relation to purchasing decisions, the gift be declined.

### **Recommendation Five**

It is recommended that state and local public authorities provide regular refresher training to officers, particularly those exercising discretionary authority. This training might augment existing induction, procurement or ethics training programs. This training is however to include relevant policies and purchasing arrangements, and should include information on the requirements and obligations in regard to legally enforceable contracts.

**Recommendation Six**

It is recommended that state and local public authorities review their existing gift policies and registers in light of the principles outlined in Appendix Five *Suggested Format for a Gift Decisions Register* and Appendix Six *Suggested Gift Policy Elements*.

**Recommendation Seven**

It is recommended that the Local Government Regulations, and/or Local Government Act, be reviewed and amended to reflect a position consistent with the intent and recommendations of this report. To the extent that they are inconsistent, particularly in terms of the requirement for auditing of gift registers, gifts from relatives, “notifiable” and “prohibited” gifts, and monetary thresholds, it is recommended that they be amended.

## EXECUTIVE SUMMARY: ENDNOTES

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<sup>1</sup> The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003* (WA).

<sup>2</sup> The public officer’s evidence appears in the Transcript of Proceedings, 27 October 2009, pp80-95.

<sup>3</sup> The public officer’s evidence appears in the Transcript of Proceedings, 26 October 2009, pp59-78.

<sup>4</sup> The public officer’s evidence appears in the Transcript of Proceedings, 27 October 2009, pp122-140.

<sup>5</sup> Wherever this report refers to the additional cost to Government or what the cost would have been had the purchases been made from an approved supplier, the calculations have been determined on the basis that the same quantity of toner cartridges had been purchased from the approved supplier of that brand of cartridge, at the stated price at that time.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Purpose

- [1] This is a report on the 2008 and 2009 investigation by the Corruption and Crime Commission (“the Commission”) of alleged misconduct by public officers<sup>1</sup> from Western Australian state and local public authorities, and subsequent research, review and analysis of the procurement and gift policies of public authorities<sup>2</sup>, conducted during 2010.
- [2] The investigation by the Commission of alleged public sector misconduct was in relation to the purchase of goods by public officers from a toner cartridge supply company (“The Company”), outside State Government Common Use Arrangements (“CUAs”) and other procurement policies, and the offer to, and receipt of, gifts by public officers, as a consequence of their purchasing activities.
- [3] The succeeding research, review and analysis of procurement and gift policies considered the extent to which Western Australian public authorities are generally resilient or exposed to companies such as The Company, and the types of sales strategies it employed.
- [4] The report documents significant misconduct risk factors and makes recommendations for improvements in gifts and procurement policies and practices, to minimise the risks to public officers and public authorities in the future, and to reduce the adverse effect improper practices can have on the state’s finances.

### 1.2 Background

- [5] The Commission refers to and incorporates into this report, as appropriate, those generic and common matters set out in its *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)*, tabled in the Parliament of Western Australia on 21 October 2010 (“the Special Report”).<sup>3</sup>
- [6] In 2008, the Commission initiated an investigation into improper purchasing of toner cartridges, and improper gift-receiving by public officers from a supply company, outside the state and local government procurement arrangements. In determining whether any public officer had engaged in misconduct in relation to these purchasing activities, the investigation also considered whether any other person had counselled or procured such conduct.
- [7] To this extent, the investigation took account of evidence of the business strategies and sales tactics applied by The Company through its sales representatives, which may have effectively coerced public officers to engage in misconduct. The investigation and public hearings into the

matter provided evidence that the intention of The Company was to have purchasing officers purchase Company-supplied toner cartridges, outside proper procurement arrangements.

- [8] The Company, which continues to operate, was a Victorian-based corporate conglomerate consisting of an umbrella company and a number of subsidiaries (six of which are known). With distribution centres around the country, they traded throughout Australia selling “Tiger Brand”, “compatible” toner cartridges<sup>i</sup>, which were manufactured in Zhuhai, China.
- [9] This report will refer to the corporate entity as “The Company” throughout, unless referring to one of its subsidiary companies specifically. As the Subsidiary Companies operated interchangeably, the report will not distinguish between them and The Company unless it is relevant to the point at hand. Where necessary, these will be referred to as “Subsidiary Company A” through “F”.
- [10] The Company was not an approved supplier of toner cartridges under the State Government’s CUA for Business Machine Consumables (which covers photocopier toner cartridges).<sup>ii</sup> Nor was The Company a Preferred Supplier for local government through the Western Australian Local Government Association (WALGA) Preferred Supplier program, which functioned in a similar aggregated manner to State Government CUAs.
- [11] The Company supplied toner cartridges which are commonly termed “compatible” or “non-original” products. They sold “Tiger Brand” cartridges which were compatible with and marketed as a substitute for the original machine manufacturer’s products. Toner cartridges can be legitimately sold as compatible, substitute or recycled products (products that have been re-filled or re-manufactured). However they may not be manufacturer-recommended and their use may void the manufacturer’s machine warranty. Some “compatible” toner cartridges can offer a viable alternative to the original manufacturer’s product where there is an equivalent, consistent yield and print density, manufacturer’s warranties are maintained, and there is value for money.
- [12] The Commission investigation focused on the offer of gifts to, and their receipt by, public officers, following the purchase of toner cartridges from The Company.<sup>iii</sup> However, as the investigation proceeded, it became clear that the misconduct risks identified as a consequence of the conduct evidenced, have wide-spread implications for procurement across Western Australian state and local government.
- [13] Based on the number of cartridges purchased from The Company, the Commission estimated that had the same number of cartridges been

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<sup>i</sup> See the Glossary of terms for “compatible toner cartridges” on page vii.

<sup>ii</sup> CUA Buyers Guide – Business Machine Consumables (Contract Number: 000302F) 1 September 2001 to 31 January 2010. See Appendix 1 for portions of the Common Use Agreement for Business Machine Consumables.

<sup>iii</sup> See Appendix 2, *Overview of Gifts Received by Public Officers from The Company*.

purchased from approved suppliers, the cost to Government would have been significantly less. It is estimated that the total additional cost to Government on toner cartridge purchases was almost \$415,000.<sup>iv</sup> This additional cost does not take account of the excess cartridges that were purchased which further increases the additional cost wastage to Government.

- [14] The subsequent research exposed serious vulnerabilities in the manner in which many public authorities undertook procurement, and in their ability to prevent and detect improper practices and misconduct by public officers, with respect to gifts and benefits.
- [15] Based on the evidence obtained by the Commission, these vulnerabilities exist throughout the Western Australian public sector. This has the potential to seriously compromise the effectiveness and economic operations of state and local public authorities, and provides greater opportunity for misconduct to occur and go undetected.
- [16] This report will consider two misconduct risks:
  - (1) not adhering to state and local government procurement policies and arrangements, which is generally referred to in this report as “improper procurement” or “improper purchasing”; and
  - (2) conflicts of interest stemming from the offering and acceptance of gifts, particularly in the context of purchasing and procurement.

### **1.3 Jurisdiction of the Commission**

- [17] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”) faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the CCC Act.
- [18] It is a function of the Commission, pursuant to section 18 of the CCC Act, to ensure that an allegation about, or information or matter involving, misconduct by public officers is dealt with in an appropriate way. An allegation can be made to the Commission, or made on its own proposition. The Commission must deal with any allegation of, or information about, misconduct in accordance with the provisions of the CCC Act.

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<sup>iv</sup> Wherever this report refers the additional cost to Government or what the cost would have been had the purchases been made from an approved supplier, the calculations have been determined on the basis that the same quantity of toner cartridges had been purchased from the approved supplier of that brand of cartridge, at the stated price at that time.

## **1.4 Definitions**

### **1.4.1 Misconduct**

- [19] The Commission refers to and incorporates into this report what is set out at [20] to [36] and [38] inclusive of its Special Report.

### **1.4.2 Public Officer**

- [20] The Commission refers to and incorporates into this report what is set out at [39] of its Special Report.

## **1.5 Reporting by the Commission**

- [21] The Commission refers to and incorporates into this report what is set out at [40] to [41] inclusive of its Special Report.

- [22] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84, the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

- [23] The Director of The Company was notified by letter dated 18 October 2011 of comments proposed to be included in the final report relating to the practices of The Company, and the reference to evidence which could be considered to reflect adversely on The Company, its subsidiary companies and employees. The Director was invited to make representation about those and other matters about which he/she may wish to do so within ten working days of the date of that letter. The Director was advised that they and/or their legal adviser could view the transcript of hearings before the Commission and inspect evidentiary material going to matters identified. The Company Director was provided with an extension of time allowing for legal advice to be sought and any representations to be made. Through the Company's solicitor, the Commission was advised that the Company Director did not wish to make any representations.

- [24] With respect to the matters considered in this report, the Commission makes no adverse findings in relation to an identified person or body. However, in view of the findings and recommendations made, and the implications they may have for Western Australian public policy, the Commission provided preliminary copies of its report to the Public Sector Commissioner, Auditor General and Director General of the Department of Finance prior to finalisation. To seek their views about the draft report and its proposed recommendations, the Commission hosted a meeting to which the parties, or their delegates, were invited, proposing an integrated approach to the matters raised by the report and its recommendations. There was broad agreement to the recommendations.

- [25] The Commission notes the Western Australian Auditor General's Public Sector Performance Reports for June and September 2011.<sup>4</sup> The Auditor General's performance reports regularly consider the performance of

public sector agencies across a broad spectrum of government operations.

[26] The June report examined two areas, including agency compliance with procurement requirements. Nine public authorities were assessed against four principles of good procurement practice. The results of this indicated to the Auditor General that “government agencies can do more to ensure that the State gets the best return for taxpayer’s dollars”, noting that during 2009-10, public authorities spent about \$7 billion on procurement of goods and services.<sup>5</sup>

[27] The audit found that:

*... only two of the agencies applied these principles [of good procurement practice] consistently and some agencies failed against most of the principles. This was a disappointing result given the regular attention that is given to instances of poor practice by my Office, other integrity agencies, the Parliament and the media.<sup>6</sup>*

[28] Based on the audit findings, the report concluded that compliance with government policy and good practice was inconsistent. “Less than half the agencies we looked at managed procurement strategically and only two agencies ... complied consistently with all four principles of good practice”.<sup>7</sup> In this regard the Auditor General found that the “most common weaknesses related to poor controls for identifying and managing conflicts of interest”.<sup>8</sup> Furthermore, the report highlighted the need for training as an important control over procurement quality.

[29] The September report examined two areas; the use of ICT contractors in government and the acceptance of gifts and benefits by public officers in the Department of Health. The latter was an investigation undertaken at the request of the Minister for Health and a member of the opposition.

[30] With respect to the use of ICT contractors in government, the audit considered how well six public authorities planned for, procured and managed their ICT contractors. Only one agency performed well in all areas. The report identified “poor procurement practice and a failure to adequately recognise or address potential conflicts of interest” among the common weaknesses.<sup>9</sup> To this end, it noted that public authorities should:

- comply with relevant government policy, guidelines and good practice for procurement, and
- proactively manage the risk of conflicts of interest by maintaining conflict of interest and gift registers. Where contracting arrangements present potential conflicts, these should be recognised and mitigation strategies documented through the strategic plan or conflict of interests/risk register.<sup>10</sup>

[31] The second area considered in the report related to the acceptance of gifts and benefits by public officers in the Department of Health. The report highlighted weakness in the Department’s management of sponsored

travel and gifts, especially in the recognition of potential conflicts of interest and the management of those risks.<sup>11</sup> The report noted that:

*... agencies need to provide staff with clear guidance on the circumstances where acceptance of gifts is appropriate and inappropriate. Agencies also need to ensure they have controls, such as gift registers and monitoring of procurement and contracting decisions, to prevent gifts being used to assert inappropriate influence on public sector officers.*<sup>12</sup>

[32] Comments by the Public Sector Commission in the September Public Sector Performance Report included that:

*It is not necessarily appropriate to have a blanket ban or a one-size-fits-all rule in relation to gifts, even within a single agency. A situation involving a procurement officer accepting regular hospitality or an expensive gift from a supplier at the time a tender is being assessed should not be compared to a nurse or a teacher accepting a gift in appreciation of work done in the course of their work, even where the gift is of similar monetary value.*<sup>13</sup>

### **1.5.1 Victorian Ombudsman**

[33] On 21 April 2010, the Acting Commissioner of the Corruption and Crime Commission (“the Commissioner”) informed the Victorian Ombudsman of the Commission’s investigation into allegations that Western Australian public officers were purchasing toner cartridges from the Victorian-based Company, outside procurement policies and arrangements. The Ombudsman was informed that this had cost the Western Australian government, approximately an extra \$300,000 over a three year period. As a result of this advice, the Ombudsman initiated an investigation to determine whether this was also occurring in the Victorian Public Sector. The results of this investigation are documented in the Victorian Ombudsman’s report, *Corrupt Conduct by Public Officers in Procurement, June 2011*.

[34] The Victorian Ombudsman’s investigation found a number of incidents in which purchasing officers had used public money inappropriately in the purchase of toner cartridges from The Company, including:

- One officer purchased enough black toner cartridges to supply the government department for 40 years. Toner cartridges expire after 24 months.<sup>14</sup>
- An “Arts Victoria employee received over \$8,000 in prepaid Visa cards and Coles Myer vouchers. This corrupt conduct cost Arts Victoria, and the public purse, over \$80,000. This officer resigned during [the] investigation”.<sup>15</sup>

[35] The Ombudsman’s report found that lack of management and auditing processes provided an environment which allowed the conduct to go undetected.<sup>16</sup> His investigation identified that “once a public officer accepts

a gift, and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour, placing them in a position that makes it difficult for them to discontinue purchasing or to decline gifts from The Company in the future".<sup>17</sup>

- [36] With respect to gifts, the Ombudsman's view was that "all gifts, more than \$20 in value, should be declared by the recipient to their manager in writing and recorded on a gift register".<sup>18</sup>
- [37] In addition to the Victorian Ombudsman, in April 2010, pursuant to section 153(3) of the CCC Act, the Commission notified its counter-part integrity agencies through Australia of the allegations being investigated as it was apparent that The Company was trading in other States and there could be similar implications for other public sectors.

## **1.6 Disclosure**

- [38] The Commission refers to and incorporates into this report what is set out at [43] to [46] inclusive of its Special Report.
- [39] The decision to report on the investigation by the Commission of alleged public sector misconduct in relation to the activities of public officers goes to its statutory purpose of improving continuously the integrity of, and reducing the incidence of misconduct in, the public sector and is also necessary in the public interest to enable informed action to address the corruption and other misconduct risks identified by the circumstances revealed in this report.

## **1.7 Privacy Considerations**

- [40] The Commission has concluded that for the purposes of this report, it is not necessary to name the company, subsidiary companies or sales representatives involved within the report. In this regard the Commission notes that similarly the Victorian Ombudsman did not identify these entities or people in his recent report.

## **1.8 Methodology**

- [41] The methodology used by the Commission is best presented as having two parts.
  - Part One: Investigation.
  - Part Two: Research, Review and Analysis of Procurement and Gift Policies.

### **1.8.1 Part One: Investigation**

- [42] The Commission investigation was undertaken between September 2008 and October 2009.<sup>v</sup> The main purpose was to:

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<sup>v</sup> Chapter Two of this report details the Commission's investigation.

- determine if any public officer had engaged in misconduct by purchasing goods, specifically toner cartridges, outside State Government CUAs and other procurement policies; and
- determine if any other person had counselled or procured such conduct.

[43] There were three broad allegations of misconduct which were investigated.

- (1) A number of public officers may have engaged in misconduct, in concert with representatives from The Company, or one of its subsidiary companies, by purchasing toner cartridges outside State Government CUAs and other procurement policies.
- (2) A number of public officers may have engaged in misconduct by receiving gifts from The Company, or one of its subsidiary companies, as a consequence of their purchasing activities.
- (3) A number of public officers may have engaged in misconduct by failing to declare such gifts in accordance with the relevant public authority policy.

[44] Part One was conducted using the methodologies below.

- (1) Reviewing The Company's order and supply documentation, obtained<sup>19</sup> in order to identify:
  - individual public officers who were ordering goods from The Company;
  - individuals who had received gifts from The Company (and subsequent analysis of public authority records showed the gifts were not declared);
  - those state and local government public authorities purchasing outside State Government CUAs and other procurement policies; and
  - the estimated cost to state and local government of improper purchasing.
- (2) Analysing the gift policies and gift registers of public authorities.
- (3) Conducting interviews with individual public officers, seizing gifts, and associated gathering of evidence.
- (4) Obtaining information and evidence from representatives of The Company including:
  - telephone conversations with a representative of The Company;
  - purchasing four "high yield" Tiger Brand toner cartridges from The Company; and

- receiving gifts/rewards from The Company in relation to the purchasing activities.

(5) Forensic testing of four “high yield” Tiger Brand toner cartridges (labelled as “tiger 21TM”) in the United States of America (“USA”) by Lexmark, in order to assess their yield against the claims made in their sale.

(6) Public examinations by the Commission in which:

- seven public officers were examined in relation to their purchasing activities and dealings with The Company;
- two sales representatives from The Company were examined in order to provide evidence of the tactics and strategies used by The Company in relation to supply of goods to public authorities; and
- one expert witness; a senior officer with the then Department of Treasury and Finance<sup>20</sup>, provided evidence about State Government procurement policies and practices.

### **1.8.2 Part Two: Research, Review and Analysis of Procurement and Gift Policies**

[45] The Commission’s research, review and analysis activities were undertaken between December 2009 and December 2010. The main purpose of these was to consider the extent to which public authorities are generally resilient or exposed to companies such as The Company, and those sales strategies it employed. The research, review and analysis was undertaken and is presented in two parts:

- a. The policies and practices of public authorities in relation to *purchasing and procurement*, and their vulnerability to breach, particularly with respect to such practices and strategies as those used by The Company.<sup>vi</sup>
- b. The policies and practices of public authorities in relation to *gifts*, and their vulnerability to breach, particularly with respect to such practices and strategies as those used by The Company.<sup>vii</sup>

[46] Part Two involved:

- Obtaining gift policies and registers from state and local public authorities, and analysing these documents to determine their standard practices in relation to gift-receiving.

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<sup>vi</sup> Chapter Three of this report details this research.

<sup>vii</sup> Chapter Four of this report details this research.

- Reviewing procurement policies, requirements and arrangements for state and local public authorities in order to identify any weaknesses in procurement policies.
- Reviewing the gift policies and Codes of Conduct for other Australian states, Canada and New Zealand to inform the Commission's findings and recommendations.

## 1.9 Findings

[47] As a result of Part One and Part Two, the Commission makes the following findings in relation to procurement policies and arrangements for state and local public authorities, gift-offers to and gift acceptance by public officers in the context of purchasing activities, and the business strategies and sales tactics employed by the Company.

