CORRUPTION AND CRIME COMMISSION

REPORT ON FRAUD AND CORRUPTION IN PROCUREMENT IN WA HEALTH: DEALING WITH THE RISKS

12 JUNE 2014

ISBN: 978-0-9871634-3-1

This report and further information about the Commission can be found on the Commission Website at www.ccc.wa.gov.au.

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CORRUPTION AND CRIME COMMISSION

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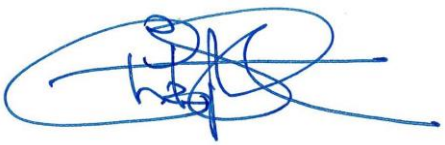
Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, the Commission presents its *Report on Fraud and Corruption in Procurement in WA Health: Dealing with the Risks*.

Yours faithfully



Christopher Shanahan, SC
ACTING COMMISSIONER

12 June 2014

ABBREVIATIONS AND ACRONYMS

(“the CCC Act”)	*Corruption and Crime Commission Act 2003*
(“the Commission”)	Corruption and Crime Commission
HCN	Health Corporate Network
NGO's	non-government organisations
("the SSC Act")	*State Supply Commission Act 1991*
("Treasurer's Instruction 825")	Western Australian *Financial Administration Bookcase*, Treasurer's Instruction 825: Risk Management and Security (December 2007)

GLOSSARY

Commission Investigation — when an allegation is investigated by the Commission under section 33(1)(a) or (b) of the *Corruption and Crime Commission Act 2003* ("the CCC Act"). This includes the process of gathering and analysing evidence to determine facts, and any other disciplinary or corrective action arising from the findings.

Control(s) — those policies, processes, functions and activities of an organisation designed to help it achieve specific goals or objectives. A control may work to mitigate a risk as much as achieve an objective.

Misconduct — (also refer **Serious Misconduct**) as defined by section 4 of the CCC Act.

> *Misconduct occurs if —*
>
> *…*
>
> *(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).*

Notify/notification — the process of informing the Commission of any matter that is suspected on reasonable grounds to concern or may concern misconduct pursuant to section 28 of the CCC Act. The CCC Act obliges the Director General of Health to notify the Commission as a paramount duty which puts aside any other legal considerations or confidentiality responsibilities, pursuant to section 29 of the CCC Act.

Procurement — refers to all the activities involved in acquiring goods and services, including works, of any value. This includes purchasing outright or by lease, and the contracting out of services and functions.

Serious Misconduct — (also refer **Misconduct**) section 3 of the CCC Act defines serious misconduct as "misconduct of a kind described in section 4(a), (b) or (c)". Thus serious 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; [or]*
>
> *(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 …*

WA Health — refers to the health services that make up the Western Australian public health system. At the time of the review, these were:

- Department of Health;
- North Metropolitan Area Health Service;
- South Metropolitan Area Health Service;
- WA Country Health Service; and
- Child and Adolescent Health Services.

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EXECUTIVE SUMMARY

[1] This report deals with an important misconduct problem in WA Health: WA Health does not have adequate measures in place to prevent fraud and corruption in its procurement activities. This is despite the fact that it expended $3.6 billion on procurement in 2011-2012.

[2] This problem, and the extent of WA Health's potential exposure to fraud and corruption in procurement, was initially brought to light by a 2010 Corruption and Crime Commission ("the Commission") investigation into serious misconduct at a major public hospital by a facilities development manager, Wathumullage Wickramasinghe ("Wickramasinghe").

[3] Wickramasinghe had corrupt relationships with business associates which enabled him to fraudulently obtain benefits for himself and others totalling $490,267.50 from a number of projects he managed over a six year period.

[4] Weaknesses in the hospital's financial controls and poor supervision of Wickramasinghe underpinned his corrupt behaviour. These weaknesses made it possible for Wickramasinghe's conduct to go undetected for so long. Indeed, his conduct was not identified as a result of WA Health's financial controls. It was identified by a university-affiliated organisation which was collaborating on a laboratory refurbishment overseen by the manager.

[5] A subsequent Commission review of WA Health's capacity to deal with its fraud and corruption risks in procurement identified that the weaknesses at the hospital which underpinned Wickramasinghe's corrupt behaviour were a symptom of WA Health's systemic failure to manage fraud and corruption risk in procurement.

[6] In the context of the $3.6 billion spent on procurement in 2011-2012, the significance of this systemic failure could hardly be over-estimated. It is a problem that requires immediate and urgent attention from the WA Health executive.

[7] The Commission has recommended to WA Health that it:

- conduct a comprehensive procurement fraud and corruption risk assessment;
- develop organisation-wide compliance strategies;
- utilise the comprehensive fraud and corruption risk assessment noted above to inform internal audit strategies;
- develop appropriate training; and
- review policies relating to conflict of interest, gifts and benefits and outside employment.

CHAPTER ONE
COMMISSION INVESTIGATION

1.1 Serious Misconduct Investigation

[1] In 2010 the Corruption and Crime Commission ("the Commission") undertook an investigation into serious misconduct on the part of a facilities development manager at a major public hospital. The manager, Wathumullage Wickramasinghe ("Wickramasinghe"), was responsible for procurement in a number of different site-specific and WA Health capital works projects, including refurbishments and building renovations. Most of these were high profile projects which involved significant budgets.

