



**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL
TERRITORY**

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: [Inquiry into Auditor-General Report: 7/2021 – Procurement Exemptions and Value for Money](#))

Members:

**MRS E KIKKERT (Chair)
MR M PETERSSON (Deputy Chair)
MR A BRADDOCK**

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 8 DECEMBER 2021

**Secretary to the committee:
Mr S Thompson (Ph: 620 50435)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

BAIN, MR GLENN , Executive Group Manager, Procurement ACT	6
HANDLEY, MR MARTIN , Director, Performance Audit, ACT Audit Office	1
HARRIS, MR MICHAEL , Auditor-General, ACT Audit Office	1
STANTON, MR BRETT , Assistant Auditor-General, Performance Audit, ACT Audit Office	1
STEEL, MR CHRIS , Minister for Skills, Minister for Transport and City Services and Special Minister of State.....	6

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Amended 20 May 2013

The committee met at 9.31 am.

HARRIS, MR MICHAEL, Auditor-General, ACT Audit Office

HANDLEY, MR MARTIN, Director, Performance Audit, ACT Audit Office

STANTON, MR BRETT, Assistant Auditor-General, Performance Audit, ACT Audit Office

THE CHAIR: Good morning, welcome to the Public Hearings of the Standing Committee on Public Accounts into Auditor-General's report No 7 of 2021, *Procurement exemptions and value for money*. The proceedings today will hear evidence from the ACT Auditor-General and officials and the Special Minister of State and official.

Please be aware that the proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and web-streamed live. When taking a question on notice, it would be useful if witnesses used the words, "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript. We will first hear from the ACT Auditor-General and his officials. Could I confirm that you have read the privilege statement on the pink card in front of you and that you understand the privilege implication of the statement?

Mr Harris: I have read the privilege statement and understand it.

THE CHAIR: Great, thank you. If witnesses take any questions on notice today, please get those answers to the committee support office and committee secretary within five working days of the receipt of the uncorrected proof transcript.

Mr Harris, you can have the floor and explain to us the key findings and recommendations you have for this report.

Mr Harris: Thank you, Chair. The best summary of this report is in fact in the conclusions on pages 1 and 2. We basically concluded from this report that in relation to procurement exemptions—which is where entities seek to enter into a procurement process in what is called a select tender process or a single select process—agencies are, effectively, documenting the rationale for selecting a provider without an open and competitive process. That lack of open and competitive process is the essential characteristic of procurement exemptions. So we found that they are basically complying with the legislative requirements for using an exemption; however, that compliance was lacking in a number of areas, in our view. The key areas in which attention was lacking were essentially the value-for-money process and issues related to value for money.

Fewer than half of the procurements considered in the audit actually had a documented process for addressing probity issues. So, whilst entities were complying with the legislative requirements, they were not taking effective account of probity issues in this process. Fewer than half of the procurements considered in the audit had effective risk assessments in relation to the risk attached to procurement itself. They were fairly proficient—in fact, they were very proficient—in addressing operational risk, but they were severely lacking, in our view, in addressing the risks attached to

the procurement itself. That lack of attention to probity is one example of that lack of attention to risk assessment in the procurement process. Also, there was no evidence that we saw in relation to paying attention, taking account of, or factoring in the whole-of-life costs when assessing value for money.

That is probably best demonstrated when you look at procurements in relation to IT—particularly software upgrades, and additional IT equipment and software related procurements. Frequently, these procurements will be assessed in terms of their cost to the purchaser in relation to the upfront cost but not the whole-of-life cost of IT equipment—software in particular. It is not uncommon—and this is the nature of the marketplace, as much as anything else—for people to be relatively locked into a single supplier in terms of IT product. We are all guilty of that in relation to phones in particular; it is the nature of the market. But the actual initial purchase price of the equipment is one component, and the ongoing maintenance and upgrade of that equipment is another component. We did not see sufficient evidence that people were taking account of the entire lifecycle costs of those products when they were going through procurement exemptions.