- The purchase of goods from companies outside Western Australian Government CUAs and other procurement policies, by public authorities, can result in the supply of goods which are inconsistently or exorbitantly priced, and/or do not meet the standards at which they are marketed and sold. This can have repercussions for the efficient and economic operations of public authorities and Government.
- Public officers acted contrary to state and local government procurement and gift policies and arrangements in purchasing goods from The Company, outside procurement policies and arrangements, and in receiving personal benefits from The Company as a consequence of their purchasing activities.
- When public officers breach procurement or gift policies in circumstances such as they did, these breaches may go undetected where systems are inadequate and accountability mechanisms do not exist.
- In the face of pressured sales tactics and strategies, such as those employed by The Company, less than robust procurement and gift policies, and less than rigorous adherence to, or compliance with them, leaves public authorities and public officers vulnerable to the risk of misconduct occurring.
- In terms of the risk of misconduct occurring, the monetary value of an offered gift is a relevant, but not necessarily determinative factor. The overriding, critical factor is the relationship between the gift-offerer/gift-giver and the gift-recipient, particularly in the context of purchasing and procurement.
- Generally, the gift policies, gift register arrangements and accountability mechanisms for public authorities did not sufficiently address the misconduct risks associated with the inappropriate offering and/or acceptance of gifts by public officers.

## CHAPTER TWO

### COMMISSION INVESTIGATION

#### 2.1 Background and Overview

[48] In August 2008, the Commission received, pursuant to section 28 of the CCC Act, notification from a Western Australian local public authority that an employee had allegedly committed misconduct in relation to the non-disclosure of gifts they had received, in breach of the public authority's *Code of Conduct* policy.

[49] It was alleged that between 11 June 2007 and 22 May 2008, the public officer had received undeclared gifts as a result of toner cartridges purchased from a Victorian-based company. The cartridges were over-priced by approximately 330% resulting in a loss, estimated by the public authority to be more than \$12,000.<sup>21</sup> The public officer received Liquorland vouchers and ANZ visa cash cards as a consequence of the purchases made.

[50] Initial inquiries revealed that the company, Subsidiary Company A, was part of a group of companies operating under an umbrella company, The Company. Other companies in this group included Subsidiary Company B through F. None of these companies were approved suppliers of business machine consumables under the State Government CUA or local government Preferred Supplier arrangements.

[51] The sales strategies and tactics of Subsidiary Company B had been highlighted in a Commission investigation of 2004. The investigation found that Subsidiary Company B had offered vouchers and gifts to public officers in exchange for the purchase of toner cartridges. The public officers who failed to declare these gifts in accordance with the requirements of the public authorities by whom they were employed, were the subject of disciplinary action.

[52] As there were similarities between the allegations involved in the 2004 matter and those reported by the local public authority in 2008, the same company appeared to be involved, and there were indicators that misconduct by public officers had potentially occurred across the public sector, the Commission expanded its investigation beyond the authority involved, to local and state public authorities generally. The purpose of the investigation was to:

- determine if any public officer had engaged in misconduct by purchasing goods, specifically toner cartridges, outside State Government CUAs and other procurement policies; and
- determine if any other person had counselled or procured such conduct.

[53] There were three broad allegations of misconduct which were investigated.

- (1) A number of public officers may have engaged in misconduct, in concert with representatives from The Company, or one of its subsidiary companies, by purchasing toner cartridges outside State Government CUA and other procurement policies.
- (2) A number of public officers may have engaged in misconduct by receiving gifts from The Company, or one of its subsidiary companies, as a consequence of their purchasing activities.
- (3) A number of public officers may have engaged in misconduct by failing to declare such gifts in accordance with the relevant public authority policy.

[54] The Commission's investigation commenced on 24 September 2008. The investigation consisted of:

- a review of The Company's order and supply documentation;
- analysis of the gift policies and gift registers of public authorities;
- interviews with public officers, seizure of gifts and associated gathering of evidence;
- the purchase and forensic testing of the toner cartridges from The Company; and
- public examinations by the Commission.

## 2.2 Review of Order and Supply Documentation

[55] Following Western Australian Supreme Court Orders of 11 December 2008, relating to an application made pursuant to the *Service and Execution of Process Act 1992*, Commission officers served a notice to provide records under section 95 of the CCC Act, on The Company. With this, the Company was required to produce order and supply documentation relating to state and local public authorities. This documentation was used to identify specific public authorities which had purchased goods from The Company.

[56] These purchases were cross-referenced against the respective public authority gift registers, to identify those individuals who received and then failed to declare gifts, and those individuals who may have been ordering from The Company in order to obtain gifts (see section 2.3). In almost every instance identified, the gifts received by public officers from The Company were not recorded in the gift registers of the particular public authorities, and, when asked, managers were not aware that those individual public officers had received gifts.

[57] In addition to the investigation of individual conduct, the records obtained from The Company provided evidence of those public authorities that were purchasing from them outside state and local government procurement

policies and arrangements. Between 2006 and 2009, almost 2,000 individual transactions from 56 public authorities were made with The Company, totalling almost \$620,000. Had these purchases been made through approved purchasing arrangements, the total cost would have been about \$205,000. The difference between the two figures is \$415,000. However the full cost to the state is unclear because:

- (a) In some cases more toner cartridges than required were purchased; and
- (b) The Company was unable to provide the Commission with a complete record of order and supply documents.

## **2.3 Analysis of Gift Policies and Gift Registers of Public Authorities**

[58] Based on the public authorities and officers identified through the order and supply documentation of The Company, the gift policies and registers of a number of public authorities were obtained. These were analysed as outlined in section 2.2, paragraph [56] of this report.

## **2.4 Interviews with Public Officers**

[59] As part of the investigation, initial interviews were conducted with those officers identified in the order and supply documentation obtained from The Company, as well as senior officers from the public authorities identified. A total of 46 public officers were interviewed. In some cases the officers were able to provide to the Commission as evidence, the gifts they had received from The Company.

[60] During these interviews, many public officers claimed to have been "bullied" or "tricked" into purchasing toner cartridges from The Company. There were claims that sales representatives of The Company were very good on the phone and managed to talk them into placing an order on the grounds that it was a continuation of previous orders with their organisation. Either during, or at the conclusion of telephone conversations, The Company would send through a confirmation facsimile ("fax"), confirming what the officer had just agreed to purchase. This fax became a "contract" between The Company and the public authority for the purchase of toner cartridges (in some cases up to 24 months in advance).

[61] During telephone conversations between public officers and sales representatives from The Company, it was apparently common for the sales representative to mention the promotional item that would be sent to the public officer as a result of the order.

## **2.5 Contact with The Company**

- [62] A Commission officer communicated by telephone with a sales representative from The Company. During these conversations the Commission officer purported to be an employee of a State Government public authority.
- [63] The purpose of this was to obtain independent evidence of the methods and sales techniques used by The Company in securing orders, including the provision of gifts/rewards, and to obtain Company-supplied toner cartridges for forensic testing.
- [64] There were several telephone calls between the Company sales representative and the Commission officer. Initially the sales representative identified themselves by one name, and later this same sales representative used a different name.<sup>22</sup> To begin with, the Commission officer was told that if an order was placed, gifts such as a Play Station 3 or Navman would be sent. In further conversations, a large size LCD television was suggested as an additional gift. Eventually the sales representative changed the terms and conditions regarding the receipt of gifts, and the Commission officer received gift vouchers to the value of \$400 after ordering a quantity of “high yield” Tiger Brand toner cartridges.

## **2.6 Forensic Examination of Toner Cartridges**

- [65] During the Commission’s investigation, information was received that the Company’s Tiger Brand toner cartridges were being sold at a high cost because they were “high yield” toner cartridges. The cartridges obtained by the Commission were contained in boxes and packaging that indicated they were “high yield”.
- [66] Four re-manufactured toner cartridges, labelled as “tiger 21TM” were sent to Lexmark Headquarters in the USA for forensic testing in October 2009. The cartridges underwent forensic testing by the Lexmark Laser Supplies Analysis laboratory, where the Lexmark Supplies Engineering team run print quality, yield and reliability test.
- [67] A report detailing the findings of the forensic investigation conducted on the “high yield” cartridges revealed that they were fitted with an “aftermarket” chip that is programmed to identify the cartridges as a 30,000 page yield cartridge (that being “high yield”). Testing however, found that their actual yield was significantly less than 30,000. Of the four cartridges tested, the page yields were between 6,934 and 8,220 pages. Further discussion about the quality of the toner cartridges is in section 3.4.1 of this report.

## 2.7 Public Examinations

### 2.7.1 Decision to Conduct Public Examinations

[68] Section 139 of the CCC Act stipulates that except as provided in section 140, an examination is not to be open to the public. Section 140(2) allows the Commission to open an examination to the public only if having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.

[69] In this case the Commission weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, and decided that it was in the public interest to conduct the examinations of the 10 witnesses in public.

[70] Although the CCC Act speaks in terms of a person being examined (for the purposes of obtaining information to advance an investigation), there is a general tendency for those to be described in the media as a “hearing”. To avoid confusion, the Commission will use that word to mean a compulsory examination of a person before it.

[71] In his remarks at the start of the October 2009 public hearings, Commissioner the Hon. Len Roberts-Smith, RFD, QC said:

*The particular considerations upon which I have concluded that these examinations should be held in public include the following: (1) the need to alert public agencies and public officers generally to the marketing strategies used by certain companies to sell their products to public agencies outside the Western Australian government Common Use Arrangements and other procurement policies; (2) the need to demonstrate to public officers the financial loss to the state when purchases are made contrary to the government's Common Use Arrangements or the relevant purchasing policy; (3) the public exposure will act as a strong deterrent to other public officers from becoming involved in similar conduct; (4) to highlight the importance of state and local government agencies maintaining a gift register; (5) to assist in ensuring that weaknesses identified in the Common Use Arrangements are dealt with immediately; (6) to demonstrate the current need for training about the government's Common User [sic] Arrangements; (7) the activities of these companies are extensive and still ongoing, they extend across the state and across a large range of government departments and authorities at both a state and local government level. Despite the comprehensive investigation to date it is likely there are many instances of which the Corruption and Crime Commission is unaware. The reporting of public hearings is likely to bring further relevant information forward; (8) these ongoing activities are resulting in significant financial loss to the state and local governments which publicity is likely to stop; (9) those matters which may reflect adversely on individuals are well founded in evidence already obtained; and (10) there are no matters or personal privacy likely to be exposed which are not directly relevant to the alleged misconduct or which extend beyond it, however should they arise they can be dealt with by confidentiality or non-publication orders or the like.*

[72] In his opening address at the October 2009 public hearings, Counsel Assisting, Mr Kevin Tavener, said:

*This is a public examination which shines a narrow spotlight on the conduct of public officers who appear to have been inveigled by a complex sales technique applied by a corporate conglomerate. The application of the particular sales technique led to some of those public officers ordering items, in particular toner cartridges for photocopying machines which was overpriced and not of the stated quality.*

*The sales techniques included bullying, deception and the use of inducements. The public officers in their respective capacities as purchasing officers should have resisted the enticements of the sales persons and are responsible for their actions; indeed there was a range of reactions from those public officers. Those reactions went from resistance through to placing substantial orders in breach of government procurement policies.*

*Only a small number of persons will be called to illustrate the nature of the problem, how it arose and its impact on the state.*

...

*There are a number of policies which should have been followed by the procurement officers in ordering photocopying toner. The examination is concerned with issues around misconduct risks that arise when public officers deal with companies outside government policies, such as Common Use Arrangements and also how to address those misconduct risks.*

...

*... the sums of money involved in the overall process and the undermining of confidence in the objectivity of government purchasing practices is a significant and important issue.*

[73] Concern has been expressed in the past when Commission hearings have been conducted in public. Commissioner Terence Cole QC in his conduct of the Royal Commission into the building and construction industry, in addressing the need to conduct hearings by Royal Commissions in public, stated:

*It was necessary for me to weigh the risk that reputations may be unfairly damaged against the public interest in the matters that I was required by my terms of reference to investigate. I had to make a judgement regarding the competing interests. Reasonable minds may differ in relation to which portions of evidence should be taken in public and which in private, but the public interest in a Royal Commission conducting its hearings in public should not be underestimated. Public hearings are important in enhancing public confidence in a Commission as they allow the public to see the Commission at work.*

*They also enhance the ability of Commission's to obtain information from the public as they demonstrate to the public the types of matter*

*with which the Commission is concerned and they allow potential witnesses to see that they would not be alone in giving evidence to a Commission. Summarising concerns of this type Mason J emphasised in the Australian Building Construction Employees v Builders Labourers Federation case that in conducting Royal Commission hearings in private seriously undermines the value of the inquiry. It shrouds the proceedings with a cloak of secrecy, denying to them the public character which to my mind is an essential element in public acceptance of any inquiry of this kind and its report.*

[74] The Commission respectfully agrees with the comments made by Commissioner Cole and has taken those considerations into account.

### **2.7.2 Public Hearings**

[75] Public hearings were held by the Commission over three days between 26 and 28 October 2009. Ten witnesses, outlined below, were called to give evidence during the hearings.

#### **Public Officers**

- Expert witness; a senior officer with the then Department of Treasury and Finance (26 October 2009).
- Seven public officers from state and local public authorities, both in and outside the Perth metropolitan area (26 and 27 October 2009).

#### **Non-Public Officers**

- Sales Representative A, The Company (28 October 2009).
- Sales Representative B, The Company (28 October 2009).

### **2.7.3 Evidence at Public Hearings and Findings**

[76] The evidence given in the hearings established that:

- public officers had received gifts and personal benefit from The Company as a direct result of purchasing toner cartridges on behalf of a state and local public authority;
- public officers purchased goods outside State Government CUAs and other procurement policies and arrangements;
- policies and practices in relation to gifts and gift registers weakened the ability of public authorities to effectively prevent, detect and respond to misconduct by public officers with respect to gifts and personal benefits; and
- the issue was potentially wide-spread.

[77] The sales representatives from The Company provided evidence of the business and sales strategies adopted by The Company, and in which their sales representatives were trained. These included:

- the use of aliases by sales representatives;
- “cold calling” and sales pitches;
- The Company’s “high yield policy”;
- using a “rewards point system” or “bonus points program” whereby purchasing officers acquired “points” and were given “promotional items” as a consequence of their purchases; and
- the use of fax order confirmations.

[78] The evidence of the seven public officers who appeared before the Commission during its public hearings are summarised below as case studies.

#### **2.7.4 Case Study One (Public Officer A)**

[79] Public Officer A, a level two client service officer at a regional state public authority, appeared before the Commission on 26 October 2009.<sup>23</sup> She had been responsible for purchasing consumables for the public authority for about five years.

[80] During the public hearings, the Commission heard that the officer’s understanding of CUAs and purchasing policies was limited. She had heard of the CUAs “probably at meetings”, but “I haven’t had any official training of where to look that up or anything like that”.<sup>24</sup> She was not aware of the *Value for Money* or *Buy Local* policies.

[81] A sales representative of The Company (identifying themselves as Subsidiary Company C) contacted the officer “out of the blue”.<sup>25</sup> Until then, the officer had purchased toner cartridges from a local supplier. After that, she continued to get phone calls “out of the blue” and did not recall ever initiating contact with The Company herself.<sup>26</sup>

[82] In terms of the officer’s conversations with the sales representatives, she said, “... they always started off, ‘We’ve got another six cartridges to send to you,’ and I have said ‘no’ to this on many occasion but they keep pushing till they get the answer ‘yes’, you know”.<sup>27</sup>

[83] The evidence of the officer was that she did not contact The Company, rather a sales representative would contact her every couple of months saying he was sending an order of six cartridges. If she said no, he would say, “but this is part of your special deal’ or ‘agreement’ or something like that”.<sup>28</sup>

[84] The officer continued to order from The Company for two or three years although the cartridges were not needed. Although she told the sales

representative that they did not need the cartridges, he kept “pushing and pushing”, ringing her back, until she agreed.<sup>29</sup>

- [85] The toner cartridges purchased from The Company were kept in the stationery room and the number built up over time. The number of toner cartridges being received was not required.
- [86] The officer told the Commission that The Company “sent some \$20 vouchers in a separate envelope after the cartridges were received, and I received a camera at the end of the year which I said I didn’t want but they still send it”.<sup>30</sup> She told her manager about the vouchers. She used some and provided others to the public authority. The camera was sent to her personal address, which she reported to her manager. The officer was told she could keep the camera as it was a “cheaper brand”.<sup>31</sup>
- [87] The officer said she was unaware of the gift policy of the public authority she was employed by, but that the receipt of gifts had not impacted on her ordering.<sup>32</sup>
- [88] The Commission heard that although, over a nine month period, the unit price for the toner cartridges purchased through The Company rose from \$299 to \$399, the officer “never really took much notice”.<sup>33</sup> The officer authorised purchases of toner cartridge from The Company totalling approximating \$11,700. The cost, if the same quantity of toner cartridges had been purchased from an authorised CUA supplier, would have been \$4,700.
- [89] The officer told the Commission that she came to pay so much for toner cartridges, in quantities that were not needed, because “I suppose they’re pushing and I just was saying ‘yes’ in the end to get rid of them, even though I wasn’t happy about them sending them and that”.<sup>34</sup> She described the manner in which they engaged with her as being “like a bullying sort of tactic”.<sup>35</sup>

### **2.7.5 Case Study Two (Public Officer B)**

- [90] Public Officer B, a level two purchasing officer at a metropolitan state public authority, appeared before the Commission on 26 October 2009.<sup>36</sup> The officer had 10 years experience as a purchasing officer and was at that time buying mainly for his own office.
- [91] The officer had some training in procurement, including CUAs, and was familiar with purchasing from CUAs. He was also aware of the *Value for Money* policy.<sup>37</sup>
- [92] The officer received a phone call from a sales representative of The Company (identifying themselves as Subsidiary Company C). The officer purchased toner cartridges from The Company because:

*Well, in the first instance – well, like I said they told me that they sold to other government departments and I – I said, “Well, okay then, I’ll – I’ll give you a go,” and, “I’ll give you a go for the first time,” and that’s how it started and then they juts [sic] wouldn’t leave me alone after that.*<sup>38</sup>

[93] At first, the officer did not realise The Company was not on the CUA.<sup>39</sup> However he told the Commission that, “I’d say probably – after the second time they called I decided to check to see if they were on the CUA, and they weren’t”.<sup>40</sup>

[94] The officer did not initially notice how expensive the toners were, but each time he bought toner, the price went up. He said that, at “the time I didn’t realise that they were a lot more expensive” than buying from the CUA.<sup>41</sup> However, then “I noticed that each time I bought it that the price seemed to be going up”.<sup>42</sup>

[95] The officer told the Commission that, over a period of time, he was given gifts by the Company. He stated that:

*They rang me and said, “You bought so many toners and you’ve got all these points and we’ve got something to send to you.” I said, “We’re not allowed to accept gifts,” and they said, well, “It’s not a gift, it’s just because you’ve bought this stuff that we’re giving this to you.” The first thing, I think the first thing I received was the coffee maker.*<sup>43</sup>

[96] Over time the officer received gifts from The Company including a digital camera, vouchers, a GPS navigator and a 19 inch digital TV. Even though the officer did not tell his supervisor about the gifts, he claimed they did not affect his ordering because the gifts were sent whether he wanted them or not.<sup>44</sup>

[97] The officer told the Commission that if he told the first sales representative he did not want any more toner, then a “guy by the name of Paul would ring me back”.<sup>45</sup> According to the officer “Paul” would say:

*“Why don’t you want these toners?” I said, “Well, because we’ve got enough and I don’t need any more at the moment.” He’d say – I’d keep hanging up. He would ring me back every 10 or 15 minutes for the whole day until I finally said, “Yes, okay just send them,” and I used to do that just to get rid of him because – you know, five minutes after I’d hang up the phone would ring again and it was him saying, “We’ve got these ready to send to you. You have to have them,” sort of thing.*<sup>46</sup>

[98] The officer stated that when he tried to stop purchasing toner cartridges from The Company he was told, “Well, you have to buy it.’ We’re contracted to buy as many each – well, they didn’t say what period but they said, ‘It’s time for you to buy another five or six toners.”<sup>47</sup> Or that “we’ve got a docket here that you’ve signed”<sup>48</sup>.