[2] In late 2009 the Commission was notified that Wickramasinghe was suspected of engaging in unapproved and undisclosed secondary employment. The Commission decided to conduct an investigation under section 33 of the *Corruption and Crime Commission Act 2003* ("the CCC Act"). It soon became apparent that there was a much wider range of misconduct involved. The Commission investigation established that Wickramasinghe corruptly took advantage of his employment as a public officer to obtain personal benefits for himself and others. The total amount corruptly obtained was $490,267.50 in relation to a number of projects over a six year period.

[3] Wickramasinghe maintained a covert business relationship with an engineering consultant, Ardeshir Kalani ("Kalani"). In his capacity as a public officer, Wickramasinghe engaged Kalani on a regular basis as either the project manager or project administrator on WA Health capital works projects. Kalani then subcontracted Wickramasinghe to undertake drafting and design work on those projects.

[4] The relationship was concealed by the use of Wickramasinghe's two private businesses, through which he submitted invoices for drafting and design work to Kalani. Kalani, in turn, recouped costs from WA Health through Wickramasinghe.

[5] Wickramasinghe justified this arrangement on the basis that he provided drafting services beyond his official duties. This work would usually be completed by an architect. He argued that he was in the same situation as a doctor working at a public hospital and also receiving remuneration from private patients. His view was that he could do the same because he was saving the hospital the cost of an architect.

[6] Wickramasinghe said that hospital and WA Health executives had knowledge of him engaging in secondary employment. But his personal files did not reveal any evidence of any written authorisation for him to engage in secondary employment as required by policy.[1]

[1] Any request for secondary employment must be made in writing to the relevant Chief Executive and written authorisation provided as per the requirements of the WA Health Outside Employment policy (1998).

[7] Working closely with Kalani, Wickramasinghe established a reputation for consistently completing works well under budget and within tight timeframes. He became the "go to" person for expediting building projects. Several factors enabled him to achieve this. These included:

- There were no written contracts between WA Health and each consultant and contractor.
- Wickramasinghe did not allow any extra invoices for variations to be submitted by contractors in excess of their initial quotation.
- Wickramasinghe carried out most of the design documentation, saving on the cost of architects.
- WA Health procurement processes were not followed, thereby shortening timeframes.
- Wickramasinghe engaged in "circular tendering", continually using the same consultants and contractors on different capital works projects.

[8] Wickramasinghe also circumvented his limited delegated authority to authorise payments to the consultant. Records of payments show that $3,120,952 was paid to Kalani's company by WA Health. Nearly all of that amount was authorised by Wickramasinghe in payments under $10,000 - the limit of his delegated authority.

[9] The Commission investigation also uncovered evidence that Wickramasinghe used his position as a public officer to corruptly obtain a benefit to the value of $118,580 from a university-affiliated organisation for a laboratory refurbishment project. The laboratory was on hospital premises. In his public officer role, Wickramasinghe was required to oversee and project manage the refurbishment to ensure that it met hospital standards.

[10] Wickramasinghe utilised the same consultants and contractors he used on other projects, approving their invoices and submitting them to the organisation for payment. The organisation paid the consultants and contractors and later recouped the costs from the university.

[11] Wickramasinghe approved his own company's invoices for payment and submitted them to the organisation which, in turn, paid the invoices and forwarded them to the university. He did not, at any point, declare his interest in the company to the organisation or the university, both of whom believed he was acting solely in his capacity as a public officer.

[12] Suspicions about Wickramasinghe arose while working on this project. The university architect responsible for the project noticed that certain invoices contained very little information and were from a company which had not provided a quotation prior to the project commencing. Inquiries by the organisation established that the company was owned by Wickramasinghe.

[13] In November 2013 Wickramasinghe pleaded guilty to 10 counts of corruption pursuant to section 83 (b) *Criminal Code* totalling $490,267.50.

[14] In September 2013 Kalani pleaded guilty to nine counts of corruption pursuant to section 83 (b) *Criminal Code* totalling $ 371,687.50.

[15] Both men were sentenced on 17 January 2014, Wickramasinghe to four years imprisonment and Kalani to two years imprisonment.

1.2 Governance Issues

[16] Procurement practices at the hospital were comprised of a mixture of historically-based, localised practices and informal arrangements. These practices were inconsistent and did not comply with legislation, state-wide policies and WA Health policies. Senior management at the hospital did not understand procurement policy.

[17] Wickramasinghe's conduct went undetected for six years because of poor supervision and financial controls. These included the following:

- Relevant policies and procedures for the procurement of goods and services existed, but not for procurement of works when building or renovating.
- There was related lack of clarity around relevant legislation.
- There was no appreciation of the misconduct risks associated with the procurement of works and consequently nothing was done to proactively manage them.
- Audits failed to identify multiple payments under the tender threshold.
- There were insufficient controls for enforcing and monitoring compliance with state-wide legislation and policies, and WA Health policies and processes.
- Historically, the hospital conducted its own works with a high degree of autonomy that was not always in accordance with policy.
- Senior executives did not consider whether or not Wickramasinghe was bypassing policy and procedure when undertaking works programs.
- Senior executives appear to have focused on Wickramasinghe's capacity to deliver timely outputs at favourable cost.
- Wickramasinghe was viewed as a person with unique skills and was given enormous discretion. This created an internal monopoly. Misconduct risks associated with this internal monopoly were not identified.

- Wickramasinghe had a high degree of executive autonomy. His Director trusted him to carry out his duties with integrity and to follow correct procurement guidelines.

[18] The Queensland Crime and Misconduct Commission has observed that "misconduct is more likely to occur when the official exercising the power misuses discretion in situations where accountability and transparency are absent, ineffective or avoided."[2] The investigation revealed WA Health's management of its misconduct risks in this situation was characterised by the same configuration of poor supervision, low accountability and high discretion.

1.3 Commission Review

[19] The Commission investigation raises the question of whether these circumstances were unique to one hospital, or were a symptom of systemic failure to manage misconduct risks in procurement across WA Health.

[20] To answer that question, in 2012-2013 the Commission undertook a review of WA Health's capacity to deal with its misconduct risks in procurement.

[21] The review considered whether:

1. WA Health knows what its fraud and corruption risks in procurement are; and

2. WA Health has adequate controls to prevent, identify and deal with fraud and corruption in procurement.

1.4 Reporting by the Commission

[22] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or a 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] In January 2014 WA Health, Mr Wickramasinghe and Mr Kalani were given the opportunity to make representations on the draft of this report. All three made submissions which were carefully examined by the Commission. Various amendments have been made to this report accordingly.

[24] WA Health requested that the following statement, which articulates WA Health's position but not that of the Commission, be included in the report.

[2] Queensland Crime and Misconduct Commission, "Regulatory Risks – minimising misconduct risks in agencies with regulatory functions", *Building Capacity Series* (no. 2, August 2003), p.3.

The Department of Health, on behalf of the state public health system, would like to thank the Commission and its staff for the time and effort that has been put into reviewing procurement activities in WA Health.

Whilst many of the observations made in the Commission's report describe the situation in WA Health at the time of the Commission's investigation, the risks identified in relation to fraud, corruption and procurement are acknowledged. Steps have now been taken to remedy the issues of immediate concern, and the planning of action has commenced with regard to all of the Commission's recommendations.

The Commission's investigation has been productive and led to improvements in our corporate governance systems and procurement practices. We look forward to further support from the Commission and its encouragement of our efforts to promote misconduct resistance in the public health system.[3]

[3] Letter to Commissioner Roger Macknay, QC, of 14 February 2014 from Professor Bryant Stokes, Acting Director General of the Department of Health, p.1.

CHAPTER TWO
WESTERN AUSTRALIAN LEGISLATION AND POLICY

2.1 Legislation and Policy

[25] The *State Supply Commission Act 1991* ("the SSC Act") provides the legislative basis for the procurement of goods and services in Western Australia. State Supply Commission policies are based on the SSC Act and are mandatory for all state government authorities.

[26] During the Commission's investigation, the Executive Director of Government Procurement, Department of Treasury and Finance, advised the Commission that all WA Health Area Health Services and work sites are expected to comply with State Supply Commission policies for all areas of procurement, including works.[4]

[27] Under the SSC Act, a public authority can procure on its own behalf in accordance with the terms and conditions of its Partial Exemption.[5] The Partial Exemption sets out requirements for compliance with the SSC Act and policies, for the maintenance of registers and records and for the conduct of "an internal audit of compliance with supply policies and the terms and conditions of the Partial Exemption every two years".[6]

[28] Although State Supply Commission policies apply to goods and services, they do not extend to "works". Works include building works, maintenance, refurbishment and construction. Works may involve significant refurbishment, alterations, additions, or the construction of stand-alone buildings. Services related to works such as an architect, engineer, tradesperson or contractor also fall within the definition of works. The legislative framework for works is contained within the *Public Works Act 1902* which is regulated by Building Management and Works in the Department of Finance.

2.1.1 Probity and Accountability

[29] The Probity and Accountability Policy is the primary State Supply Policy which works as a deterrent to misconduct in public sector procurement. This policy includes the requirement for public officers with procurement responsibilities to declare all actual and perceived conflicts of interest, ensure adequate records are maintained to enable external scrutiny of decisions, comply with Government and State Supply Commission policies and make contract award details public as required.

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[4] Transcript of Proceedings, Public Examination of Mr Rodney Leonard Alderton, Executive Director of Government Procurement, Department of Treasury and Finance, on 25 October 2010, p.25.

[5] Partial Exemption under the *State Supply Commission Act 1991*was granted to the Minister for Health on 1 July 2011.

[6] These are known as the Biennial Audits and are discussed in section 3.5.1. State Supply Policy Compliance Audits.

[30] The Partial Exemption requires that procurement staff are "appropriately skilled" and undergo “appropriate training”. Logically, in line with the Probity and Accountability Supply Policy, appropriate skills and training should include, at a minimum, identifying and managing conflicts of interest.