[99] In terms of any documentation or contract with The Company regarding the purchases, the officer explained that:

*Well, when they ring you and if I said, “Yes, I’ll buy them,” they actually wait on the phone while they send you a fax. You sign the form for that particular amount of toner that you’re buying and that’s the fax. They won’t hang up until they actually get that fax back signed.*<sup>49</sup>

- [100] The officer did not raise the issue with a supervisor because he was worried he would get into trouble. He stated that he was “embarrassed about it because I’d fallen into a trap, I think, that I couldn’t get out of”.<sup>50</sup>
- [101] Eventually the officer stopped ordering from The Company because he had “just had enough”.<sup>51</sup> The officer’s purchases of toner cartridges from The Company totalled more than \$26,000. Had the same quantity of toner cartridges been purchased from a CUA supplier, the total cost would have been approximately \$9,300.

### **2.7.6 Case Study Three (Public Officer C)**

- [102] Public Officer C, a level two purchasing officer with a state public authority, with at least six years experience as a purchasing officer, appeared before the Commission on 26 October 2009.<sup>52</sup>
- [103] The officer had received some training as part of his role, having attended, in particular, courses run by the then Department of Treasury and Finance. He was aware of CUAs and the *Value for Money* policy.<sup>53</sup>
- [104] The officer received an unsolicited call from a sales representative of The Company (identifying themselves as Subsidiary Company C), telling the officer that “there was a previous agreement in place at that time and that we had purchased toner from them”.<sup>54</sup> According to the officer, the sales representative “indicated to me that there was an agreement with [The Company] to supply toner to the [public authority], and that they also supplied other government departments at that time”.<sup>55</sup>
- [105] The officer ordered toner cartridges from The Company, the sales representative apparently telling him that all he needed to do was sign the confirmation document and fax it back to them.<sup>56</sup> The officer told the Commission that he would receive orders to be signed “every six to eight weeks”.<sup>57</sup>
- [106] After the officer had been dealing with The Company for about eight months, he realised there was no “contract of arrangement”. The officer stated that “I told them that they weren’t under a contract of arrangement [sic: Common Use Agreement], a CUA, and I couldn’t purchase from them but they said that this was put in place at a local level and it just went on from there”.<sup>58</sup>
- [107] The officer said that he felt “obligated” and “pushed” because he was told “that they had these items already in stock from the previous agreement and that they – nobody else required them except us.”<sup>59</sup>
- [108] According to the officer, The Company started sending him gifts. Although he claimed it did not impact on his ordering, he accepted the gifts and did not tell his manager.<sup>60</sup> The officer received a digital Camcorder, gift vouchers, and a GPS navigator. In terms of a gift policy, he said that “the only policy that I was aware of was that we weren’t to accept anything”.<sup>61</sup>

[109] When asked why he continued to purchase toner cartridges from The Company despite knowing they were not a CUA approved supplier, the officer told the Commission:

*Because I felt hammered. They rang, they kept ringing and I kept arguing and then at the end I pushed it and said to them, "I have no authority to order any more" and said, "You will have to go through my manager," which he did. He rang – they went through the manager and towards the end it came back that he said to order them, so I did.<sup>62</sup>*

[110] During his evidence the officer confirmed having paid \$499 per unit for toner cartridges when the CUA price was \$96, \$111 or \$180 per unit, depending on the brand. The officer confirmed having spent \$111,000 on toner cartridges from The Company and that the same quantity purchased through a CUA supplier would have cost approximately \$28,000.

[111] In terms of the cost of toner cartridges, the officer said that he "told him [the sales representative] the price was too high, we shouldn't be buying from them because they weren't under a CUA".<sup>63</sup> The sales representative explained the price differences saying that the cartridges were "superior quality" and "high yield".<sup>64</sup> The officer did not check these claims.

[112] The officer admitted to the Commission that he was able to purchase up to \$30,000 on his corporate credit card in a single transaction, and that no one questioned the amount he spent on that credit card, particularly to purchase toner cartridges.<sup>65</sup>

[113] The officer took actions to attempt to cease the orders with The Company by writing "final order" on a confirmation fax. After this, the officer was sent \$500 worth of gift vouchers from The Company, which he redeemed without telling his manager.<sup>66</sup>

### **2.7.7 Case Study Four (Public Officer D)**

[114] Public Officer D, a level three IT administrator with a regional local public authority, appeared before the Commission on 27 October 2009.<sup>67</sup>

[115] The officer's duties involved purchasing IT equipment including photocopier toner cartridges. He had held the position for six years and never received any formal training in respect of procurement policies or arrangements. He told the Commission that had heard of CUAs and the *Buy Local* policy, but did not know what they meant. He did not know of the *Value for Money* policy.<sup>68</sup>

[116] The officer had been purchasing toner cartridges from a local business until a sales representative from The Company (calling themselves Subsidiary Company F) contacted him. The officer told the Commission that:

*In his first call he asked what printers, what photocopiers we had. A couple of weeks later toners arrived along with, you know, a phone call saying, "Just try them." We did and then the invoices started rolling in, at which point it was just a constant barrage of phone calls from them, you know, "Buy more. Buy more."<sup>69</sup>*

[117] The officer told the Commission that after that, “The phone calls were coming in every two weeks. The cartridges would come in every month”.<sup>70</sup> He added that “the order confirmations would come through with ridiculous figures like 16 toner cartridges and we would scrub out that 16 and put down four or five, whatever we needed to get the stock levels up”.<sup>71</sup>

[118] When asked how the prices of Company-supplied toner cartridges compared with those from the local supplier, the officer explained that:

*We were being told they were ultra-high yield and to expect up to 20,000 copies out of these cartridges, which you add up four or five standard-yield cartridges, which is what the pricing would have been, and they seemed like a good deal ... but they weren't high-yield cartridges.*<sup>72</sup>

[119] The officer went on to add that:

*I've been working in IT for about 15 years now, your Honour. We were definitely getting more than a standard-yield cartridge but nowhere near what they were telling us we should have been getting, and it's just through hindsight that I can see that now.*<sup>73</sup>

[120] According to the officer, they were actually getting between “8 and 10 thousand copies” from the “high-yield” cartridges, which were about “three times” more expensive than those cartridges from the local supplier.<sup>74</sup> With respect to a “normal cartridge”, the officer stated he would have expected a yield of about “seven and a half thousand”.<sup>75</sup>

[121] The officer told the Commission that he received gifts from The Company, based on a point system”. He said that:

*During this process there were gifts ... the gifts I received were based on a point system, he [the sales representative] would tell me that the gift that he had previously sent me had used up X number of points and that I needed to order X number of cartridges to bring up the points again so that he wouldn't get into trouble from his managers...*<sup>76</sup>

[122] In relation to the gifts he received from The Company, the Commission heard from the officer that:

*Well, it kept going. He [the sales representative] was requesting more cartridges be ordered. Each time the gifts seemed to be getting bigger and bigger and it just escalated and escalated to the point where they were offering air fares and holidays, at which point I said to him, “No more. The number of cartridges you're asking me to order and the gifts that you're offering are just outlandish.”*<sup>77</sup>

[123] During the three-year period in which he dealt with The Company, the officer estimated that he had received “approximately \$5000 worth” of gifts from them.<sup>78</sup> At the time the officer was not aware of any gift policy and he did not mention the gifts to anyone.<sup>79</sup>

[124] The officer confirmed that during 2006, he purchased almost \$23,000 worth of toner cartridges from The Company, and, that if the same quantity of cartridges had been purchased through the CUA, the cost would have been approximately \$5,000.<sup>80</sup>

[125] The officer told the Commission that he had been the subject of disciplinary proceedings by his employer as a result of his conduct. As a consequence his purchasing privileges had been revoked for a period, but that he was now involved in procurement again. When asked about any subsequent training in procurement policies he may have had, the officer stated that he hadn't received any.<sup>81</sup>

### **2.7.8 Case Study Five (Public Officer E)**

[126] Public Officer E, a senior manager of a regional local public authority, appeared before the Commission on 27 October 2009.<sup>82</sup>

[127] The Commission heard from the witness that, a receptionist of the public authority, who had no purchasing authority, was contacted by a sales representative of The Company (identifying themselves as Subsidiary Company D). She explained that, "It was the receptionist that they rang, got information on our machines; then got her to sign what we thought was a contract and we honoured that contract for three months".<sup>83</sup>

[128] Later, in January 2008, another junior officer, new to the organisation, was contacted by a sales representative of The Company and again the officer signed what was believed to be a contract.<sup>84</sup> The public authority honoured this "contract" for another three months.

[129] Three months later, in April 2008, The Company again contacted a junior administrative officer, who signed the "contract" with The Company. The senior manager was then contacted by a sales representative of The Company after the junior officer ceased employment with the authority.<sup>85</sup>

[130] The senior manager told the Commission that when she spoke to the sales representative, she was told "that we committed to this contract and they would be sending out some cartridges".<sup>86</sup> After that, "he rang up and said that that wasn't all the committed funds, that they were actually dual-cartridge cases; so we had to take I think it was probably six more, so they sent another six".<sup>87</sup>

[131] The senior manager told the Commission that later, speaking to the sales representative, "I said, 'This is silly, we've already got too many,' and he goes, 'Well, we could send some for the other machine,' which was a Brother, which they then sent to fulfil our commitment".<sup>88</sup>

[132] The senior manager confirmed for the Commission that the authority had "a policy, a policy document" that applied to procurement, and that this included a *Buy Local* policy.<sup>89</sup> There was also a *Value for Money* policy. The senior manager admitted that she was aware of these policies.<sup>90</sup>

[133] Initially the price for a Company-supplied toner cartridge was \$164 but over time rose to \$399.<sup>91</sup>

[134] The Commission heard from the senior manager that several gift vouchers arrived from The Company. The senior manager indicated that she was aware of the public authority's gift policy and that "if you get a gift you must enter it in the gift register", but that as far as she knew, these gifts were

not.<sup>92</sup> Some of the vouchers received from The Company were used to take “the finance and administration branch out to Christmas lunch”.<sup>93</sup>

[135] The senior manager told the Commission that in conversation with the sales representative, she was told that her “\$300 Visa card [was] ready to go” but she did not make any more orders.<sup>94</sup>

### 2.7.9 Case Study Six (Public Officer F)

[136] Public Officer F, an administration officer with a regional state public authority, appeared before the Commission on 27 October 2009.<sup>95</sup>

[137] The officer was newly appointed to her position. In terms of any training she may have received in relation to procurement policies, she told the Commission that:

*When I first went, was employed there, they gave me an induction and they have all the code of conducts and all about gifts and all the policies and procedures that they give you, and you have to read them and then sign off on them, that you understand, and I have worked for government departments before over the years and I know that procedure.*<sup>96</sup>

[138] The officer was aware of the gift policy for the authority she was employed by, but she was not aware of the *Buy Local* policy for State Government.<sup>97</sup>

[139] The officer told the Commission that when she began in the position, her predecessor had left a folder/manual which contained all the information and procedures needed for her role. The officer explained that when she referred to the folder in order to buy printer cartridges, “there was a little note at the bottom about not using [Subsidiary Company C] if they ring. There was a little handwritten note there, ‘Do not buy anything from them’”.<sup>98</sup> Further to this she told the Commission that “there was another company that we – [Subsidiary Company D], that we had used but there also another note that they found that [Subsidiary Company D] was a bit expensive so maybe compare it with Corporate Express”.<sup>99</sup>

[140] The officer testified that she had received a telephone call from a sales representative from Subsidiary Company C. He said that he was “just fixing up our order, that we always ordered cartridges from him.”<sup>100</sup> The sales representative told the officer that he would fax through the order for her to sign. When it arrived, “it was for three or four cartridges for about 3000, 4000 dollars”, which the officer was not able to sign for.<sup>101</sup> When she checked her manual and saw the note not to buy from Subsidiary Company C, she spoke to a colleague who told her, “No, we’ve got plenty of cartridges,’ and we had a look in the storeroom and there was a pile of these cartridges still in there”.<sup>102</sup>

[141] The officer told the Commission that when the sales representative called her back she read him the note over the phone, to which “he got quite irate and annoyed”.<sup>103</sup> No further orders were made.

[142] In terms of their stock of toner cartridges, the officer said that “I cleaned out the storeroom, our supply cupboard, and I found all these toners there,

some dating back to 2007, 2008, so the IT department said they mightn't even be – still work".<sup>104</sup>

[143] Over several weeks, more calls were received from the sales representative of Subsidiary Company C. The officer testified that on one occasion the caller started the conversation using one name, but ended the conversation with a different name.<sup>105</sup> Furthermore, she told the Commission that, during her last conversation with the sales representative "they said they were from [Subsidiary Company A]".<sup>106</sup> The officer said that during this final conversation:

*... I said, "Are you sure you're not from [Subsidiary Company C]?" and he said, "[Subsidiary Company C]?" No, he's never heard from [Subsidiary Company C], and then he said "Who are [Subsidiary Company C]? What's wrong with [Subsidiary Company C]?" Tried to sort of find out and wanted know about the printers and things like that. Then in the end I said, "No. We're right. Thank you," and hung up and then my phone identified the phone number, so I quickly rang it back and I got a recorded voice message saying, "[Subsidiary Company C]."*<sup>107</sup>

[144] The officer told the Commission that the sales representatives had offered her gift vouchers and sought to have her "finalise all the details" and "close the account".<sup>108</sup> The officer refused the gifts and did not purchase any goods from The Company.

#### **2.7.10 Case Study Seven (Public Officer G)**

[145] Public Officer G, a level five officer had been employed for two and a half years with a state public authority, outside the metropolitan area. She appeared before the Commission on 27 October 2009.<sup>109</sup>

[146] The officer told the Commission that although her role did not directly involve procurement, she was familiar with procurement policies including *Value for Money* and *Buy Local*.<sup>110</sup> The office, in which she was the most senior person and had some managerial functions, was purchasing toner cartridges through Subsidiary Company B.

[147] The officer told the Commission that she had been there for about six months when she decided the office staff would "have a bit of a clean up of some cupboards that we have down the back".<sup>111</sup> She said that:

*... when we did I discovered that stashed away were boxes upon boxes of [Subsidiary Company B] printer and fax toners ... They were – they were shoved into cupboards and I said, "Why are we hanging onto all these old printer cartridges," thinking that they were all spent, to which [another officer] said, "No, those are – we haven't used those yet," and I said, "Well, why have we got so many," and she said, "We've got a contract we can't get out of." So that's what alerted me to the situation.*<sup>112</sup>

- [148] When asked to examine photographs<sup>viii</sup> taken of the room in which the stock of toner cartridges were kept, the officer told the Commission that her office had calculated that they had a four or five year supply of toner cartridges.<sup>113</sup> When asked to examine a photo<sup>ix</sup> of the labelling on some of the cartridge boxes, the officer confirmed that they read “quality-rated and quality-tested, maximum page yield, optimum image, extensive guarantee, high-print density”.<sup>114</sup>
- [149] The officer confirmed for the Commission that the price of the toner cartridges seemed “very high” and that those toner cartridges available from Corporate Express, a CUA-authorised supplier, were considerably cheaper.<sup>115</sup>
- [150] The Commission heard a recorded conversation between a sales representative of The Company and another officer from the public authority (recorded by the public authority). In this recorded conversation, the officer advised the sales representative they were overstocked with toner cartridges and they were not able to purchase from The Company as “you’re not on the approved list for the Government even”.<sup>116</sup> The sales representative was heard to say that the purchase had been authorised by head office.<sup>117</sup>
- [151] When questioned about the original contract or agreement with The Company, the sales representative said, “Well it wasn’t a written contract this was a verbal contract. We do that with all our clients especially with the pricing we do for those cartridges so you guys get them considerably cheaper because of the quantities”.<sup>118</sup> When the officer queried the price of the cartridges, the sales representative said, “No these are high yield ones; we are talking about different cartridges altogether”.<sup>119</sup> The lower priced cartridges, he explained, were “a lot cheaper but they probably last four or five times less than the high yields”.<sup>120</sup>
- [152] After this conversation, the sales representative did not contact the authority again.<sup>121</sup>

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<sup>viii</sup> *Photographs of Toner Cartridge Supplies* [CCC 02008-2008-0467] and [CCC 02008-2008-0468]. See Appendix 3.

<sup>ix</sup> *Photographs of Toner Cartridge Supplies* [CCC 02008-2008-0470]. See Appendix 3.



# CHAPTER THREE

## PROCUREMENT

### 3.1 Introduction

- [153] The focus for Part Two of the Commission’s work was to research, review and analyse the procurement and gift policies for state and local public authorities. The purpose of this was to consider the extent to which public authorities, as a consequence of their policies and practices, were generally resilient or exposed to companies such as The Company, and the sales strategies employed by it.
- [154] Part Two involved reviewing procurement policies for state and local public authorities in the light of information obtained during the investigation, in order to identify where breaches of procurement policies had occurred and where policies were potentially susceptible to transgression. In December 2009, Chief Executive Officers for state and local public authorities were required to provide copies of their gift policies and registers.
- [155] This chapter documents the Commission’s research in relation to procurement policies and practices across the public sector and the extent to which they took account of and effectively mitigate the misconduct risks associated with government purchasing. Chapter Four presents the research activities undertaken by the Commission with respect to gifts.
- [156] The Commission’s research identified serious vulnerabilities in both the manner in which state and local public authorities generally undertook their procurement, and in their accountability mechanisms, with respect to business consumables. The Commission found that despite the existence of procurement policies and arrangements, public officers were able to circumvent these and The Company was able to effectively coerce public officers to purchase toner cartridges outside State Government CUAs and other procurement policies.

### 3.2 Procurement Policy – State Government

- [157] State Supply Policies are issued under and in accordance with section 28 of the *State Supply Commission Act 1991* (“the SSC Act”). State Government “Public Authorities” for the purposes of the SSC Act, are required to adhere to State Supply Policies. These include *Value for Money*, *Buy Local* and *Common Use Arrangements*.

#### 3.2.1 Value for Money

- [158] The State Supply Policy, *Value for Money*, states that, “A public authority must ensure that its procurement of goods and services achieves the best value for money outcome ... achieving best value for money outcomes requires a public authority to ensure that its procurement activities are aligned with Government policies, objectives and strategies...”.<sup>122</sup> The *Value for Money* policy, which can be regarded as the chief policy and

principle for state supply, requires state public authorities to take account of whole of government policies such as the *Buy Local Policy* and CUAs at the corporate and individual purchase level.