2.2 Compliance in WA Health

[31] Non-compliance with legislation and state-wide policies is a recognised problem at WA Health. The 2011 WA Health Combined Entries Significant Risk Register notes that "Supply processes are inefficient or not followed by staff, customers and/or service providers." It goes on to refer to "deliberate disobedience" and "reluctance of Health sites to change and adopt Health Corporate Network[7] or government processes" as possible causes. There is no reference to misconduct.[8] Neither does this entry appear to have prompted WA Health to address the issue.

[32] This is consistent with audits conducted at North Metropolitan Area Health Service and South Metropolitan Health Service which showed widespread evidence of non-compliance.[9] These included:

- inconsistent and different approaches to documentation requirements, varying between worksites;
- general lack of documentation and poor record-keeping, including lack of supporting documentation for transactions and decisions;
- non-compliance with, or bypassing, procurement processes;
- worksites with their own procurement processes;
- close relationships with suppliers and contractors; and
- failure to declare conflicts of interest, gifts and secondary employment.

[33] Additional issues identified in the WA Country Health Service included the failure to maintain contracts and exemptions registers as required by the Partial Exemption, and poor segregation of duties.[10]

[34] Consistent with the Probity and Accountability Supply Policy, the Commission's review considered the WA Health Managing Conflicts of

[7] Health Corporate Network is the business unit responsible for providing corporate and administrative support for all procurement activities.

[8] Significant Risk reporting forms part of WA Health's approach to risk management. Health Corporate Network entry, *WA Health Combined Entities Significant Risk Book 2011*, row 31.

[9] Ray Bennet Consulting, *Review of NMAHS Facilities Management with respect to compliance with Government procurement requirements* (2011) and Department of Health Internal Audit, *Control System Review - SMAHS Facilities Management RPH Final Report* (September 2010).

[10] Health Corporate Network provides WA Country Health Service managers with regular Segregation of Duties violation reports.

Interest policy (2010), Acceptance of Gifts policy (2011) and Outside Employment policy (1998).

2.2.1 Conflicts of Interest Policy

[35] WA Health's position is that individual staff members are primarily responsible for deciding if a conflict of interest exists in any given situation. However, there is a lack of training around conflicts of interest in the procurement context and this significantly reduces staff capacity to identify a conflict situation.

[36] WA Health staff involved in procurement are not required, as a general rule, to regularly declare any family, financial or other matters that may create conflicts between their personal and work interests. And when they do make such declarations, no central registers are maintained to ensure they are managed appropriately.

[37] Evaluation panels are commonly used for decision-making in the contract award stage of the procurement cycle, and if a tender is involved. WA Health commonly retains declarations of interest by employees - if they are made - on the file relating to the relevant procurement transaction, rather than recording them in the appropriate register.

[38] These gaps point to a lack of coverage in the majority of situations in which a conflict of interest may occur in procurement.

[39] In its submissions to the Commission about this report, WA Health noted that it was moving to improve its approach to conflicts of interest:

> *The Conflict of Interest policy is under review. It has been noted that the review will need to accommodate pecuniary and non-pecuniary interests, and should recognise and accommodate the fact of dual and multiple interests, whether or not such interests generate conflicts.*[11]

2.2.2 Gifts Policy

[40] The WA Health Gifts policy, including the requirement to report, does not apply to "token" gifts. These are defined as gifts with a nominal value of up to $50. This approach overlooks that token gifts can be indicators of more systemic gift-giving and accepting and may be an indicator of gift-giving of more than token value over time.

[41] The Gifts policy, including the requirement to report, does not apply to hospitality offered to, and accepted by, senior leaders within WA Health. The policy justifies this on the grounds that it ensures effective public health leadership and that relationships are maintained.

[42] The Commission analysed gift registers at the Area Health Service and whole-of-health level. Area Health Services gift registers are a requirement of the Gifts policy. This involved two sets of Area Health Service gifts

[11] Letter to Commissioner Roger Macknay, QC, of 14 February 2014 from Professor Bryant Stokes, Acting Director General of the Department of Health, p.2.

registers. Both sets were incomplete. The descriptions of some gifts included blank spaces. In some cases, the missing data was key information such as whether the gift giver was in a commercial relationship with WA Health.

[43] The data in the gifts register was also unreliable. Several gifts were identified as coming from major pharmaceutical suppliers to WA Health, yet the gift giver was described as not being in a commercial relationship with WA Health.

[44] In its submission to the Commission WA Health observed that "in many situations, particularly clinical ones, stopping a staff member from accepting a token gift (e.g. from an appreciative patient to ward staff) could undermine an innocent and socially valuable act".[12]

[45] To the extent that the submission applies to clinical circumstances the Commission does not dispute this submission. But it overlooks that this report deals with procurement, not clinical circumstances. The submission therefore misses the point. In the Commission's view it is possible to clarify the distinction between these two circumstances in policy and procedure.

2.2.3 Outside Employment Policy

[46] Information about outside, or secondary, employment is critical to any proper assessment of potential conflicts of interest. This is compounded by the sheer volume of staff movement throughout the health sector. In WA Health, it is common for staff to work for more than one Health Service, to move between Health Services and to work in both public and private health settings.

[47] The tools and mechanisms WA Health has do not allow it to readily identify such staff. Approvals to undertake secondary employment are kept on individual staff personnel files, not on a central register at the Area Health Service or whole-of-health levels. This makes secondary employment extraordinarily difficult to monitor and review.

[48] In its submission to the Commission WA Health observed that WA Health secondary employment policy is in line with whole-of-Government policy; that reports on all employees with secondary employment can be, and are, generated; and that although it is common for clinical staff to have multiple jobs, this not generally the case for staff involved in procurement.

[49] The Commission notes, however, that secondary employment was a critical aspect of the corrupt behaviour of Wickramasinghe - WA Health's secondary employment policy was neither effective, nor effectively enforced.

[12] Letter to Commissioner Roger Macknay, QC, of 14 February 2014 from Professor Bryant Stokes, Acting Director General of the Department of Health, p.3.

2.3 Transparency

[50] The Commission's review also considered the transparency of contracts awarded by WA Health. In Western Australia, transparency is measured using TendersWA, a central database on which public authorities must publish details of awarded contracts over $20,000. The Open and Effective Competition Supply policy states that:

> *Where the awarded contract price is greater than $20,000 (except when purchasing from a Common Use Arrangement) a public authority must publish the contract details on TendersWA after the successful bidder has been notified.*

[51] To gain an idea of the degree of WA Health's transparency in its procurement practices, the Commission reviewed the reporting of contracts awarded by the Department of Health to non-government organisations (NGOs) for services.[13]

[52] To put this in context, WA Health spent $2.85 billion on services in 2011-2012, the majority of which were contracted to NGOs. This equates to 79% of the total amount it spent on procurement that year.[14]

[53] The Department of Health gave the Commission a master list of current Department of Health contracts with NGOs. Forty-five of these were awarded in the six months between 1 July 2011 and 31 December 2011. Their total value was almost $79 million. The lowest value contract was $116,368 and the highest was $13,878,910.

[54] The Commission therefore expected all 45 contracts to be reported on TendersWA. In the event, only 10 were reported. These 10 had a total value of about $6.6 million. This represents a transparency ratio of about 22% by number and less than 10% by value. In other words, 90% of Department of Health contracts by value and 78% by number do not comply with State Government transparency requirements.

[55] Of interest was the performance of Statewide Contracting. Statewide Contracting is meant to set the example for all other WA Health business units working with NGOs. It awarded nine contracts over $20,000 during the period. Only two of those were published on TendersWA, giving Statewide Contracting a transparency ratio of 22% by number and 8% by value.

[13] The test was not run at the Area Health Service level.

[14] Western Australian Department of Finance, *Who Buys What and How: An Overview of 2011-2012 Western Australian Government Spending* (2013), p.10.

CHAPTER THREE
WA HEALTH INTERNAL CONTROLS

3.1 Procurement in WA Health

[56] According to the Department of Finance publication, *Who Buys What and How: An Overview of 2011-2012 Western Australian Government Spending,* WA Health spent $3.6 billion on procurement in 2011-2012.[15] This is a significant figure in its own right. It is also significant by comparison with:

- The total cost of running WA Health: the procurement spend represented 56% of the $6.4 billion spent to run the public health system that year.
- Other public authorities: apart from the Gold Corporation, WA Health spent more than any other public authority on procurement. The next highest was the Department of Education which, at $1.38 billion, spent less than half WA Health's total.
- The total State Government procurement spend: in 2011-2012 the total Western Australian Government procurement spend amounted to $25.7 billion.[16] WA Health accounted for 14% of that total.
- The total State Government procurement spend on services: WA Health accounted for 28.6% of the State Government's procurement of services.

[57] WA Health is a large and complex organisation. It employs over 40,000 people in five distinct entities and provides health services from hundreds of individual worksites to around 2.3 million people, geographically spread across metropolitan, rural and remote Western Australia.[17]

[58] Given these factors, successfully managing fraud and corruption risk in procurement in WA Health should involve a range of integrated controls reflecting good practices and principles.

[59] *Australian Standard 8001-2008: Fraud and Corruption Control*, along with the Australian National Audit Office, *Fraud Control in Australian Government Entities: Better Practice Guide* (2011), indicate that the main

[15] At the time of this report, the 2012-2013 edition of *Who Buys What and How* had not been published. Thus all figures cited are from the 2011-2012 edition.

[16] Western Australian Department of Finance, *Who Buys What and How: An Overview of 2011-2012 Western Australian Government Spending* (2013), p.8.

[17] Staff figures from WA Health website www.health.wa.gov.au/about/ and budget figures from Western Australian Department of Treasury, *2012-13 Budget Overview*, p.24

elements of an integrated approach to the management of fraud and corruption as business risks are:

- demonstrated leadership commitment and allocation of appropriate resources;
- identification and consideration of fraud and corruption risks as a category in all areas of business activity, including procurement; and
- staff training and awareness to enable early detection of fraud and corruption and a clear and accessible reporting mechanism.

[60] These should be supported by an internal audit focus and mechanisms for review. This integrated set of policies, procedures and functions should work in conjunction to provide a comprehensive controls framework to effectively mitigate fraud and corruption. They should also include the capacity to identify possible indicators of fraud and corruption.

[61] In that context, the Commission examined the following individual WA Health mechanisms:

- Integrity and Ethical Governance Framework;
- Fraud and Corruption Control Plan;
- Risk Management Policy and Framework;
- internal audit;
- identifying and reporting fraud and corruption; and
- training and awareness.