### **3.2.2 Buy Local**

[159] The *Buy Local Policy* is a State Government policy administered by the State Supply Commission requiring state public authorities to maximise the use of competitive local business in goods, services, housing and works purchased or contracted on behalf of government. Western Australian state public authorities located in regional and country areas, in accordance with the *Buy Local Policy*, have the discretion to purchase products and/or services from local suppliers.<sup>123</sup> In such circumstances where a mandatory CUA offers a Perth-based supplier, public authorities subject to the policy may choose to buy from a local or regional supplier offering value for money.

### **3.2.3 Common Use Arrangements**

[160] The State Supply Policy, *Common Use Arrangements* effective at the time of the alleged misconduct stated that a CUA is a:

*Whole of government standing offer arrangement, awarded to a single supplier or a panel of suppliers for the provision of specific goods or services commonly used within Government. CUAs are aggregated supply arrangements that enable public authorities and other specified parties to source goods or services.*

*Where a CUA has been established, all public authorities must use these arrangements as their exclusive source of supply for the goods and services covered by the CUA, unless otherwise authorised in accordance with this Policy.*<sup>124</sup>

[161] During the period being considered within this report, the then Department of Treasury and Finance administered more than 50 CUAs on behalf of State Government, including CUA Buyers Guide, Business Machine Consumables (Contract Number: 000302F) which included photocopy toner cartridges.

[162] The CUAs were mandatory state-wide prior to 7 April 2009, when the Buyers Guide was updated making the CUA non-mandatory in the regions. After that date, regional purchasing officers could apply regional purchasing discretion in accordance with the *Buy Local* and *Value for Money* policies. If a regional supplier can provide the same good or service, their products can be purchased, or service engaged, provided they are within a prescribed distance from the point of delivery.

## **3.3 Procurement Policy – Local Government**

[163] State Supply Commission Supply Policies do not mandatorily apply to local government public authorities, although they are available for use by local governments. The principles of *Buy Local* and *Value for Money* are

encouraged by the Department of Local Government and WALGA, providing a framework for best practice in procurement.

- [164] WALGA offers local public authorities access to Preferred Supplier arrangements through its Preferred Supplier program, which operates in a similar aggregated manner to CUAs. Many local governments utilise this system.

### **3.4 Consequences of Public Authorities Purchasing Outside CUAs and Other Procurement Policies**

- [165] A CUA is a standing offer arrangement, awarded to a single supplier or a panel of suppliers, for the provision of specific goods or services commonly used within government. Approved CUA suppliers have been through a vetting process in terms of supply quality and cost. The suppliers have committed to providing the specific goods or services at a set price, including economies of scale savings in their quotes. This in effect significantly reduces the purchasing risks for public authorities.
- [166] In purchasing outside CUAs and other procurement policies and arrangements, public authorities lose probity and accountability, and risk purchasing lower-quality goods at prices higher than might otherwise be paid through established procurement arrangements. The risks and consequences of public officers purchasing outside CUAs and other procurement policies and arrangements, are apparent from those dealings between public authorities and The Company examined by the Commission.
- [167] The Company and its subsidiary companies were not CUA approved suppliers for business consumables to state public authorities. Similarly, as a Victorian-based company, it is unlikely that they should have been considered as a viable supplier under the *Buy Local* policy, for those regional state public authorities wishing to exercise exemption from the CUA. There appears no reason for state public authorities to have engaged The Company in the purchase of toner cartridges.
- [168] With respect to local government, The Company was not a Preferred Supplier and, based on the evidence gathered by the Commission in respect of the cost and quality of their toner products, The Company could not have been considered a value for money supplier or their engagement as a supplier, be considered an economic use of government monies.
- [169] Information gathered by the Commission, including the results of the forensic testing of Company-supplied goods and evidence provided during its public hearings, was that The Company provided goods at inconsistent and potentially inflated prices. Furthermore, based on the information gathered, the goods supplied were inferior insofar as they did not meet the quality and standards at which they were marketed and sold. Adherence by public officers to the established CUAs and other procurement policies would have significantly reduced the risk of inferior goods having being purchased without value for money.

### 3.4.1 Recommendation

#### Recommendation One

It is recommended that state and local public authorities ensure adherence to procurement and supply policies and arrangements by having in place robust policies, procedures, training and accountability mechanisms, which take account of the misconduct risks associated with procurement.

### 3.4.2 Product Quality

- [170] During the Commission's public hearings, there was evidence of sales representatives of The Company claiming the "high yield" toner cartridges they supplied were "superior quality" and produced a higher yield of copies per unit, when compared to a "standard" toner cartridge. Sales Representative B provided evidence in relation to The Company's "high-yield policy" where customers were told that a standard (non-Company supplied) high-yield toner cartridge had a yield of about 20,000 pages. By comparison, The Company "guaranteed 20 to 30 per cent more on top of the standard 20,000 copies" (a yield of between 24 and 26 thousand copies).<sup>125</sup>
- [171] Forensic testing of the Company-supplied toner cartridges and evidence provided by public officers who purchased the "high yield" cartridges, undermined claims made by The Company.
- [172] The Commission purchased from The Company, four Tiger Brand cartridges in boxes marked "high yield". These cartridges contained an electronic chip which identified the cartridge as having a 30,000 page yield. The cartridges were sent to Lexmark, USA for forensic testing. The yields of those cartridges tested were less the promoted 30,000 page yield, averaging only 7,400 pages per cartridge. To the extent that the products supplied by The Company did not meet the standard to which they were marketed and sold, they were inferior.
- [173] The Commission advised the Australian Competition & Consumer Commission ("the ACCC") as a result of these tests, raising concerns about potential overpricing of the cartridges, the yield capacity and the apparent sales strategies of The Company. On 6 January 2010, the ACCC advised the Commission that they would not be pursuing the matter.

### 3.4.3 Inconsistent Pricing

- [174] The Commission's investigation revealed that toner cartridges supplied by The Company were sometimes up to three times the price of toner cartridges purchased from CUA approved suppliers, and the prices at which they were sold appeared to vary between public authorities.
- [175] During the Commission's public hearings, one public officer admitted purchasing Tiger Brand toner cartridges for \$299 per unit when toner cartridges were available from a CUA supplier for \$147 per unit.<sup>126</sup> Another

officer paid \$499 per unit when the price of toner cartridges purchased from a CUA-approved supplier was between \$96 and \$180 per unit, depending on the brand.<sup>127</sup>

[176] The Commission heard evidence that The Company would raise the price of its toner cartridges, seemingly on an arbitrary basis. During the examination of one purchasing officer, the Commission heard that the unit price of the toner supplied by The Company rose from \$299 to \$399 in a nine month period.<sup>128</sup> During the evidence of another officer, it was noted that the price for toner cartridge purchases paid by the public authority rose from \$164 to \$399 over the period they ordered from The Company.<sup>129</sup>

### **3.5 Sales Strategies Employed by The Company**

[177] Notwithstanding the requirements of State Government Supply Policies and other procurement policies, a number of public officers made significant purchases of toner cartridges from The Company, often when no need for cartridges existed, and at prices greater than those of other, approved suppliers. How these breaches of local and state government procurement policies and arrangements occurred is of concern. In the Commission's opinion, part of the explanation for this occurring lies in the business strategies and sales techniques employed by The Company, and part lies in the relative inexperience and vulnerability of the public officers involved.

#### **3.5.1. Aggression**

[178] During the public hearings held by the Commission, evidence was heard of The Company's aggressive sales techniques, pressuring purchasing officers into ongoing purchases of toner cartridges. Often officers were inundated with calls from The Company, each call increasing in pressure until they agreed to the purchases. The sales representative would send through a confirmation order by fax and stay on the telephone until the order was signed and faxed back. These confirmation orders formed the basis of the "contract" by which The Company held the authority bound.

[179] During the public hearings, several public officers indicated that they only agreed to purchase toner cartridges as a result of the sales behaviour employed and in an effort to "to get rid of them". Public Officers A and B stated that:

*... they're pushing and I just was saying "yes" in the end to get rid of them, even though I wasn't happy about them sending them and that.*<sup>130</sup>

*The main reasons was because they – they kept ringing me every 10, 15 minutes during the day if I said no, and the only way I could get rid of them was to say yes ... And that was the only why reason why I was buying from them, just to get them off my back.*<sup>131</sup>

[180] In terms of the sales strategies of The Company, Public Officer D told the public hearing that:

*A lot of what I'd call emotional blackmail. Really – I don't really know how to explain it. He [the sales representative] made me feel bad for not ordering more and more and more.*<sup>132</sup>

### **3.5.2 Deception and Misinformation**

[181] The evidence of several public officers was that the sales representatives from The Company provided information about the quality and standards of their products, which was not supported by the experiences of those public officers, or by the forensic testing of the Company-supplied goods. In addition to this, there was evidence of the sales representatives providing false or misleading information about the name of the company they were representing and their own identities. The Commission heard that it was common practice for Company sales representatives to use aliases when speaking to clients.

[182] During their evidence, Sales Representatives A and B both indicated that they identified themselves to clients using different aliases and as representing different Subsidiary Companies. When asked how he decided which Subsidiary Company he was working for at any one time, Sales Representative A replied that, "It's up to the individual. You can work as all of them, if need be, in the same day".<sup>133</sup> He confirmed that the Subsidiary Company names were used interchangeably.<sup>134</sup> Sales Representative B stated that "I chose whatever name I liked to".<sup>135</sup>

[183] Evidence provided during the public hearings was that sales representatives would lead public officers to believe that a binding contract with The Company existed, or that they had provided toner cartridges to the authority in the past. The sales representative would mention the name of another employee and confirm the details of the photocopier. The Commission heard evidence that sales representatives told public officers that an agreement to purchase the product had already been entered into, and that another batch was ready to be sent through.

[184] Public Officer E, a senior officer, told the Commission that she believed a binding contract existed for The Company to supply toner cartridges to the public authority she was employed by. She indicated that "it was the receptionist that they rang, got information on our machines; then got her to sign what we thought was a contract and we honoured that contract...".<sup>136</sup>

[185] Public Officer C provided evidence of a similar tactic being employed by The Company. The officer said that:

*I received a telephone call from them saying that there was a previous agreement in place at that time and that we had purchased toners from them.*<sup>137</sup>

[186] And that:

*... they said they had these items already in stock from the previous agreement and that they – nobody else required them except us.*<sup>138</sup>

### 3.5.3 Vulnerable Public Officers

[187] The nature of government purchasing is such that sales representatives from The Company necessarily dealt with purchasing officers, who tend to be relatively junior or lower-level officers. Purchasing officers approached by The Company were generally ill-equipped to manage the pressured sales techniques adopted by The Company and some acquiesced to purchases, knowingly or not, outside government policies and arrangements.

[188] Public Officer B told the Commission that he began purchasing from The Company after receiving a “cold call” from a sales representative. Prior to this, he had been purchasing from the CUA, and initially he did not realise The Company was not on the CUA.

*... in the first instance ... they told me they sold to other government departments and I – I said, “Well, okay then, I’ll – I’ll give you a go,” and, “I’ll give you a go for the first time,” and that’s how it started and then they juts [sic] wouldn’t leave me alone after that.*<sup>139</sup>

[189] The Commission heard that Public Officer B became concerned about the ongoing purchases realising The Company was not on the CUA and the price of toners had gone up. He had also started receiving gifts. The officer told the Commission that he was feeling “uncomfortable” about it;

*... that’s probably the reason why I didn’t want to tell a superior, because I was a bit worried that I would get into trouble if I said to them what was going on.*<sup>140</sup>

[190] And that;

*... I was embarrassed about it because I’d fallen into a trap, I think, that I couldn’t get out of.*<sup>141</sup>

### 3.5.4 Officers with Discretionary Authority to Purchase

[191] The Company would “cold-call” purchasing officers; officers with discretionary authority to make purchases up to a certain limit, in an effort to convince them to purchase toner cartridges.

[192] Although local public authorities were not required to make toner cartridge purchases from CUA-approved suppliers, it is nonetheless useful to note that the Commission considered all toner purchases made by public authorities with non-CUA approved companies over a period. Of the top 15 companies represented in this group, The Company or one of its subsidiaries account for six of the 15. As such, they accounted for 40% of the transactions made.

### 3.5.5 Credit Card Purchases

[193] The nature of government purchasing processes and practices is such that purchasing officers use corporate credit cards, often with a significant purchase limit. Through the Commission’s investigation it was evident that purchasing officers often had the authority to make substantial purchases, without, at the point of purchase, the need for further approval. In those

cases examined by the Commission, this situation or purchasing arrangement, came to constitute a misconduct risk to the public authority.

- [194] Public Officer C, a level two purchasing officer, was able to purchase up to \$30,000 for a single purchase on his corporate credit card and told the Commission that no one questioned the quantity of toner he purchased on his card. In total, the officer spent \$111,000 on toners when the same number purchased through the CUA would have cost \$28,000.
- [195] As part of the Commission's investigation, state and local public authorities were required to notify the Commission of the purchases they had made in relation to toners within a specified period. Some agencies reported that they could not retrieve credit card data without manually sorting through thousands of transactions. The Commission advised the Auditor General and the then Department of Treasury and Finance of the apparent difficulty in analysing past credit card transactions. The Commission was advised that public authorities have access to an electronic management service, "FlexiPurchase", which provides users with the option of detailed electronic reporting of transactions by card holder, vendor and purchase amount. In discussions with the then Department of Treasury and Finance, they indicated that a number of agencies were unaware that they had access to the service or had simply chosen not to use it.
- [196] While the use of credit cards offers savings and efficiencies for State Government, with this, effective controls are needed to ensure that the level of transparency and accountability expected of the public sector by the community, with respect to government purchasing, is met. That some public authorities appear to have been either unaware of FlexiPurchase or chose not to utilise it, is of potential concern, if they were not assuring accountability and controls in other ways.

### **3.5.6 Recommendations**

#### **Recommendation Two**

It is recommended that state and local public authorities reinforce the systems in place to ensure that before a purchase order or credit card purchase is authorised, the purchase is in accordance with the relevant purchasing policy or purchasing arrangement.

#### **Recommendation Three**

It is recommended that the Department of Finance consider a more structured approach to informing public authorities of electronic management services and credit card search facilitates, such as FlexiPurchase, offered by financial institutions that may assist them in ensuring accountability and effective controls with respect to government purchasing.

## CHAPTER FOUR

### GIFTS

#### 4.1 Introduction

[197] Generally, receiving gifts in the Western Australia public sector is governed by public authority policy, either dedicated, stand-alone gift policies, or as part of a public authority's code of conduct. Section 5.103 of the *Local Government Act 1995* (WA) ("the Local Government Act") requires local public authorities to prepare or adopt a code of conduct to be observed by council members, committee members and employees of the authority. Regulation 34B of the *Local Government (Administration) Regulations 1996* ("the Local Government Regulations") requires that these codes of conduct take account of gifts.<sup>142</sup> At a state level, section 9 of the PSM Act and the *Code of Ethics*<sup>143</sup> articulate the broad standards for integrity and conduct by public officers. The Public Sector Commission *Conduct Guide*<sup>144</sup> incorporates a requirement that state public authorities consider conflicts of interest within their Codes of Conduct, which may include gifts and the establishment of gift registers.

[198] State and local public authorities were required to provide copies of their gift policies and gift registers to the Commission. Comparative analysis of these documents assisted in assessing the level of exposure of the public sector to organisations like The Company.

[199] This report makes public the observations and findings of the Commission's investigation and research activities. In so doing, it is intended that public authorities will consider their policies and practices towards gifts in light of the findings of this report, and implement the recommendations made, to reduce the misconduct risks associated with gifts, particularly in the context of purchasing and procurement.

#### 4.2 Gifts

[200] The Western Australian Integrity Coordinating Group's document, *Gifts, benefits and hospitality* states that:

*The receipt of gifts, or other non-monetary benefits including rewards or offers of hospitality, can place a public officer in a position of actual, perceived or potential conflict of interest. Public authorities should develop clear and consistent protocols for all employees to follow in the event that a gift or benefit is offered to them or their employer. This is particularly important where employees are involved in procurement functions, sponsorship or commercial dealings with the private sector.*

*Public sector employees should not believe that accepting gifts will go undetected, or that it would not affect their relationship with the supplier.*<sup>145</sup>

[201] In the public sector, an unspoken expectation from gifts is what can give rise to the risk of misconduct by public officers because gifts are often given (or offered) to influence behaviour. This risk is plainly evident when the public officer receiving a gift exercises discretionary authority.

### 4.3 Analysis of Gift Policies

[202] An 85% response rate to the Commission's requirement to provide the gift policies and registers for public authorities was achieved, with 153 (of 180) state public authorities and 121 (of 141) local public authorities complying.

[203] Figure One indicates that in terms of those local and state public authorities which responded, the majority had both a gift policy and a gift register. Some had one without the other and a small number had neither. Of the public authorities to respond, 7.7% had a gift register without a corresponding policy. In these circumstances, having a register has little point as without a related policy or procedures, the parameters by which gifts are to be declared, recorded and managed is unclear.

Authority	Both	Gift policy only	Gift register only	Neither	No response *	TOTAL
State public authority	103 (67.3%)	28 (18.3%)	5 (3.3%)	17 (3) (1.9%)	27	180
Local public authority	97 (80.2%)	4 (3.3%)	16 (13.2%)	4 (3.3%)	20	141
<b>TOTAL</b>	<b>200 (73.0%)</b>	<b>32 (11.7%)</b>	<b>21 (7.7%)</b>	<b>21 (7) (2.5%)</b>	<b>47</b>	<b>321</b>

\* Percentages have been calculated using the responses received (153 state government and 121 local government authorities, a total of 274 agencies).

**FIGURE ONE: GIFT POLICIES AND GIFT REGISTERS OF PUBLIC AUTHORITIES RECEIVED BY THE COMMISSION**

[204] The Commission found that the majority of local public authorities (80.2%) had both a gift policy and a gift register, as is required by legislation. Regulation 34B of the Local Government Regulations<sup>x</sup> establishes the core requirements of this gift policy and this was reflected in the gift policies (contained within the Codes of Conduct) of local public authorities. As there was little variation between the policies provided by local public authorities, one "standard" policy was included in the Commission's analysis with respect to local public authorities.

[205] There is no mandated requirement for state public authorities to have gift policies. Rather, such policies have developed at an individual, public

<sup>x</sup> See Appendix 4, *Regulation 34B of the Local Government (Administration) Regulations 1996*.

authority level, usually as a perceived need arises, or prompted by Codes of Conduct. Some consistency, albeit limited, was evident with respect to the structure and content of gift policies across the state sector. It is not clear why this was the case, however among the likely explanations is the practice of public authorities utilising the policies of other similar public authorities, when they are developing their own. In this regard, some policy similarities were found across the sector.

- [206] In light of the above, among the policies obtained by the Commission, a total of 25 variations of gift policies were identified. Those that were the same, or adapted to an authority from another authority, were analysed as one policy. In its comparative analysis, the Commission considered 25 variations or policy types in all. The subsequent analysis consisted of breaking down each of the policies into three broad areas – format, accountability and content. Within each of these areas were a number of elements against which the policies were assessed.
- [207] Based on the Commission's research into gift policies, 14 key elements or features were identified and were considered by the Commission to be of importance to a gift policy (see Figure Two). Nine of these elements were considered critical to an adequate policy. These elements, critical and other, provided the assessment tool and formed the basis against which the policies obtained were measured for "adequacy".

ELEMENT		Critical
<b>FORMAT</b>		
1	Location of the Policy	
2	Procedures and Guidelines	✓
3	Detail	✓
4	Definitions	✓
<b>ACCOUNTABILITY</b>		
5	Declaration Required If Receiving Gifts	✓
6	Gift Register	✓
7	Consequences of Breaching Policy	✓
<b>CONTENT</b>		
8	Minimum Monetary Value	
9	Relationship with Gift-Offerer/Gift-Giver	✓
10	Declining Gifts	✓
11	Disposal of Gifts	
12	Policy when Agency Gives Gifts	
13	Accumulation of Gifts	✓
14	Training <sup>146</sup>	

**FIGURE TWO: ELEMENTS OF GIFT POLICIES ANALYSED**

- [208] The 25 core gift policies, provided by public authorities and considered by the Commission, were assessed against the 14 elements identified in Figure Two. The complete results of this assessment appear in Figure Three.

POLICY	LOCATION OF POLICY	FORMAT ELEMENTS			ACCOUNTABILITY ELEMENTS			CONTENT ELEMENTS						
		PROCEDURES AND GUIDELINES	DETAIL	DEFINITIONS	DECLARATION REQUIRED	GIFT REGISTER	CONSEQUENCE OF BREACH	MINIMUM MONETARY VALUE	RELATIONSHIP WITH GIFT-GIVER	DECLINING GIFTS	GIFTS REDISTRIBUTED	GIFT GIVING	ACCUMULATION OF GIFTS	TRAINING
1	C	-	-	-	✓	-	-	\$50	✓	-	✓	-	-	-
2	S	✓	✓	-	✓	✓	✓	\$50	-	✓	✓	✓	-	✓
3	S	✓	-	✓	✓	✓	✓		✓	-	-	-	-	-
4	C	-	-	-	✓	-	-	Tkn	-	✓	-	-	-	-
5	S	✓	✓	-	✓	✓	-	Tkn	-	✓	✓	✓	-	✓
6	S	✓	-	-	✓	✓	-	\$50	-	-	✓	-	-	-
7	S	-	-	✓	✓	✓	-	\$20	✓	-	-	-	-	-
8	C	-	-	-	✓	-	-	\$50	✓	-	-	-	✓	-
9	S	✓	-	✓	-	-	-		-	-	-	-	-	-
10	S	-	-	-	✓	-	-	Ngbl	-	-	-	-	-	-
11	S	-	-	-	✓	-	-	Tkn	-	-	✓	-	-	-
12	C	-	-	-	✓	✓	-	\$30	-	-	-	-	-	-
13	S	✓	✓	✓	✓	✓	-	\$25	✓	✓	-	-	✓	-
14	S	✓	✓	✓	✓	✓	-	\$25	✓	-	-	-	-	-
15	S	✓	✓	✓	✓	✓	-	\$30	-	-	✓	-	-	-
16	C	-	-	-	✓	✓	-	\$30	✓	-	-	-	-	-
17	S	✓	✓	-	✓	✓	✓	\$50	-	-	-	✓	-	-
18	C	-	-	-	✓	-	-	Tkn	-	-	-	-	-	-
19	S	✓	✓	✓	✓	✓	✓	\$100	✓	✓	✓	✓	✓	-
20	S	✓	✓	-	✓	✓	✓	Tkn	-	✓	✓	✓	-	-
21	S	-	-	-	✓	✓	-	\$25	✓	-	-	-	-	-
22	C	-	-	-	✓	-	-	Tkn	✓	-	-	-	-	-
23	C	-	-	-	✓	-	-	\$25	✓	-	-	-	-	-
24	C	-	✓	✓	✓	✓	-	Tkn	✓	✓	-	-	-	-
25	C	-	-	✓	✓	✓	-	\$50	✓	-	-	-	✓	-

C = Code of Conduct

S = Stand alone

- = not included

Tkn = Token

✓ = included

Ngbl = Negligible

**FIGURE THREE: ANALYSIS MATRIX OF STATE AND LOCAL PUBLIC AUTHORITIES' GIFT POLICIES**

[209] The 25 policies were then rated according to the number of critical policy elements they contained (see Figure Four). Of the policies considered by the Commission in its analysis, the majority were assessed as “Poor”. Notwithstanding that the percentages of policies ranked from “Excellent” through to “Poor” relate only to the 25 policy variations considered, there is application to the wider sector.

Number of Critical Elements in Policy	Rating	Number of policies	Percentage of policies
8 or 9	Excellent	2	8.7%
6 or 7	Good	5	21.8%
5	Average	4	13.0%
1 to 4	Poor	14	56.5%
		25	100%

**FIGURE FOUR: NUMBER OF CRITICAL ELEMENTS PRESENT IN THE POLICIES EXAMINED**

## 4.4 Gift Policy Elements

### 4.4.1 Critical Policy Elements

[210] As noted already, for the purposes of its comparative analysis, certain policy elements were identified as critical factors to the overall adequacy of a gift policy. Those policy elements not identified as critical should nonetheless be regarded as important to a policy’s effectiveness. This report considers some of these elements in greater detail, and makes recommendations in regard to them, below.

#### 4.4.1.1 Procedures and Guidelines, and Detail

[211] Less than half (44%) of the gift policies analysed had procedures and guidelines included as part of the policy. Without detailed procedures and guidelines to support policy positions, the overall effectiveness of a policy is questionable. The Commission considered that in 64% of the policies examined, there was insufficient detail to provide adequate instructions to public officers about managing gifts. Some policies consisted only of a single paragraph or statement, without an explanation as to how the policy should be enacted.

[212] In these circumstances, the intent of public authorities in establishing these policies may have been valid and well intentioned, however without the corresponding detail in procedures or guidelines, there is difficulty in having those intentions realised.

[213] The Commission considers that in order to reduce the misconduct risks associated with gifts, particularly in the context of purchasing and procurement, it is important that state and local public authorities have mandatory gift policies in place. While it is recognised that such policies and procedures need to allow for and take account of the differences between authorities (differences in their size, the environment in which they operate and the work that they do), the core principles outlined in this report, should apply as a minimum.

#### **4.4.1.2 Definitions**

[214] The Commission found that only 36% of the 25 policies analysed, included definitions of major terms, and across those definitions there was limited consistency. Many of the policies made reference to “token” gifts, and placed monetary values on such gifts, but did not define the word “token”.

[215] Regulation 34B of the Local Government Regulations contains some definitions, including “notifiable” gifts; a gift or gifts received from the same person within a six month period of between \$50 and \$300, and “prohibited” gifts; a gift or gifts received from the same person within a six month period of more than \$300. The Regulation does not make provision for gifts under \$50 or “token” gifts, perhaps implying that any gift which is not notifiable or prohibited is therefore acceptable.

[216] Section 5.82 of the Local Government Act, and Regulation 25 of the Local Government Regulations, require certain designated employees and relevant persons to disclose to their Chief Executive Officer, as part of an annual return, certain gifts received. Although this Regulation applies only to certain officers (not including those who would typically have discretionary authority for purchasing) it is nonetheless noted that it does not require gifts under \$200 to be disclosed, and does not deal with the issue of multiple gifts received from a source over a period. Furthermore this Regulation again focuses on gifts received as opposed to offers of gifts. The limitations of the Regulation, in addition to the narrow definition of a gift provided for by the Local Government Act, does not take full account of the nature of attempted influence.

#### **4.4.1.3 Declaration Required if Receiving Gifts**

[217] All but one policy considered in the Commission’s analysis included a requirement to declare gifts that had been received. The system or method of declaration required in such circumstances varied between policies. For example some required a declaration to be made in writing on a gift register, whereas other policies did not say how the declaration was to be made. While the system or method by which a public officer is to declare a gift is important, the requirement to make a declaration is paramount.

[218] In making the observation above, the Commission notes the evidence it obtained in relation to the manner in which The Company provided gifts to public officers. The manner in which they were provided assisted in ensuring that the gifts were not easily detected, and could go undeclared. During the public examinations held, officers including Public Officer B, reported having

receiving gifts wrapped in black plastic, addressed to the officer by name, and marked “Private and Confidential”.<sup>147</sup> Public Officer A told the Commission that gifts from The Company were sent to her home address.<sup>148</sup>

[219] It was noted that with one exception, all of the gift policies and gift registers obtained and considered by the Commission were without secondary controls such as mandatory or regular audits. In such circumstances, the possibilities for, and mechanism by which, the public authority can possibly detect unacceptable gift-giving or receiving by public officers, is significantly diminished.

#### 4.4.1.4 Gift Register

[220] The use of the phrase “gift register” is not supported by the Commission, as it considers that the notion itself does not fully capture or describe the purpose of recording gifts. In terms of reducing misconduct risks, the recording of gifts offered but declined, is as important as recording gifts received. The notion of a “Gift Decisions Register” more accurately reflects the decision-making process undertaken by public officers when they are offered a gift.<sup>xi</sup> Importantly, it emphasises that it is gifts which are offered that are to be recorded, rather than just gifts accepted or received.

[221] The Commission’s analysis found that the majority (60%) of the gift policies examined required public officers to declare gifts on a gift register, but only one policy indicated that the register was to be audited. Of those policies that required officers to complete a register, 66% provided detail or guidelines on how to complete the register. The remaining policies did not provide what might be regarded as useable instruction to the public officer.

[222] One hundred and seventy-seven gift registers were provided to the Commission for analysis. They took a variety of formats. Some were spreadsheets, others were forms. Most registers had four standard elements – date, recipient, gift-giver and details or description of the gift.

[223] The registers were analysed in terms of their basic structure and the types of gifts recorded by them. In terms of their structure, Figure Five indicates the elements identified.

Element	Percentage of Registers Which Included Element	Element	Percentage of Registers Which Included Element
Date	99.4%	Comment	24.8%
Recipient	98.3%	Relationship with Gift-Giver	14.7%
Gift-Giver	94.9%	Disposal	28.2%
Details/ Description	97.7%	Authorisation/ Approval	23.7%
Estimate Value	84.7%		

**FIGURE FIVE: STRUCTURAL ELEMENTS IDENTIFIED IN GIFT REGISTERS ANALYSED**

<sup>xi</sup> Appendix 5 provides a proposed template for *Record of Gift Decisions Register*.

- [224] In relation to local public authorities, the Local Government Regulations state that their codes of conduct must require the Chief Executive Officer to maintain a gift register, although there is no stated requirement to audit the register, nor is an accountability mechanism recommended for gift policies. This is a significant oversight. Furthermore, under Regulation 34B(5), the recording of gifts on a register does not apply to gifts received from a relative (as defined in section 5.74(1) of the Local Government Act or an electoral gift (to which other disclosure provisions apply). The intent of, or reasoning behind, this exemption for gifts from a relative is unclear. From the Commission's perspective the statutory provisions do not adequately provide for the reduction of misconduct risks.
- [225] During the Commission's investigation, incidents of The Company providing gifts to public officers were cross referenced against the relevant public authority's gift register. The Commission found that the types of gifts involved varied, as did the actions of the public officers. However, in almost every case, it was found that the gifts provided by The Company were not recorded in a gift register, and managers/directors were not aware that individual employees had received any gifts. Public Officer C told the Commission that he accepted the gifts despite generally being aware of the policy toward gifts.<sup>149</sup>
- [226] The Commission investigation also found that where offers of gifts were made but refused, no record of the offer was made in the gift register or elsewhere. While the refusal of gifts may be considered a positive indication of the integrity of individual officers, that the offers went unrecorded represents a lost opportunity for the public authority in terms of detecting attempted improper influence or potential misconduct risks.

#### **4.4.1.5 Consequences of Breaching Policy**

- [227] Only 24% of the gift policies examined by the Commission articulated within the policy, the consequences for breaching it. The Commission found that where a policy was located within the code of conduct, the consequences of transgression were generally outlined in the context of the overall Code.
- [228] Through the Commission's public hearings it was revealed that even though some public officers generally knew it was against policy to accept gifts, few understood that in doing so, they could potentially be engaging in misconduct.
- [229] It is important that public officers are aware of and understand the potential consequences of accepting undeclared gifts. In addition to potentially breaching policy, the public officer is at risk of engaging in misconduct by accepting gifts. Furthermore, in certain circumstances, the public officer may also be committing a criminal offence. This should be articulated to public officers at a policy-level and reinforced through training. The issue of training is considered in more detail in section 4.4.2.4.

#### 4.4.1.6 Relationship with Gift-Offerer/Gift-Giver

[230] With respect to the management of gifts in a public sector context, it has been common practice within many public authorities, where policies relating to gifts exist, to allocate “token” values or a threshold to declaring gifts. This approach does not fully consider the relationship between gift-offerer/gift-giver and gift-recipient. In the Commission’s view, the first question that needs to be asked is: “What is the relationship between gift-offerer/gift-giver and gift-recipient?” There are three relevant answers to this question.

- (1) **A discretionary authority, such as purchasing discretion, exists between the gift-recipient and the gift-offerer/gift-giver.** In this relationship the possibility to directly influence the gift-recipient’s behaviour, to the advantage of the gift-offerer/gift-giver, exists and the question of misconduct therefore arises. The misconduct risk is not eliminated, or even significantly reduced, if the gift is below a certain monetary value, or is of token or negligible value.
- (2) **No direct discretionary authority exists between the gift-recipient and gift-offerer/gift-giver, however the receipt or offer of a gift to the gift-recipient, may indirectly influence the outcome of a discretionary decision made by another.** In this relationship the possibility to indirectly influence public officer behaviour, to the advantage of the gift-offerer/gift-giver exists, and therefore the question of misconduct arises. In these circumstances, where a discretionary decision is indirectly influenced, or may be seen to have been influenced, by the offer of a gift, the gift should be refused. The misconduct risk is not eliminated, or even significantly reduced, if the gift is below a certain monetary value, or is of token or negligible value.
- (3) **No discretionary authority exists between the gift-recipient and gift-offerer/gift-giver.** In this relationship there is no *direct* possibility to influence the gift-recipient’s behaviour to the advantage of the gift-offerer/gift-giver. The question of misconduct therefore is less likely to arise.

[231] Since purchasing decisions necessarily involve the exercise of some discretionary authority, the issue of the relationship between a potential gift-offerer/gift-giver and gift-recipient is readily apparent, and gifts should therefore be refused.

[232] This issue is to some extent recognised in the gift policies examined by the Commission. Of these, 32% of policies articulated that no gifts of any kind were to be accepted by officers in procurement positions. Almost half of the policies (52%) considered the relationships surrounding the offer of the gift, but only 10% of gift registers reflected this as an element.

[233] The Local Government Regulations indicate that in the case of a “notifiable” gift, the nature of the relationship between the employee and

gift-giver is to be recorded. However, as there is no legislated requirement for these details to be audited, and without these or any secondary controls in place, the likelihood of any improper behaviour being detected, is lessened.

#### **4.4.1.7 Declining Gifts**

- [234] The Western Australian ICG indicates in its *Gifts, benefits and hospitality* brochure, that preferably, gifts to public officers should be politely declined, unless to do so would cause offence. Where gifts are received, they must be declared.<sup>150</sup>
- [235] In order to reduce the misconduct risks associated with gifts to public officers, the Commission considers it critical to record the offer of a gift, not just gifts received or accepted. Not only does this give the public officer the opportunity to declare their actions, but it also provides the public authority the opportunity to identify any potential trends in gift-giving, or attempted gift-giving. By only recording gifts that have been accepted, important information and a true record of attempted influence of public officers, is lost.
- [236] As a result of its examination, the Commission observes that only 28% of the policies analysed considered the recording of declined gifts.
- [237] The Commission's view is that an appropriate place to record a gift-offer made to a public officer, is on the public authority's "Gift Decisions Register" (gift register). Furthermore, the same details need to be considered and recorded as for a gift accepted, including the relationship with the person/business offering the gift, whether the possibility to indirectly or directly influence a discretionary decision exists, and whether a direct discretionary authority exists.
- [238] A public authority that shifts the focus from gifts received to gift-offers, promotes the declining of gifts as the norm and builds this philosophy into its organisational culture, is more likely to gather an accurate register of attempted influence than an authority in which gift acceptance is tolerated or encouraged. As an indicator of misconduct risk, an audit of declined gifts would become a valuable tool for the public authority.

#### **4.4.1.8 Recommendation**

##### **Recommendation Four**

It is recommended that gift policies for state and local public authorities set out procedures and guidelines which, as a minimum, contain the core gift policy and record of gift decisions outlined in the Appendices of this report, including that:

- (a) records be made in response to gifts offered, as well as the decisions made in response to those offers;

- (b) records of gifts offered, and the decisions made in response to those offers, be audited on a regular basis; and
- (c) where there is the capacity for the offer of a gift to either directly or indirectly influence a discretionary decision, particularly in relation to purchasing decisions, the gift be declined.

#### **4.4.1.9 Accumulation of Gifts/Gift-Offers**

- [239] In terms of misconduct risks, the issue of the accumulation of gifts, or gift-offers, over time, needs to be considered. One gift may be considered acceptable according to a public authority's gift policy, but multiple gifts or gift-offers over a period of time, may indicate a trend and an emerging misconduct risk.
- [240] The Commission's analysis found that the issue of the accumulation of gifts was considered in 13% of the policies examined. This figure includes local government policies. Regulation 34B of the Local Government Regulations, which deals with codes of conduct, states that two or more gifts from the same person within a six month period are counted as the same gift value. However, Regulation 25, which deals with the requirement for certain specific officers to disclose gifts received for the purposes of annual returns to the Chief Executive Officer, does not take account of accumulation. Therefore there is an inconsistency between the two Regulations.
- [241] The Commission investigation revealed that The Company's sales tactics involved, or lead to, the accumulation of gifts by public officers. The Commission heard during its public hearings that The Company initially gave a series of small gifts for an order, and then followed with offers of more attractive gifts, such as a flat screen television, in return for orders of a higher value. Noting that individually, the gifts would not have raised suspicion under the gift policies in place at the time, when accumulated, the gifts indicated a relationship between the gift-offerers/gift-givers and gift-recipients, potentially involving misconduct.

#### **4.4.2 Other Policy Elements (Non-Critical)**

##### **4.4.2.1 Location of Policy**

- [242] As required by regulation, gift policies for local public authorities provided to the Commission were located within and as part of their codes of conduct. In relation to state public authorities, the majority (58.3%) of the gift policies examined were dedicated, stand-alone policies. One policy was located within a Conflict of Interest policy and 41.6% were located within the authority's code of conduct.
- [243] Unlike local government authorities, state government authorities are not required to include a section on "gifts" in their Codes of Conduct.<sup>151</sup> Codes

of Conduct are based on behaviours identified in the Western Australia Public Sector *Code of Ethics*. The *Code of Ethics* contains a series of guiding principles which define standards of behaviour including “personal integrity” and “accountability”. In line with the Public Sector Commissioner’s Circular 2009/08<sup>152</sup>, public authorities under the PSM Act are required to develop a code of conduct consistent with the *Code of Ethics*, setting out minimum standards of conduct and integrity.