[62] These are discussed in this chapter. Specific mechanisms and requirements relating to probity and accountability compliance including conflicts of interest, acceptance of gifts and transparency were discussed in Chapter Two.

3.2 Integrity and Ethical Governance Framework

[63] One of the WA Health responses to the Commission's April 2010 report, *Misconduct Handling Procedures in the Western Australian Public Sector: WA Health*, was the development of a detailed Integrity and Ethical Governance Framework. The intent of the Integrity and Ethical Governance Framework was to provide a structure for WA Health to ensure that it has processes that support ethical and accountable behaviours.

[64] The Integrity and Ethical Governance Framework is built around the three pillars of leadership commitment, appropriate workplace behaviour and risk management and monitoring. The third pillar is meant to "establish and maintain processes and structures that support a culture of identifying,

preventing, responding and monitoring ethical and integrity risks, including misconduct."

[65] Developing the Integrity and Ethical Governance Framework involved a dialogue within WA Health to assess how the organisation and each of its major operational entities then stood in relation to each pillar and where improvements were needed.

[66] The dialogue was intended to identify relevant information and tools already in place, pinpoint the gaps, and propose and prioritise projects to address the gaps. The resulting assessments were summarised in a very detailed Gap Analysis Matrix representing a three-to-four year roadmap for implementing the Integrity and Ethical Governance Framework.

[67] The Commission expected that the Gap Analysis Matrix would highlight the need for sound, baseline information on WA Health's misconduct risks.

[68] This did not prove to be the case. There was no reference to a current organisation-wide profile of misconduct risks, either generally, or for procurement specifically; or to the existence of any gaps, including fraud and corruption risk in procurement. None of the gaps identified elsewhere in the Gap Analysis Matrix suggested a need to improve WA Health's knowledge of its fraud and corruption risks in procurement.

3.3 Fraud and Corruption Control Plan

[69] WA Health issued a Fraud and Corruption Control Plan in April 2007. While the Fraud and Corruption Control Plan is described as current on WA Health's website and in the Health Accounting Manual, it has not been operational for several years. Within two years of its development, the Fraud and Corruption Control Plan was put on hold with the intention to review it once the Integrity and Ethical Governance Framework had been implemented. It is unclear whether the Fraud and Corruption Control Plan has any relationship to the Framework.

[70] What is clear is that the Fraud and Corruption Control Plan remains on hold and has not been replaced.

[71] If it was operational, the Fraud and Corruption Control Plan has the potential to form the basis of an integrated approach to managing fraud and corruption risk in procurement. The stated purpose of the Fraud and Corruption Control Plan was "to establish an appropriate strategic framework that defines management and staff responsibilities and to ensure the implementation of robust practices for the effective detection, investigation and prevention of fraud and corruption of any description within WA Health."

3.4 Risk Management Policy and Framework

[72] Given the scale of WA Health's procurement activity, it is reasonable to expect that WA Health's management of its fraud and corruption risks in procurement would be based on sound, current knowledge of what those risks are.

[73] The Commission review confirmed that WA Health does not know what its fraud and corruption risks in procurement are.

[74] Public authorities in Western Australia must establish risk management as an ongoing accountable management practice. *Treasurer's Instruction 825: Risk Management and Security* ("Treasurer's Instruction 825") provides the legislative baseline for establishing risk management practices in the Western Australian public sector.

> *In complying with the Treasurer's instructions, managers need to focus on material risks at all levels of the organisation and take necessary action to manage those risks. Risk management is an integral part of day-to-day operations and is an important element of effective internal control.*[18]

[75] Treasurer's Instruction 825 lists "human behaviour, including risk of misconduct and corruption" as the second of six key risk areas.

[76] WA Health has had a Risk Management Policy and Framework since 2005, as well as detailed guidelines on how to apply the Risk Management Policy and Framework in practice. At the time of the review, the Risk Management Policy and Framework was seven years out-of-date and suffered from the following flaws. The Risk Management Policy and Framework:

- does not have a risk management plan;
- does not reference fraud, corruption and misconduct as risk categories;
- does not recognise procurement as an area requiring special attention;
- has not identified fraud and corruption risks in procurement;
- lacks a clear and unambiguous statement of ownership;
- lacks a review schedule; and
- does not include a requirement for both routine and random checking of risk management decisions and operational records.

[77] At the operational level, Area Health Services have attempted to mitigate some of these weaknesses, but this has resulted in a proliferation of risk management

[18] Western Australian Department of Treasury. *Financial Administration Bookcase – Treasurer's Instruction 825: Risk Management and Security* (28 December 2007), p.1.

policies. From a whole-of-health perspective, the existence of multiple policies on the same subject matter increases the risk of inconsistency, confusion and, consequently, fraud and corruption across the organisation.

[78] The Risk Management Policy was reviewed in June 2013. The new policy provides a global statement about the importance of risk management in WA Health and references Treasurer's Instruction 825 and *Australian Standard AS/NZS/ISO 31000-2008: Risk Management Principles and Guidelines*. However, it is silent on whether the Risk Management Framework and associated Procedures Manuals have also been reviewed, or even retained.