[244] Within Codes of Conduct, gift management falls within “conflict of interest”. The Western Australian ICG<sup>153</sup> defines a conflict of interest as:

*a situation arising from conflict between the performance of public duty and private or personal interests. Conflicts of interest may be actual, or be perceived to exist, or potentially exist at some time in the future. Perception of a conflict of interest is important to consider because public confidence in the integrity of an organisation is vital.*<sup>154</sup>

[245] Although a policy framework is implied from the conflict of interest requirements in the code of conduct, the framework itself is not specific.

#### **4.4.2.2 Minimum Monetary Value**

[246] All but two of the gift policies examined by the Commission addressed the value of the gift as distinct from the circumstances in which the gift was given. Focussing on the value rather than the relationship between gift-offerer/gift-giver and recipient is, in the Commission’s opinion, seriously flawed. The approach appears to be based on a common assumption that the higher the value of the gift involved, the greater its potential to influence is, and therefore, the more inappropriate its acceptance becomes. This assumption is problematic in terms of reducing the misconduct risks associated with gifts.

[247] This assumption gives rise to gift policies which nominate a token value below which gifts are acceptable. The Commission’s analysis revealed that public authorities’ views of “token” gifts ranged in value from anything under \$25 to anything under \$100. With respect to the Local Government Regulations there was an inconsistent view of the monetary value thresholds of gifts between Codes of Conduct and annual returns (even accounting for the different types of officers to whom the Regulations apply).

#### **4.4.2.3 Disposal of Gifts**

[248] Of the policies analysed by the Commission, 32% percent considered how accepted gifts should be distributed or disposed of. Some indicated that gifts would be provided to charities. The Commission’s position is that policies need to reflect how gifts will be distributed or allocated, if accepted at all. It is open to an authority to require that all declared gifts become the property of the authority and not the recipient. However, as a non-critical element, the Commission proposes that agencies determine how gifts will be distributed to suit the unique make-up of individual agencies,

provided consideration is given to the relationship between gift-offerer/gift-giver and gift-recipient.

#### **4.4.2.4 Training**

[249] Appropriate and effective training is vital to ensure that any policy is understood and adhered to. Reinforcing particular policy positions through training, gives more weight and credibility to the policy issue, and misconduct risks are reduced.

[250] The consequence of policies not being supported by, and reinforced through, the effective training of officers, was apparent during the public hearings conducted by the Commission. The evidence heard during the hearings revealed that often, when training had been provided to the public officers involved, it was not sufficient and officers were not equipped to apply the relevant policies to their work.

[251] For example, when speaking about her knowledge of CUAs, Public Officer A said her training had been limited. She said

*I have heard of the CUA but I haven't had any official training of where to look that up or anything like that.*<sup>155</sup>

[252] During the Commission's public hearings, the evidence of several public officers was that they believed there to be an "agreement" or binding "contract" in place for The Company to supply toner cartridges to them. Public Officer E told the Commission that an officer in her organisation had signed what was believed to be a contract with The Company.<sup>156</sup> When The Company was queried, the officer was told that they "were committed to this contract" and consequently the public authority honoured it by purchasing toner cartridges.<sup>157</sup>

[253] The Commission notes that the public officers involved in these matters appeared to have little understanding of the nature of legally enforceable contracts, particularly in terms of the requirements and obligations in regards to them. It is important that public officers with discretionary authority or a purchasing and procurement role in particular have an understanding of this. This is a matter that should be appropriately addressed through training.

[254] In the Commission's opinion, for training to be effective it needs to be simple, practical and reinforced. Rather than simply providing training at the point of induction, public authorities need to update public officers' knowledge in the context of their day-to-day work. The elements which the Commission considers should be covered in such training include:

- the nature of discretionary authority by public officers, particularly purchasing discretion;
- the requirements and obligations in regard to legally enforceable contracts;
- the nature of implied obligations contained in gifts;

- the importance of the relationship between gift-offerer/gift-giver and gift-recipient;
- the system used within the individual agency to deal with gifts and gift-offers; and
- where the public officer can go for assistance and advice.

#### 4.4.2.5 Recommendation

##### Recommendation Five

It is recommended that state and local public authorities provide regular refresher training to officers, particularly those exercising discretionary authority. This training might augment existing induction, procurement or ethics training programs. This training is however to include relevant policies and purchasing arrangements, and should include information on the requirements and obligations in regard to legally enforceable contracts.

#### 4.5 Gift Policy – Australia, Canada and New Zealand

[255] Examples of gift policies and Codes of Conduct in other states, Canada and New Zealand were compared to Western Australia. Only Queensland and New South Wales offered what were, in the Commission's estimation, more comprehensive Codes of Conduct than Western Australia.

[256] Indicative of a New Zealand policy, the Councillor's Code of Conduct for New Plymouth permits the receipt of a gift or benefit if the nominal value is less than \$75(NZ). It also states that gifts over this nominal value should be disclosed and included in the publicly available gifts and benefits register.<sup>158</sup>

[257] The Canadian Office of the Ethics Counsellor allows a public officer to accept any gift, hospitality or other benefit of a value of \$200(CAN) or less from any one source in a 12-month period and does not require the gift to be disclosed. However, the public officer is required to notify the Ethics Counsellor and make a public declaration that provides sufficient detail to identify the gift, hospitality or other benefit received, the donor, and the circumstances when the gift or benefit exceeds the nominal figure.<sup>159</sup>

[258] The *Public Sector Ethics Act 1994*<sup>160</sup> in Queensland and the *Public Sector Employment and Management Act 2002*<sup>161</sup> in New South Wales provide the basis for a Code of Ethics in these states.

[259] As for Western Australian state public authorities, an agency-specific code of conduct is formed within the guidelines set out in the Code of Ethics. The general recommendation set out in these Codes of Conduct is that public officials should not solicit nor accept gifts in an official capacity.

- [260] Queensland Treasury's "Gifts and Benefits Policy" requires that all gifts, given or received, other than tokens or mementos, must constitute a clear benefit to the agency and to the general public. Any gift or benefit must be declared in the "Gifts and Benefits Register" if its fair market value is deemed to be in excess of \$100.<sup>162</sup>
- [261] In the Code of Conduct of the Queensland Department of the Premier and Cabinet, employees are required to advise their manager in writing of their intent to receive gifts or benefits regardless of their fiscal value. If the gift or benefit is deemed significant, that is, the fair market value is between \$50 and \$250, the manager's decision to accept or reject should be documented in a gift register.<sup>163</sup>
- [262] The New South Wales Office of Finance Management Code of Conduct permits the receipt of token gifts or benefits if their receipt is seen to not compromise the public official or the Office of Finance Management.<sup>164</sup>
- [263] The New South Wales Attorney General's Department Code of Conduct permits token or inconsequential gifts for receipt by public officials. The code also states that a gift and benefits register should be maintained to record all gifts or benefits and whether or not employees are allowed to retain them.<sup>165</sup>
- [264] The principles which the Commission considers should be incorporated into a Gift Decisions Register and gift policy are outlined in Appendix Five *Suggested Format for A Gift Decisions Register* and Appendix Six *Suggested Gift Policy Elements*. The Commission proposes that the principles should inform public authorities in developing their gift policies and recording mechanisms. Public authorities should apply these principles to their particular circumstances. In this regard the Commission has provided a suggested format which may assist.

#### 4.5.1 Recommendation

##### **Recommendation Six**

It is recommended that state and local public authorities review their existing gift policies and registers in light of the principles outlined in Appendix Five *Suggested Format for a Gift Decisions Register* and Appendix Six *Suggested Gift Policy Elements*.

- [265] The Local Government Act and Regulations, in particular Regulation 25 and Regulation 34B, as they relate to the disclosure, acceptance and recording of gifts, are inconsistent with the Commission's recommended position and approach. Notwithstanding that section 5.82 of the Local Government Act and Regulation 25 relate to certain designated employees and relevant persons, who typically are not the particular officers or sorts of employees this report is dealing with, there is inconsistency between the statutory framework and the approach recommended by the report. In the Commission's opinion the current

framework reflects a way of thinking about, and approach to, gifts and misconduct risk which no longer holds sway. To this end, review and amendment of the Local Government Regulations and/or the Local Government Act is needed.

#### **4.5.2 Recommendation**

##### **Recommendation Seven**

It is recommended that the Local Government Regulations, and/or Local Government Act, be reviewed and amended to reflect a position consistent with the intent and recommendations of this report. To the extent that they are inconsistent, particularly in terms of the requirement for auditing of gift registers, gifts from relatives, “notifiable” and “prohibited” gifts, and monetary thresholds, it is recommended that they be amended.

## CHAPTER FIVE CONCLUSION

- [266] The Commission's investigation and subsequent research into the purchase of toner cartridges from The Company by state and local public authorities, outside CUA and other procurement policies, and the receipt of gifts and benefits by public officers as a consequence of their purchasing activities, identified a number of issues with implications for the state and local government sectors.
- [267] The purchase of goods from companies not provided for by procurement policies or arrangements, by public authorities, can result in the supply of goods which are inconsistently or excessively priced, and/or do not meet the standards at which they are marketed and sold. This can have repercussions for the efficient and economic operations of public authorities and Government.
- [268] Evidence obtained by the Commission was that toner cartridges purchased by public officers through The Company were often significantly more expensive than those available from other suppliers, through approved supply policies and arrangements. With respect to the quality of the goods purchased, the Commission obtained evidence that they did not meet the standards at which they were marketed and sold, and were inferior.
- [269] The Commission's investigation identified that had the toner cartridges purchased from The Company been purchased through the CUA or Preferred Suppliers program, \$415,000 less would have been expended. This does not take account of unnecessary toner cartridges purchased. This involved a total of 25 state and local public authorities.
- [270] The Commission's investigation found that public officers often received personal benefits and gifts as a consequence of their purchasing activities with The Company. Public officers received cash cards, gift vouchers, LCD televisions, coffee machines, digital cameras and/or other items in connection with their purchases of toner cartridges from The Company. The value of the gifts increased in accordance with the value of the order placed by the public officer.
- [271] Incidents of public officers transgressing procurement or gift policies in circumstances such as those examined by the Commission, may go undetected when systems are inadequate and/or accountability mechanisms do not exist. A risk for public authorities is the level to which public officers are able to make substantial credit card, and other purchases, without appropriate oversight or accountabilities. These vulnerabilities may be exploited either by public officers or unscrupulous, or determined and assertive, sales companies.
- [272] Less than robust procurement and gift policies and practices, or less than rigorous adherence to them, leaves public authorities and public officers susceptible to the risk of misconduct occurring, particularly when faced

with sales techniques and strategies such as those employed by The Company. The Commission found that purchasing officers, typically junior, lower-level officers, were often given the discretion to make significant purchases, but lacked the experience and training needed, particularly to deal with the sales strategies of The Company. Furthermore, accountability and oversight mechanisms were either not in place, or were not sufficient, to detect the apparent risks of the conduct that occurred.

- [273] With respect to misconduct risks, public authorities tend to focus often on the monetary value of an offered gift. This is a secondary issue. The primary issue which gives rise to misconduct risks is the nature of the relationship between the gift-offerer/gift-giver and gift-receiver. When this relationship involves discretionary authority on the part of the gift receiver, or someone over whom the gift receiver has influence, offering or accepting gifts generates the possibility of misconduct occurring.
- [274] Generally, the existing gift policies, gift register arrangements and accountability mechanisms for public authorities considered by the Commission, did not sufficiently address the misconduct risks associated with the inappropriate offering, and/or acceptance, of gifts, by public officers, particularly for those public officers who have the authority to make purchases and purchasing decisions.
- [275] Notwithstanding the Local Government Regulations for Codes of Conduct, and despite the significant misconduct risks posed by gifts, there is no mandatory and consistent whole of government requirement for, or approach to, the management of decisions made by public officers in the performance of their duties. Responsibility for regulating and monitoring this high risk area resides with individual public authorities.
- [276] The Commission identified that 25 gift policies covered all state and local public authorities, one of which covered local public authorities. Commission analysis of the critical elements of the policies revealed that:
  - 8.7% were “excellent”;
  - 21.8% were “good”;
  - 13.0% were “average”; and
  - 56.5% were “poor”.
- [277] This analysis demonstrates that misconduct risks associated with gift decisions were not well managed in the Western Australian State and local government public sectors.
- [278] Through its research into the area the Commission noted, with respect to those gift registers and systems used by public authorities to record gifts, that the focus tended to be on gifts accepted rather than gifts offered and/or declined. A register which includes the requirement to record gift-offers, as well as gifts declined or accepted, shifts this focus and provides the opportunity to build an organisational culture of non-acceptance of

gifts. The preferred name for this type of register is “Gift Decisions Register”. This approach to gifts more accurately reflects the nature of the decision-making process when a public officer is offered a gift. Regular audits of Gift Decision Registers may reveal important patterns in gift-offering and gift-receipt.

### **Recommendation One**

It is recommended that state and local public authorities ensure adherence to procurement and supply policies and arrangements by having in place robust policies, procedures, training and accountability mechanisms, which take account of the misconduct risks associated with procurement.

### **Recommendation Two**

It is recommended that state and local public authorities reinforce the systems in place to ensure that before a purchase order or credit card purchase is authorised, the purchase is in accordance with the relevant purchasing policy or purchasing arrangement.

### **Recommendation Three**

It is recommended that the Department of Finance consider a more structured approach to informing public authorities of electronic management services and credit card search facilitates, such as FlexiPurchase, offered by financial institutions that may assist them in ensuring accountability and effective controls with respect to government purchasing.

### **Recommendation Four**

It is recommended that gift policies for state and local public authorities set out procedures and guidelines which, as a minimum, contain the core gift policy and record of gift decisions outlined in the Appendices of this report, including that:

- (d) records be made in response to gifts offered, as well as the decisions made in response to those offers;
- (e) records of gifts offered, and the decisions made in response to those offers, be audited on a regular basis; and

(f) where there is the capacity for the offer of a gift to either directly or indirectly influence a discretionary decision, particularly in relation to purchasing decisions, the gift be declined.

### **Recommendation Five**

It is recommended that state and local public authorities provide regular refresher training to officers, particularly those exercising discretionary authority. This training might augment existing induction, procurement or ethics training programs. This training is however to include relevant policies and purchasing arrangements, and should include information on the requirements and obligations in regard to legally enforceable contracts.

### **Recommendation Six**

It is recommended that state and local public authorities review their existing gift policies and registers in light of the principles outlined in Appendix Five *Suggested Format for a Gift Decisions Register* and Appendix Six *Suggested Gift Policy Elements*.

### **Recommendation Seven**

It is recommended that the Local Government Regulations, and/or Local Government Act, be reviewed and amended to reflect a position consistent with the intent and recommendations of this report. To the extent that they are inconsistent, particularly in terms of the requirement for auditing of gift registers, gifts from relatives, "notifiable" and "prohibited" gifts, and monetary thresholds, it is recommended that they be amended.

## **APPENDICES**



## **APPENDIX 1**

### **Portions of the Common Use Agreement for Business Machine Consumables**





## Department of Treasury and Finance Government of Western Australia

### VERSION NUMBER OF DOCUMENT

Current at 10<sup>th</sup> July 2008

### CONTRACT DESCRIPTION

- Business Machine Consumables manufactured by various manufacturers, including but not limited to toner cartridges, printer cartridges and any consumables that form part of the business machines. Original, substitute and recycled products may all be offered under this panel on a discount arrangement.

### MANDATORY/NON MANDATORY

This is a **mandatory** contract for State Government Agencies only, unless an exemption is given in writing from the Department of Treasury and Finance. Contact the Contract Manager.

### WHO CAN USE THIS CONTRACT?

All Public Authorities as defined in the State Supply Commission Act 1991 and organisations approved by the State Supply Commission.

### CONTRACT TERM

The Common Use Arrangement commenced on 1 September 2002 and expires 31 October 2008.

Contractors and/or their authorized dealers may be added or removed from time to time, so it is important to make sure you have the most up to date version of the Buyers Guide. Find a current copy at: [www.ogp.wa.gov.au](http://www.ogp.wa.gov.au)

### BUYING RULES

- Direct purchase up to \$1,000 requiring only one quote.
- Obtain sufficient number of verbal quotes from the panel members for purchases between \$1,001 and \$19,999.
- Obtain sufficient number of written quotations from the panel members for purchases between \$20,000 and \$99,999.
- Call restricted quotations to all panel members for purchases valued at \$100,000 and above.

**The use of Common Use Contracts does not permit Agencies to exceed their SSC Partial Exemption.**

Request for quotation documentation shall include appropriate specifications and selection criteria. (See also, Attachment D - "Default Operational Specifications")

**Buying decisions** should be based on the total cost of the product over its service life, considering factors such as quality, service standards, timely delivery, local back-up, benefits, risks, social impact and industry development potential.

Quotations received should be evaluated for 'Value for Money' in terms of:

- Compliance to technical specification such as warranty requirements, uniformity of components for specific batch of order, upgradability;
- Performance factors such as technical capabilities;
- Capacity to meet service needs such as extent of local support, effectiveness of support, turnaround time for products under repair, familiarity with agency's environment, maintenance call logging; and
- Ability to deliver such as delivery schedule, availability of spares, track record of dealer.

The weighting attached to the above criteria will depend on each agency's circumstances.

Following the acceptance of a tender/quotation and notification to the successful tenderer, all other tenderers should be notified that their offers have been unsuccessful. The formal notice must also advise that further feedback is available on request concerning:

- the reasons their bid was unsuccessful; and
- any value for money considerations involved in the decision.

Post-tender briefings must be provided on request to ensure the integrity and probity of the process and enhance unsuccessful tenderers' ability to secure future government contracts. A tenderer whose offer has been rejected for reasons other than price must be provided with salient reasons for rejection. It is important that the debriefing be as open and frank as possible and address areas where the unsuccessful tenderer could have improved their offer. This should not include a comparison with the other tenderer's performance.

If the order you place is for \$20,000 or more you are no longer required to publish it on the WA Government Contracting Information Bulletin Board.

#### **PAYMENT**

The Customer will pay the accounts within 30 days of the date of Acceptance or invoice, whichever is the later.

No surcharges can be added to the tendered price for Corporate Credit Card payments.

#### **LOCATING CUA INFORMATION AND BUYING ONLINE**

The options available to you to view CUA details, including contracted prices, and to buy online will depend on the procurement system in use within your Public Authority. Systems available to you could include Oracle or SAP.

If your Public Authority has no dedicated online procurement system, or uses a system other than through Office of Shared Services, you may need to access CUA information on the OGP website at [www.ogp.wa.gov.au](http://www.ogp.wa.gov.au). Click on the Buyers Guide link for a list of all Buyers Guides and associated contract documentation. The Government Contract Directory ebook is also available on the OGP website and provides an overview of all CUAs. A Directory ebook tailored for schools is also available.

If your Public Authority uses the Office of Shared Services Oracle system, you can view CUA information using Oracle iProcurement. Click on the Whole of Government Store, browse the contracts and click on the title of the CUA. Alternatively you can search by contracted item or CUA title.

If you experience any difficulties locating CUA information, please call the Service Centre on 9222 5468 or 1800 22 5468 for regional buyers. Alternatively you may wish to email [gem@dfi.wa.gov.au](mailto:gem@dfi.wa.gov.au).

#### **RELATED CONTRACTS**

Photocopiers and Multifunctional Devices	8504a
Printers and Scanners incl. Plotters	8504b
Facsimile Machines	8504c

#### **CONTRACT MANAGER CONTACT DETAILS**

If you have any questions relating to the operation of the contract, please contact:

[REDACTED] **Contract Manager**  
ICT Sourcing  
Dept of Treasury and Finance  
8<sup>th</sup> Floor, Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Telephone: 9222 5053  
Facsimile: 9481 0785  
Email: [REDACTED]@dtf.wa.gov.au

#### **CONTRACT REVIEW DATE**

Contract reviews will be held periodically and coordinated by the Common Use Contracts Branch. The aims of these meetings are to:

- assess Contractor performance;
- assess customer satisfaction;
- include new Contractors/Dealers; and
- terminate/reinstate Contractors.

#### **APPENDIX A – THE BUYING PROCESS**

The best Government Prices have been guaranteed under this Common Use Contract. However, you need to confirm the price with the Contractor or its authorised dealer to identify the options available before raising your Official Order.

Purchasing through this Common Use Arrangement (an established procurement framework) enables government agencies to take advantage of the guaranteed manufacturer's discounts and minimize any risks in procurement.

The steps are:

1. Get approval from your CEO (or nominated delegate) for the purchase;
2. Seek competitive quotes from the dealers in Attachment B of the Buyers Guide;
3. Quote the contract number CT000302F to ensure that you get the offered discounts; and
4. Place an Official Order with the chosen Distributor. Please quote the contract number on all orders to facilitate the contractor's administration.

Where a dealer is used, the Customer will order products and pay accounts directly to the dealer where so instructed.

Before placing your order make sure you check that the Contractor/dealer is listed in the Buyers Guide to ensure that you get the discounts offered.

## **APPENDIX B – OFFICIAL ORDER FORM**

Please use your agency's Official Order Form when placing an order and ensure you quote contract number CT000302F. The normal order form should normally suffice for ordering business machine consumables.

## **APPENDIX C – FREQUENTLY ASKED QUESTIONS**

### **1. WHAT IS THE PERIOD OF THIS CUA?**

This CUA commenced on 1 September 2002 and expires 31 October 2008.

Contractors and /or their authorised dealers may be added or removed from time to time so it is important to make sure you have the most up to date version of the Buyers Guide.

Find a current copy at: [www.ogp.wa.gov.au](http://www.ogp.wa.gov.au)

### **2. DOES THE CUA CONTAIN PRICES?**

No. However, the best prices are guaranteed by the respective Contractors.

### **3. WHAT ARE THE DELIVERY COSTS?**

Delivery is free to any nominated delivery point located within the Perth Metropolitan Area (as defined by the State Planning Commission) and within 50 km from the Contractor's agent, supplying the products and services.

The Contractor will include a 'per kilometre' charge at which travel costs may be charged for service and maintenance beyond 50km radius. The Contractor must show the cost for country delivery separately on any quotation.

### **4. DO I NEED TO TEST THE PRODUCT?**

You have responsibility to ensure that the product is suitable for use in your agency.

The Contractor is obligated to ensure that any Business Machine Consumable supplied shall substantially conform to current applicable specifications in respect of the Business Machine Consumable published generally by the Contractor. Acceptance tests may be carried out by your agency to demonstrate that the product complies with the specifications or to determine comparative performance.

The Contractor or its authorised dealer may be contacted to provide technical brochures, user manuals and documentation certifying compliance with standards and specifications with all products delivered.

### **5. AM I REQUIRED TO SIGN THE SUPPLIER'S CONTRACT?**

No. The Contractor has agreed to the GITC3 – Western Australia as provided for this Common Use Arrangement. GITC3 –Western Australia should not be varied in the Contract Details without a legal understanding of the impact. Please seek advice from your solicitor if you are in doubt.

#### **5.1 Further Note**

GITC is by its very nature, "general" provisions. The Contract Terms and Conditions are based on GITC3, and this requires that the agency will set out the specific requirements pertaining to the particular acquisition of products and related services in their Contract Details. If an agency is not fully conversant with the GITC and the technical nature of the acquisition of product and related services, it is highly recommended that legal and technical advice be sought.

**6. WHAT DO I DO IF THE PRODUCT I WANT TO PURCHASE IS NOT COVERED BY THIS CUA?**

This is extremely unlikely to happen as whole ranges of manufacturers products are supplied by many of the Contractors on this panel. Should a product be so special that it is not covered by this CUA, then call quotes in accordance with State Supply Commission guidelines.

**7. WHAT IS THE WARRANTY PERIOD AND WHAT DOES IT COVER?**

**7.1 Product Warranty**

Warranty is as per the provisions in GITC3 – Western Australia with a default warranty period of 12 months.

**7.2 General Warranty (e.g. services, etc)**

The warranty in respect of the Services shall be one (1) year. All costs related to the Service(s) are to be borne by the Contractor unless otherwise agreed by the Customer.

**8. DO I HAVE TO ACCEPT A DELIVERED PRODUCT?**

Business Machine Consumables supplied by the Contractor pursuant to this Agreement shall substantially conform to current applicable specifications in respect of the Business Machine Consumable machines published generally by the Business Machine Consumable manufacturer.

If the Business Machine Consumable that you have purchased does not meet the above, the Contractor shall be responsible for effecting / arranging to effect any repairs and modifications necessary to meet the requirements of the specification.

If you are still not satisfied with the product, you may request a replacement product be supplied. Any expense incurred by the Contractor while attempting to rectify faults at the time of product acceptance shall be borne by the Contractor.

**9. HOW DO I KNOW WHAT TO BUY?**

Technical advice on your Business Machine Consumable requirements should be sought from within your organisation specialists.

**10. IS THERE A CUA REVIEW PROCESS?**

CUA reviews will be held periodically and coordinated by Common Use Contracts Branch. The aims of these meetings are to:

- o assess Contractor performance;
- o assess customer satisfaction;
- o include new Contractors/dealers; and
- o terminate/reinstate Contractors.

Any input from Agencies is welcome.

**12. HOW LONG WILL CONSUMABLES BE AVAILABLE?**

The Contractor shall maintain full stocks of replacement parts to service/repair the Products supplied under this Head Agreement for a minimum of (3) years after the discontinuation of a model.

**13. WHAT IS TOTAL COST OF OWNERSHIP (TCO)?**

TCO is a holistic view of costs across enterprise boundaries over time, including information and communications costs. It looks at all aspects involved in the lifecycle, providing the tool to assess and manage the cost impact of changes in technology, implementation and support strategies.

**14. RESERVED**

**15. HOW DO I EVALUATE BIDS FROM REGIONAL SUPPLIERS?**

There is an outstanding obligation in regard to the application of the Buy Local Policy by agencies when evaluating regional bids.

Refer to the SSC website at [www.ssc.wa.gov.au](http://www.ssc.wa.gov.au) for details of how to apply the Buy Local Policy.

**16. AM I ALLOWED TO USE RECYCLED / SUBSTITUTE PRODUCTS?**

If you make a conscious decision to use a substitute or recycled product, the Contractor shall not void any warranty in respect of the Products supplied as a result of the Customer using recycled or substitute consumables. In the event that a defect is the result of the use of a recycled or substitute consumable, then the Customer will address the problem with the supplier of the recycled or substitute consumable to rectify the defect.

**17. WHAT WARRANTIES DO I GET FROM RECYCLED / SUBSTITUTE PRODUCTS CONTRACTORS?**

The contractor will guarantee that the recycled or substitute product(s) offered to Customer(s) are compatible with and will not cause damage to the Customer(s) business machine(s).

The contractor will repair the Customer's business machine to manufacturer's specifications and be responsible for all incidental costs in the event that the supplied recycled or substitute products cause damage to the Customer's business machine(s).

**APPENDIX D – RECOMMENDED IMPROVEMENTS**

Please forward any recommendations for improvements to the Contract Manager:

**APPENDIX E – CONTRACTOR PERFORMANCE REVIEW FORM**

The form in Attachment C is to be used to record the Contractor's performance during the contract period and for forwarding to the Contract Manager. Note that the form provides for both complimentary feedback and complaint resolution considerations.

**Complimentary Feedback**

On the majority of occasions, Contractors supply acceptable goods and/or services however, these outcomes are rarely formally recorded. The opportunity now exists to recognise these Contractors by completing the form and forwarding it to the Contract Manager. In this way, an ongoing record can be maintained of a Contractor's performance as opposed to having intermittent reviews eg when a contract may be being considered for an extension.

**Complaint Resolution**

If an agency is dissatisfied with the goods and/or service provided by the Contractor or has any specific concerns, these should be discussed in the first instance directly with the Contractor.

Please record any complaints in writing including the following details:

- o Nature of the complaint;
- o When the complaint was made;
- o To whom the complaint was made;
- o The issues involved;
- o The contractor's response; and
- o Any other relevant details.

This information will be required if the Contract Manager is to take action under the contract. The Contract Authority is keen to ensure that every Contractor provides a satisfactory level of service. Please do not hesitate to contact the Contract Manager if this is not the case.

The Contract Manager should be advised if the problem or issue is not resolved to your satisfaction through the completion and forwarding of the "Contractor's Performance Review" form. (Attachment C)

#### **APPENDIX F – GENERAL BENEFITS OF COMMON USE BUYING**

The general benefits of common use buying are as follows:

- The Contract Authority has negotiated a set of terms and conditions with a panel of pre-qualified, highly competitive and suitably qualified service providers;
- With pre-agreed contractual terms and conditions, government agencies and service providers can concentrate on the specific aspects of their service requirements;
- Reduced timeframes for agencies when calling quotations/tenders;
- Flexibility to address requirements that might be unique to an agency;
- Standard General Conditions of Contract re GST, indemnity, insurance, termination, breach, etc;
- A Contractor Performance Process has been outlined for agency use;
- Ease of use by agency staff members; and
- Trade in provisions are offered by some manufacturers.

#### **APPENDIX G – SPECIFIC BENEFITS FOR THIS CONTRACT**

The use of this CUA offers you substantial benefits as follows:

- Best Government Prices have been sought both at the time of tender and over the life of the CUA;
- Reduces procurement costs for government;
- Protecting Government with an agreed legal framework and standardised structure for agencies to procure Business Machine Consumables; and
- Time savings in procuring Business Machine Consumables.

#### **Selection of Contractors**

All contractors have undergone an evaluation process to establish their ability to meet the requirement of this contract. Contractors are selected and evaluated on a variety of selection criteria including:

- Compliance with contractual conditions and technical specifications;
- Meeting relevant Western Australian Government procurement policies;
- Meeting Quality Assurance criteria;
- Financial capacity;
- Relevant experience and demonstrate track record in delivering services in each of the nominated areas (including Government and industry experience);
- Proven capacity to provide a continuity of service and qualified staff during the term of the contract; and
- Skills, qualifications and expertise of staff.



## **APPENDIX 2**

### **Overview of Gifts Received by Public Officers from The Company**



Local Public Authorities	
Item	Total
Store Voucher \$5 Coles New World	8
Store Voucher \$20 Coles New World	6
Store Voucher \$20 Liquorland	11
Store Voucher \$50 Liquorland	14
Store Voucher \$100 Visa Pre-paid Card	2
Store Voucher \$50 JB HIFI	1
Store Voucher \$50 Coles Myer	13
Store Voucher \$25 Myer	1
Store Voucher \$25 BP Prepaid Card	4
Store Voucher \$50 Bunnings	2
Store Voucher \$20 Prouds the Jeweller	2
Store Voucher \$5 Target	1
Store Voucher \$25 Target	1
Store Voucher - JB HIFI \$50	1
Movie Passes 2 Pack	7
Apple Ipod Shuffle 512MB	1
Apple Ipod Nano 4GB	1
I-Tunes Voucher \$20 Voucher with goods	1
Digital Camera 6.0MP	1
Digital Camcorder	5
TV-Digitor 43CM Flat Panel LCD	1
Organiser	1
Memory Stick 256MB Secure Digital (SD)	1
DVD Recorder-LP Digital	1

State Public Authorities	
Item	Total
Movie Passes 2 Pack	31
Store Voucher \$5 Coles New World	2
Store Voucher \$20 Liquorland	35
Store Voucher Liquorland \$50	8
Store Voucher \$100 Visa Pre-paid Card	27
Store Voucher \$50 Coles Myer	3
Store Voucher \$25 Myer	2
Store Voucher - Myer \$100	2
Store Voucher \$25 BP Prepaid Card	5
Store Voucher \$20 Prouds the Jeweller	2
Store Voucher \$5 Target	1
Store Voucher \$20 Target	70
Store Voucher \$50 Target	5
Store Voucher - Safeway \$20	10
Store Voucher - Safeway \$50	9
Store Voucher - Kmart \$20	16
Store Voucher - Kmart \$50	6
Store Voucher Retravision \$20	2
Store Voucher Retravision \$50	2
Store Voucher - Drummond Golf \$50	6
Store Voucher - JB HIFI \$50	1
Store Voucher - JB HIFI \$20	2
Store Voucher - Angus & Robertson \$20	1
Store Voucher - Harvey Norman \$100	20
Store Voucher - Bunnings \$20	1
Apple Ipod Shuffle 1GB	1
Digital Camera 12MP	1
Digital Camera-Brand	1
Digital Camera-Canon A470	1
Digital Camcorder	5
TV-LP Digital 19" LCD	1
Memory Stick 256MB Secure Digital (SD)	1
Memory Stick 1GB Secure Digital (SD)	2
Sunbeam Café Ristretto Espresso Maker	3
MP4 Player-2GB	4
MP3 Player 1GB	1
Perfume-Britney Spears Fantasy 50ML	1
GPS Navigator-Brand Name	1
Microsoft X Box 360	1

	Vouchers	Electrical Goods	Other	Total
State	269	20	4	293
Local	74	12	1	87
Total	343	32	5	380



## **APPENDIX 3**

### **Photographs of Toner Cartridge Supplies (Case Study Seven, Public Officer G)**











## APPENDIX 4

**Regulation 34B: *Local Government (Administration) Regulations 1996***



# **Local Government (Administration) Regulations 1996**

## **Regulation 34B:**

### **34B. Codes of conduct (gifts) — s. 5.103(3)**

(1) *In this regulation —*

**activity involving a local government discretion** means an activity —

(a) *that cannot be undertaken without an authorisation from the local government; or*

(b) *by way of a commercial dealing with the local government;*

**gift** has the meaning given to that term in section 5.82(4) except that it does not include —

(a) *a gift from a relative as defined in section 5.74(1); or*

(b) *a gift that must be disclosed under regulation 30B of the Local Government (Elections) Regulations 1997; or*

(c) *a gift from a statutory authority, government instrumentality or non-profit association for professional training;*

**notifiable gift**, in relation to a person who is an employee, means —

(a) *a gift worth between \$50 and \$300; or*

(b) *a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth between \$50 and \$300;*

**prohibited gift**, in relation to a person who is an employee, means —

(a) *a gift worth \$300 or more; or*

(b) *a gift that is one of 2 or more gifts given to the employee by the same person within a period of 6 months that are in total worth \$300 or more.*

(2) *A code of conduct is to contain a requirement that a person who is an employee refrain from accepting a prohibited gift from a person who —*

(a) *is undertaking or seeking to undertake an activity involving a local government discretion; or*

(b) *it is reasonable to believe is intending to undertake an activity involving a local government discretion.*

(3) *A code of conduct is to contain a requirement that a person who is an employee and who accepts a notifiable gift from a person who —*

(a) *is undertaking or seeking to undertake an activity involving a local government discretion; or*

(b) *it is reasonable to believe is intending to undertake an activity involving a local government discretion,*  
*notify the CEO, in accordance with subregulation (4) and within 10 days of accepting the gift, of the acceptance.*

(4) *A code of conduct is to require that the notification of the acceptance of a notifiable gift be in writing and include —*

- (a) *the name of the person who gave the gift; and*
- (b) *the date on which the gift was accepted; and*
- (c) *a description, and the estimated value, of the gift; and*
- (d) *the nature of the relationship between the person who is an employee and the person who gave the gift; and*
- (e) *if the gift is a notifiable gift under paragraph (b) of the definition of “notifiable gift” in subregulation (1) (whether or not it is also a notifiable gift under paragraph (a) of that definition) —*
  - (i) *a description; and*
  - (ii) *the estimated value; and*
  - (iii) *the date of acceptance,*  
*of each other gift accepted within the 6 month period.*

(5) *A code of conduct is to require that the CEO maintain a register of notifiable gifts and record in it details of notifications given to comply with a requirement made under subregulation (3).*

*[Regulation 34B inserted in Gazette 21 Aug 2007 p. 4190-1.]*

## **APPENDIX 5**

### **Suggested Format for a Record of Gift Decisions Register**



## Name of Public Authority Record of Gift Decisions

All employees are required to complete this form if they are offered a gift. Once completed, the form must be signed by a manager and saved on the Gift Decisions Register.

### Gift-Recipient

Name of person being offered gift

Position

### Gift-Offerer/Gift-Giver

Name of person who is making the offer

Business/ organisation

### Description of gift-offer

### Value

(if required by policy)

### Relationship with Gift-Offerer/Gift-Giver

Does the public authority or intended recipient of the gift have discretionary authority in relation to the gift-offerer/gift-giver?  
(Such as purchasing discretion)

#### YES

Discretionary authority exists  
Gift-offer must be

**DECLINED**

Returned

Declined prior to receipt

#### NO

No discretionary authority exists  
Was the gift declined or accepted?

### Disposal

(select disposal method)

If Accepted

If Declined

By officer

Returned

Donated  
(charity/social club)

Declined

Other (specify)

Prior to receipt

### Person completing form

Name

Position

Signature

Date

### Authorisation/Approval

Name

Position

Signature

Date

A record of decisions made in response to offers of gifts should be completed as soon as practicable after the offer of a gift, and should be completed by the recipient. All sections should be mandated through the public authority's corresponding gift policy.

The format for the register suggested below will necessarily need to be altered to reflect the particular nature and operating environment of the individual public authority. It is not intended that the example below be adopted by public authorities without modification.



## **APPENDIX 6**

### **Suggested Gift Policy Elements**



# Suggested Gift Policy Elements

(Preferably stand-alone rather than as part of a code of conduct)

The headings below provide some guidance to assist the standardisation of gift policies and records of gift decisions made across the public sector. There may be other sections that public authorities wish to include to bring the policy in line with the look and feel of other policies. These headings are suggestions. The list is not exhaustive or exclusive.

## Date Issued

A date provides some currency to the policy, and allows public officers to see when it was last updated.

## Scope/Purpose Statement

This section provides details of what the policy is trying to achieve. It may include references to the code of conduct or the *Code of Ethics*. It may also explain the two broad reasons that gifts are offered to public officers; as a courtesy or as an attempt to influence.

## Definitions

- **Discretionary Authority:** A public officer who has the power to exercise discretionary authority means a public officer who can make or influence decisions on behalf of a public authority, such as a purchasing officer.
- **Gift:** A thing willingly given to a member of the public authority without payment, as a consequence of their employment with the authority. The term “gift” can include, but is not limited to, gift certificates or store vouchers, movie passes, electrical goods, money, alcohol, accommodation, air travel, or other items.
- **Gift Decisions Record:** The official record of the details of gifts received by or offered to the public authority, and how that gift was managed. (This was formerly known as a “gift register”.)
- **Gift-Offerer/Gift-Giver:** a person, business or organisation who offers or provides a gift.
- **Gift-Recipient:** a person (a public officer) who receives a gift, or is offered a gift, whether on behalf of a public authority or as an individual.