[79] In 2011, an internal audit of the 2005 Risk Management Policy and Framework referred to the Commission's *Misconduct Handling Procedures in the Western Australian Public Sector: WA Health* report to highlight that WA Health's misconduct risk remains high:

> *Misconduct is one type of risk to which Health is exposed. The findings of this report indicate that there is no robust process in place to identify misconduct risks or a process in place to oversee the effectiveness of strategies that may be implemented to treat this risk.*[19]

[80] The 2013 Risk Management policy fails to address this and, in doing so, also does not comply with Treasurer's Instruction 825. Without a comprehensive understanding of its fraud and corruption risks, including points of vulnerability and what fraud and corruption in procurement might look like, WA Health cannot be assured that it is adequately protected against fraud and corruption occurring.

3.5 Internal Audit

[81] The Western Australian Auditor General's view is that a "function of internal audit is to test the effectiveness of controls including those that can prevent or detect fraud or corruption."[20] Both the Australian National Audit Office Guide and *Australian Standard 8001-2008: Risk Management and Security* position internal audit as an essential control in the management of fraud and corruption risks.

[82] The internal audit function should be a key control in the management of fraud and corruption risks in procurement. Strategic planning of internal audit activity in the sense of where and what to audit should be driven by sound assessments of business risk. In WA Health, this should see fraud and corruption risks in procurement feature prominently in internal audit strategic planning and audit activity. But, because WA Health has not identified its fraud and corruption risks in procurement, internal audit activity in procurement is very limited.

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[19] Internal Audit Unit, *Review of Risk Management Framework* (2011), p.11.

[20] Western Australian Auditor General, *Fraud Prevention and Detection in the Public Sector* (Report 7 – June 2013), p.7.

[83] The Internal Audit Unit's ongoing work program includes audits focusing on three areas related to procurement. These are procurement using purchase cards, major capital works and biennial audits of WA Health compliance with State Supply Commission procurement policies. The first two audits only deal with the lowest and highest value areas of procurement activity. Given the size and scale of procurement activity in WA Health, the scope of procurement-related audits is therefore small.

[84] “Major” capital works in this context meant projects costing $20 million or more. This threshold is considerably higher than elsewhere in the public sector. Consequently, a figure such as $5 million, which would normally be significant in other contexts, drops off the radar in the WA Health context.

[85] Major works procurement activity is subject to greater oversight, both internally and externally, than all other procurement activities. Projects categorised as major usually involve a number of external stakeholders such as Building Management and Works, or the Department of Treasury’s Strategic Projects unit. In short, if and when WA Health staff are used in major works project procurement, they have far less decision-making autonomy than they do in lower value works projects.

[86] However, a great deal of works procurement, most notably facilities management works procurement, does not get elevated to major works status because of the $20 million threshold. Out of the 96 capital works projects in progress listed in the Department of Health Annual Report 2011-2012, 62 were not subject to this level of oversight because their estimated cost was under $20 million. Yet most of these projects had budgets of over $5 million.

3.5.1 State Supply Policy Compliance Audits

[87] Internal Audit Unit's normal work programme includes biennial audits to ensure compliance with key parts of State Supply Commission procurement policies.

[88] At the time of the review, WA Health had completed three biennial audits. These were undertaken in WA Country Health Service, Health Corporate Network and the Department of Health.

[89] These audits fell short of providing a comprehensive picture of WA Health compliance with the State Supply Commission policies; in the number of audits conducted, scope of the audits and actual compliance shown in the audits.

[90] The WA Country Health Service audit showed significant levels of non-compliance. Compliance audits have not been undertaken at the two largest operational entities within WA Health - North Metropolitan Area Health Service and South Metropolitan Area Health Service.

[91] In its submission to the Commission, WA Health observed that its biennial audits met State Supply Commission reporting requirements.

3.6 Identifying and Reporting Fraud and Corruption

[92] Identifying fraud and corruption involves recognising and reporting fraudulent and corrupt behaviours when they occur. Significant aspects of a public authority's capacity to identify fraud and corruption include the effectiveness of internal reporting mechanisms; the confidence in, and knowledge of the mechanisms by staff; and the ability of staff to identify behaviours which amount to fraud and corruption.

[93] WA Health has had a Misconduct and Discipline policy since 2009. The Misconduct and Discipline policy sets out WA Health's expectations about staff behaviour and explains the process for dealing with misconduct when it occurs.

[94] The Misconduct and Discipline policy provides examples of behaviours that constitute misconduct, but does not link any of these behaviours to procurement.

[95] There are a number of other WA Health, Area Health Service and hospital policies and information handouts with different degrees of relevance to identifying and reporting misconduct generally, and in procurement particularly. For example, personal use of workplace Information Technology resources, conflicts of interest, gifts and benefits and secondary employment. These examples all have a direct bearing on managing fraud and corruption risk in procurement, but do not reference procurement as an activity that is particularly susceptible to fraud and corruption.

[96] The capacity to identify fraud and corruption through procurement-related complaints is not connected to the Misconduct and Discipline Policy and reporting framework. Supplier complaints about particular procurement processes are kept on the relevant procurement transaction file rather than on a central register. Such record-keeping significantly reduces the opportunities to identify themes or trends in how procurement systems work in practice, including how they cope with fraud and corruption risk.