(To avoid using monetary terms when referring to gifts, the term “token” is not defined.)

## Acceptance of Gifts

This section outlines when it is or is not appropriate to accept/decline gifts. This section provides direction to employees so they can recognise circumstances of gift giving situations and potential responses to gift offers.

- As a general rule, gifts are to be declined.

- All gifts offered to public officers who exercise discretionary authority in relation to the gift-offerer/gift-giver are to be declined.
- All gifts offered to public officers who influence or are likely to influence discretionary authority exercised by others in relation to the gift, are to be declined.
- Promote other means to demonstrate appreciation, such as a letter of thanks.
- Although gifts may be accepted by officers who do not exercise discretionary authority in relation to the gift-offerer/gift-giver, unless otherwise declared, such gifts become the property of the public authority.

### **Declaration Required**

This section provides instruction to public officers that all offers of gifts, and acceptance of gifts, are to be declared. The declaration is to be in writing in the Gift Decisions Register, and reported to a supervising officer.

### **Gift Decisions Register**

This section explains the purpose of the Gift Decisions Register (formerly a Gift Register). The different sections of the Gift Decisions Register are to be explained including how to fill in the record. Declaration of a gift offer (including those offered and declined) is mandatory. Gift Decisions Registers are to be audited regularly by the public authority.

Elements on a Gift Decisions Register are to include:

- **Gift-Recipient:** This section contains the details of the public officer to whom the gift was offered or given, including their name and position;
- **Gift-Offerer/Gift-Giver:** This section contains full details of the person or entity offering the gift. This includes the name of the individual and any business name. This section is critical for audit purposes;
- **Description of Gift:** This section should provide a clear description of the gift. This can also include any other details deemed important, such as circumstances of the gift being offered. If an agency so desires, an approximate value of the gift can be included;
- **Relationship with Gift-Offerer/Gift-Giver:** This section explains the relationship between gift-offerer/gift-giver and gift-recipient, clarifying that the gift-recipient does not exercise discretionary authority, and/or does not influence or is likely to influence another who exercises discretionary authority, in relation to the gift-offerer/gift-giver. All gifts offered to officers with discretionary authority must be declined;
- **Disposal:** This relates to how the gift was dealt with (e.g. declined prior to receipt, returned to giver, allocated to social club, or donated to charity);

- **Person Completing Form:** This should be completed by the gift-recipient.
- **Authorisation/Approval:** This relates to whether the public officer sought approval from upper management in order to accept or decline the gift. This section is used for audit purposes.

### **Consequences of Breaching Policy**

This section explains that breaching a gift policy can be more serious than a breach of discipline. The public officer is at risk of engaging in misconduct by accepting a gift. In some cases, the public officer may commit criminal offences. Policy requirements should be mandatory.

### **Monetary Value of Gifts**

Should a public authority determine that there is a limit to the monetary value of gifts received in non-discretionary authority relationships between gift-offerer/gift-giver and gift-recipient, it should be articulated here. This section should also address the effect of accumulation of gifts on monetary value. All gifts are to be declared regardless of value.

### **Relationship Between Gift-Offerer/Gift-Giver and Gift-Recipient**

This information is critical for inclusion on the Record of Gift Decisions, and so needs to be clearly articulated in the gift policy. If discretionary authority exists between gift-offerer/gift-giver and gift-recipient, or the gift-recipient influences or is likely to influence another who exercise discretionary authority in relation to the gift-offerer/gift-giver, then the question of misconduct arises. In these circumstances gifts should never be received. If no discretionary authority exists, there is less possibility to directly influence the gift-recipient's behaviour to the advantage of the gift-offerer/gift-giver. Gifts may be accepted in certain circumstances, which must be articulated here.

### **Alternative to Gifts**

As a general rule, offers of gifts should to be declined. It is possible to promote other means of expressing appreciation to a potential gift-recipient, such as a letter of thanks. This message can be promoted to all stakeholders to the public authority in advance, so there is no expectation that a gift is an appropriate course of action.

### **Disposal of Gifts**

Gifts that are declined should be returned to the gift-offerer/gift-giver or declined prior to receipt. The gift policy should contain a statement that any gifts that are accepted become the property of the public authority, unless otherwise delegated by Chief Executive Officer.

Once the property of the public authority, the Chief Executive Officer (or delegate) can determine how the gift is to be dealt with, such as donated to a charity or to the agency social club, or whatever is appropriate. This needs to be clearly articulated in the policy.

### **Accumulation of Gifts**

Part of the misconduct risk when receiving gifts is the accumulation of gifts over time. Multiple gifts to the same person, or from the same person, may indicate a

trend. Public officers need to be aware of the potential of gift accumulation. The gift policy needs to articulate a time frame over which accumulation of gifts is unacceptable.

## **Training**

The gift policy needs to link with existing training within the public authority, promoting when training takes place and the content of any such training.

## **Policy Exception**

Circumstances may arise in some public authorities in which gifts are able to be accepted, notwithstanding that the gift-recipient exercises discretionary authority in relation to the gift-offerer/gift-giver.

These circumstances need to be outlined, along with the approval mechanism needed to accept the gifts.

Public officers receiving such gifts should be prevented from approving them. As a general rule, executive approval ought to be necessary.

## ENDNOTES

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<sup>1</sup> The Commission has concluded that in this report it is not necessary to name the public officers involved in the Commission’s investigation or public hearings, as no opinion of misconduct is being made in relation to them, nor is the Commission recommending that disciplinary action be taken in relation to any public officer. The Commission has concluded that the purpose of the report can be achieved without naming the public officers involved in the matters considered within the report. The Commission accordingly refers to these officers through this report as Public Officer A through G.

<sup>2</sup> The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003* (WA).

<sup>3</sup> Sections 83-86 of the *Public Sector Management Act 1994* (“the PSM Act”) were deleted by Amendment No.39 of 2010 s.99. Any reference to these sections in the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003”* (WA) (“the Special Report”) should be disregarded. In addition, parts of paragraphs [31]-[38] of the Special Report are no longer applicable as a result of other amendments made to the PSM Act by Amendment No. 39 of 2010.

<sup>4</sup> The Western Australian Auditor General’s Reports; *Public Sector Performance Report 2011* (Report 5, June 2011) and *Second Public Sector Performance Report 2011* (Report 7, September 2011).

<sup>5</sup> Western Australian Auditor General’s Report, *Public Sector Performance Report 2011* (Report 5, June 2011), p4 and 9.

<sup>6</sup> *Ibid*, p4.

<sup>7</sup> *Ibid*, p6.

<sup>8</sup> *Ibid*, p6.

<sup>9</sup> Western Australian Auditor General’s Report, *Second Public Sector Performance Report 2011* (Report 7, September 2011), p4.

<sup>10</sup> *Ibid*, p7.

<sup>11</sup> *Ibid*, p4.

<sup>12</sup> *Ibid*, p23.

<sup>13</sup> *Ibid*, p30.

<sup>14</sup> Victorian Ombudsman’s report, *Corrupt Conduct by Public Officers in Procurement*, June 2011, p4.

<sup>15</sup> *Ibid*.

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*, p5.

<sup>18</sup> *Ibid*.

<sup>19</sup> The Company’s order and supply documentation was obtained after the Western Australian Supreme Court granted an application made pursuant to the *Service and Execution of Process Act 1992*, to serve a notice to produce records under section 95 of the CCC Act.

<sup>20</sup> On 1 July 2011, the Department of Treasury and Finance was renamed to the Department of Treasury. At the same time, the State Revenue, Government Procurement, Building Management and Works and Shared Services functions of the Department of Treasury and Finance were transferred to the newly created Department of Finance.

<sup>21</sup> The Company had charged \$349 per toner cartridge when a suitable cartridge from the CUA supplier would usually cost \$81 on average. This reflects an approximate “overcharging” of 330%.

<sup>22</sup> This person, Sales Representative B, appeared before the Commission during the public hearings into the matter.

<sup>23</sup> Public Officer A’s evidence appears in the Transcript of Proceedings, 26 October 2009, pp26-42.

<sup>24</sup> Transcript of Proceedings, 26 October 2009, p28.

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<sup>25</sup> *Ibid*, p29.

<sup>26</sup> *Ibid*, p30.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*, p31.

<sup>29</sup> *Ibid*.

<sup>30</sup> *Ibid*, p37.

<sup>31</sup> *Ibid*, p39.

<sup>32</sup> *Ibid*.

<sup>33</sup> *Ibid*, p33.

<sup>34</sup> *Ibid*, p41.

<sup>35</sup> *Ibid*.

<sup>36</sup> Public Officer B's evidence appears in the Transcript of Proceedings, 26 October 2009, pp42-58.

<sup>37</sup> Transcript of Proceedings, 26 October 2009, pp45-46.

<sup>38</sup> *Ibid*, p47.

<sup>39</sup> *Ibid*.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid*.

<sup>42</sup> *Ibid*.

<sup>43</sup> *Ibid*, p49.

<sup>44</sup> *Ibid*, p51.

<sup>45</sup> *Ibid*, p50.

<sup>46</sup> *Ibid*.

<sup>47</sup> *Ibid*, p54.

<sup>48</sup> *Ibid*, p55.

<sup>49</sup> *Ibid*.

<sup>50</sup> *Ibid*, p57.

<sup>51</sup> *Ibid*.

<sup>52</sup> Public Officer C's evidence appears in the Transcript of Proceedings, 26 October 2009, pp59-78.

<sup>53</sup> Transcript of Proceedings, 26 October 2009, p61.

<sup>54</sup> *Ibid*.

<sup>55</sup> *Ibid*, p62.

<sup>56</sup> *Ibid*, p63.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ibid*.

<sup>59</sup> *Ibid*, p64.

<sup>60</sup> *Ibid*, p63 and 73.

<sup>61</sup> *Ibid*, p65.

<sup>62</sup> *Ibid*.

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<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*, p67.

<sup>65</sup> *Ibid.*, p69.

<sup>66</sup> *Ibid.*, pp75-76.

<sup>67</sup> Public Officer D's evidence appears in the Transcript of Proceedings, 27 October 2009, pp80-95.

<sup>68</sup> Transcript of Proceedings, 27 October 2009, pp82-83.

<sup>69</sup> *Ibid.*, p84.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, p86.

<sup>72</sup> *Ibid.*, p87.

<sup>73</sup> *Ibid.*, p88.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

<sup>76</sup> *Ibid.*, p86.

<sup>77</sup> *Ibid.*, p87.

<sup>78</sup> *Ibid.*, p88.

<sup>79</sup> *Ibid.*, p89.

<sup>80</sup> *Ibid.*, p90.

<sup>81</sup> *Ibid.*, p94.

<sup>82</sup> Public Officer E's evidence appears in the Transcript of Proceedings, 27 October 2009, pp95-107.

<sup>83</sup> Transcript of Proceedings, 27 October 2009, p98.

<sup>84</sup> *Ibid.*, p100.

<sup>85</sup> *Ibid.*, p101.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, p102.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*, p97.

<sup>90</sup> *Ibid.*, p98.

<sup>91</sup> *Ibid.*, pp105-106.

<sup>92</sup> *Ibid.*, p104.

<sup>93</sup> *Ibid.*, p107.

<sup>94</sup> *Ibid.*, p106.

<sup>95</sup> Public Officer F's evidence appears in Transcript of Proceedings, 27 October 2009, pp108-121.

<sup>96</sup> Transcript of Proceedings, 27 October 2009, p110.

<sup>97</sup> *Ibid.*

<sup>98</sup> *Ibid.*, p111.

<sup>99</sup> *Ibid.* Corporate Express was a CUA-approved supplier for business machine consumables (CUA Contract Number: 000302F), including toner cartridges.

<sup>100</sup> *Ibid.*

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<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid*, p112.

<sup>103</sup> *Ibid*, p114.

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid*, p117.

<sup>106</sup> *Ibid*, p115.

<sup>107</sup> *Ibid*, p118.

<sup>108</sup> *Ibid*, p116.

<sup>109</sup> Public Officer G's evidence appears in the Transcript of Proceedings, 27 October 2009, pp122-140

<sup>110</sup> Transcript of Proceedings, 27 October 2009, p124.

<sup>111</sup> *Ibid*, 27 October 2009, p125.

<sup>112</sup> *Ibid.*

<sup>113</sup> *Ibid*, p126.

<sup>114</sup> *Ibid*, p127.

<sup>115</sup> *Ibid*, p139.

<sup>116</sup> *Ibid*, p133.

<sup>117</sup> *Ibid*, p134.

<sup>118</sup> *Ibid*, p135.

<sup>119</sup> *Ibid*, p136.

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid*, p139.

<sup>122</sup> State Supply Commission, *Value for Money Supply Policy* (Gazettal date 28 December 2007).

<sup>123</sup> State Supply Commission, *Buy Local Supply Policy* (Effective date July 2002).

<sup>124</sup> State Supply Commission, *Common Use Arrangements* (Gazettal date 31 October 2006).

<sup>125</sup> Transcript of Proceedings, 28 October 2009, p198.

<sup>126</sup> Transcript of Proceedings, 26 October 2009, p33.

<sup>127</sup> *Ibid*, p66.

<sup>128</sup> *Ibid*, p33.

<sup>129</sup> *Ibid*, p105.

<sup>130</sup> *Ibid*, p41.

<sup>131</sup> *Ibid*, p58.

<sup>132</sup> *Ibid*, p86.

<sup>133</sup> Transcript of Proceedings, 28 October 2009, p163.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid*, p180.

<sup>136</sup> Transcript of Proceedings, 27 October 2009, p98.

<sup>137</sup> Transcript of Proceedings, 26 October 2009, p61.

<sup>138</sup> *Ibid*, p64.

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<sup>139</sup> *Ibid*, p47.

<sup>140</sup> *Ibid*, p56.

<sup>141</sup> *Ibid*, p57.

<sup>142</sup> Section 34B, *Local Government (Administration) Regulations 1996*. The *Local Government (Rules of Conduct) Regulations 2007* contain similar provisions for council members under Regulation 12 (Gifts). This report refers to the *Local Government (Administration) Regulations 1996*, as they apply to all local government employees.

<sup>143</sup> The *Code of Ethics* is available through the Public Sector Commission's website;  
[http://www.opssc.wa.gov.au/Publications\\_and\\_Resources/](http://www.opssc.wa.gov.au/Publications_and_Resources/)

<sup>144</sup> The *Conduct Guide* is available through the Public Sector Commission's website;  
[http://www.opssc.wa.gov.au/Publications\\_and\\_Resources/](http://www.opssc.wa.gov.au/Publications_and_Resources/)

<sup>145</sup> Western Australian Integrity Coordinating Group, Conflict of Interest Scenarios, *Gifts, benefits and hospitality*, accessed 1 September 2011 at <http://www.opssc.wa.gov.au/ICG/Documents/scenario6.pdf>.

<sup>146</sup> In this context, 'training' refers to a gift policy making some reference to training. The Commission does not consider that it is critical for a gift policy to refer to training. However, as indicated throughout the report, the need for effective and regular training of staff in the areas of procurement, gifts and conflicts of interest is critical. In considering Figure Two, a distinction should be made between a policy which refers somehow to training, and policy which is then supported by, and reinforced through, effective and ongoing training.

<sup>147</sup> Transcript of Proceedings, 26 October 2009, p52.

<sup>148</sup> *Ibid*, p38.

<sup>149</sup> *Ibid*, pp71-73.

<sup>150</sup> Western Australian Integrity Coordinating Group, Conflict of Interest Scenarios, *Gifts, benefits and hospitality*, accessed 18 June 2010 at <http://www.opssc.wa.gov.au/ICG/Documents/scenario6.pdf>.

<sup>151</sup> However the Public Sector Commission's *Conduct Guide*, does highlight gift registers as a tool that might be employed in relation to "Conflicts of Interest" (which are to be consider in the public authority's Code of Conduct). See [http://www.opssc.wa.gov.au/Publications\\_and\\_Resources/](http://www.opssc.wa.gov.au/Publications_and_Resources/)

<sup>152</sup> Issued 20 Feb 2008 and which superseded Premier's Circular 2008/01.

<sup>153</sup> The Western Australian Integrity Coordinating Group was formed to promote strength and integrity in the Western Australia public sector. It is made up of the Auditor General, the Commissioner for Public Sector Standards, the Corruption and Crime Commissioner, the Western Australian Ombudsman and the Information Commissioner.

<sup>154</sup> Western Australian Integrity Coordinating Group, *Conflicts of Interests: Guidelines for the Western Australian Public Sector* (June 2011), accessed 311 August 2011 at <http://www.opssc.wa.gov.au/ICG/Documents/guidelines.pdf>.

<sup>155</sup> Transcript of Proceedings, 26 October 2009, p28.

<sup>156</sup> Transcript of Proceedings, 27 October 2009, p100.

<sup>157</sup> *Ibid*, p101.

<sup>158</sup> *New Plymouth, Councillor's Code of Conduct*, accessed 7 July 2010 <http://www.newplymouthnz.com/CouncilDocuments/Reports/CouncillorsCodeOfConduct.htm#behaviour>.

<sup>159</sup> The Office of the Ethics Counsellor, *Conflict of Interest and Post-Employment Code for Public Office Holders*, accessed 08 July 2010, <http://www.oecd.org/dataoecd/61/10/35526941.pdf>.

<sup>160</sup> The Office of the Queensland Parliamentary Counsel, *Public Sector Ethics Act 1994 (reprinted 01/January/2010)*, accessed 6 July 2010, <http://www.legislation.qld.gov.au>.

<sup>161</sup> *Public Sector Employment and Management Act 2002*, accessed 7 July 2010 [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/pseama2002379/](http://www.austlii.edu.au/au/legis/nsw/consol_act/pseama2002379/).

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<sup>162</sup> Queensland Treasury, *Gifts and Benefits Policy (Including Entertainment and Hospitality)*, accessed 6 July 2010 <<http://www.treasury.qld.gov.au/knowledge/docs/policies/gifts-and-benefits-policy.pdf>>.

<sup>163</sup> Department of Premier and Cabinet (Queensland), *Code of Conduct*, accessed 6 July 2010 <<http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/assets/code-of-conduct.pdf>>.

<sup>164</sup> Office of Finance Management (NSW), *Code of Conduct*, accessed 6 July 2010, <[http://www.treasury.nsw.gov.au/\\_data/assets/pdf\\_file/0014/17411/tpd-4-1.pdf](http://www.treasury.nsw.gov.au/_data/assets/pdf_file/0014/17411/tpd-4-1.pdf)>.

<sup>165</sup> Attorney General's Department (NSW), *Code of Conduct*, accessed 5 July 2010 <[http://www.lawlink.nsw.gov.au/lawlink/Corporate/l1\\_corporate.nsf/vwFiles/Code\\_of\\_Conduct\\_2009.pdf/\\$file/Code\\_of\\_Conduct\\_2009.pdf](http://www.lawlink.nsw.gov.au/lawlink/Corporate/l1_corporate.nsf/vwFiles/Code_of_Conduct_2009.pdf/$file/Code_of_Conduct_2009.pdf)>.