[97] In its submission to the Commission WA Health observed that it will soon issue an operational directive on reporting misconduct, including fraud in procurement.

3.7 Staff Training and Awareness

[98] Given the fraud and corruption risks inherent in procurement; the enormous dollar value of procurement in WA Health; the volume, spread and nature of WA Health's procurement activities; the rapidly evolving nature of procurement rules and good practice; and the State Supply Commission requirement that procurement staff have appropriate training, the Commission expected WA Health to have mandatory training for staff involved in procurement.

[99] Notwithstanding that WA Health has undertaken a number of relevant training programmes as part of its misconduct prevention strategy, the Commission found that there was:

- no WA Health training program or requirement for training about fraud and corruption risks specifically in procurement;

- no evidence of a systematic whole-of-health approach to identifying and meeting training needs in procurement; and
- no common recognition that training in procurement should be undertaken on a regularly scheduled basis.

[100] The Public Sector Commission's Accountable and Ethical Decision-Making training has some relevance to this topic. It gives examples of misconduct behaviours in the procurement context. At the time of the review, it was unclear how widely this training had been rolled-out across WA Health. What was clear, however, was that, with the exception of staff at the hospital at the centre of the Commission investigation, procurement staff had not been identified as a target group for the training.

CHAPTER FOUR
CONCLUSIONS AND RECOMMENDATIONS

4.1 Conclusions

[101] The foundation of Wickramasinghe's corrupt behaviour was a covert business relationship with Kalani which enabled him to receive payments from Kalani. Kalani recouped the cost of these payments in invoices to WA Health, which Wickramasinghe approved.

[102] To avoid detection, nearly all of the $3,120,952 in invoices submitted by Kalani were for amounts under $10,000 - the limit of the Wickramasinghe's delegated authority.

[103] Wickramasinghe's conduct went undetected for six years because of poor financial controls and poor supervision of him.

[104] In the light of this, the Commission undertook a review of WA Health's capacity to deal with its misconduct risks in procurement. Based on the evidence of the review, it is clear that:

1. WA Health does not know what its fraud and corruption risks in procurement are; and

2. WA Health does not have adequate controls to prevent, identify and deal with fraud and corruption in procurement.

[105] In this regard it is relevant that:

- There is evidence of widespread non-compliance with state-wide legislation and policies across WA Health.

- WA Health has limited capacity to effectively manage conflicts of interest, gifts and benefits and outside employment.

- WA Health's transparency in procurement is low.

- There is no reference to a current organisation-wide profile of misconduct risk, either generally or for fraud and corruption in procurement, in WA Health's Integrity and Ethical Governance Framework.

- WA Health's Fraud and Corruption Control Plan was put on hold in 2009 and has not been replaced.

- WA Health's recently updated Risk Management Policy:

  - does not have a risk management plan;

  - does not reference fraud, corruption and misconduct as risk categories;

- does not recognise procurement as an area requiring special attention;
- has not identified fraud and corruption risks in procurement in a risk management plan;
- lacks a review schedule; and
- does not require that risk management decisions and operational records be checked.

- The 2005 Risk Management Framework has not been updated. It is unclear whether the 2013 Risk Management policy is connected to the 2005 Risk Management Framework.
- Fraud and corruption risk in procurement does not feature prominently in WA Health's internal audit strategic planning and audit activity.
- There is no systematic training in recognising and reporting fraud and corruption for WA Health staff engaged in procurement.

[106] In short, the review identified that the circumstances which underpinned Wickramasinghe's corruption was not unique to one hospital. It was a symptom of systemic failure to manage fraud and corruption risks in procurement across WA Health.

[107] Given that WA Health spent $3.6 billion on procurement in 2011-2012, its systemic exposure to fraud and corruption in procurement is a significant problem. It requires immediate and urgent attention from the WA Health executive.

[108] The Commission does not advocate that WA Health try and address the problem in an *ad hoc* way such as dealing with the symptoms or imposing ineffective additional compliance regimes. An *ad hoc* approach is likely to be expensive and is doomed to failure. What is required is "root and branch" reform which addresses the state-wide legislation and policy framework; identifies exposure to misconduct risk as principle to guide policy development; recognises the complexities of both WA Health and the procurement environment in which it operates; and incorporates best practice in hospital procurement and best practice in risk management.

4.2 Recommendations

[109] In that context, the Commission makes the following five recommendations to WA Health:

Recommendation 1

Conduct a comprehensive risk assessment for fraud and corruption in procurement, update its risk register accordingly and develop appropriate organisation-wide strategies to ameliorate identified risk based on best practice in hospital procurement and risk management.

Recommendation 2

Develop organisation-wide strategies to ensure compliance with state-wide legislation and policies and deliver transparency.

Recommendation 3

Utilise the comprehensive fraud and corruption risk assessment outlined in Recommendation 1 to inform internal audit strategic planning and activity.

Recommendation 4

Develop fraud and corruption risk in procurement training packages and systematically deliver them to procurement staff.

Recommendation 5

Review policy and procedures to manage conflicts of interest, gifts and benefits and outside employment.