So the argument is that I am locked into one supplier and therefore I can only go to one place; therefore I qualify for a single, select procurement. I look at the upfront cost of the item I am buying but I do not look at the lifecycle cost. If I did, I may come to the conclusion that the cost of swapping to a different provider—an alternative form of equipment—might be worthwhile. I am not saying that, having done that assessment, that decision would actually be made. What I am saying is that the assessment does not appear to have been made, so, because you do not have the information to make that decision, it is very difficult to make it. It is not a difficult thing to do—simple cost-benefit analysis has been around for donkey's years, and it is a very effective tool in terms of discounted cashflow to judge the whole of lifecycle. So, those are the key findings, and our recommendations go to addressing those findings.

So a brief summary: on the surface, documentation looks fine. When you scratch the surface a little bit and go down, the probity issues were not effectively addressed, risk assessments were not effectively addressed and value for money was not effectively assessed in relation to whole-of-lifecycle costing.

THE CHAIR: Did you also have a look at the legislation? I mean, are they compliant with the legislation? Would you have any recommendation about amending the legislation so the procurement could be a bit thorough?

Mr Harris: I have contemplated that. I have not come to a final view on that question. Indeed, you have asked me that question in the past, and my response to date has been that my default position is not to go to additional black-letter law in these matters and that the procedures and the policies that are in place are effective if they are followed. The issue is that they are not being followed as rigorously as they should be. Up to this point, my view has been there should be additional training—additional exposure of public servants to these issues. Some more effective training in relation to recognising a conflict of interest when it is there, in my view, to this point, would be more effective.

I do not believe that across the public sector—and we are seeing it in a number of pieces of work that we are doing at the moment—there is a sufficient understanding of what a conflict of interest actually is. There needs to be more exposure and more training in that area for public servants to understand what conflicts of interest are and how to address them. How to address a conflict of interest is as important as recognising that one exists in the first place.

Having said that, we have done a number of pieces of work in this area to date and we have a couple more that are coming through the pipeline very shortly, and all of those pieces of work are adding to a picture that is leading me to believe that something more than additional training may be required. But until we have done more work in this area I would be loath to make a comment about what that step should be.

THE CHAIR: Okay. I was going to ask you a follow-up question about the conflict of interest—whether you have seen that with other reports and investigation you have done, but you have just raised that—

Mr Harris: Yes, we have. It will become evident in a couple of reports that are coming quite soon. We are, in fact, contemplating within the office, some more pieces of work in this area in the forward programs, which will shine a light on some of these issues perhaps in a more direct way than we have done. They have come up in a peripheral sense, to some degree, in some of the work we have been doing this year. It will be more concentrated in some of the work that we do next year.

MR PETTERSSON: Of the 33 audits that you investigated, fewer than half had documented processes for addressing probity issues, only a third had signed declarations of confidentiality and conflict of interest, fewer than half of the procurements considered in the audit had effective risk assessments and only 14 of 33 had a tender evaluation plan. Of the audits you looked at, did any of them get it all right the whole way through?

Mr Harris: Good question. I might pass to Martin, who is the lead in this audit, for that level of detail.

Mr Handley: I do not believe there were any that got it right all the way through.

MR PETTERSSON: Right. That is a jarring answer. On a slightly different tack, are there any repercussions for public servants who do not get the procurement process right?

Mr Harris: “Repercussions” is a word that has a scale attached to it. There are, depending upon the scale of the issue. Indeed, those repercussions can go all the way to termination of employment if the scale of the breach is sufficient. To be fair, the vast majority of these breaches were at the minor end of the scale, and a lot of them were not large procurements, either. So, yes, there are penalties. Those penalties can be invoked through various pieces of legislation, depending upon the nature of the breach. It might be a disciplinary action; at the top end of the scale it would be a termination.

MR PETTERSSON: I am not sure if it was part of the terms of reference for the

audit, but did you see any instances of any repercussions for anyone involved in these procurement oversights?

Mr Harris: It was not a term of reference. I am not aware that we saw any in relation to the procurements that we examined in this particular report. We are doing other work, which will come to the committee shortly, where there have been much more serious breaches which may or may not result in more severe consequences, depending upon who decides to take action.

Mr Stanton: I have read the privileges statement and understand it. What we did not look at for this audit and these procurements, was the procurement outcome and whether, frankly, it was the right outcome. And “right outcome” is a loaded judgement, anyway. We did not do a deep dive into each of the procurements. However, to the extent that all procurement in the ACT needs to follow, or otherwise demonstrate, value for money, as articulated in section 22A of the act, it is the opportunity for the people undertaking the procurement to document their consideration of whole-of-life costs and to document their consideration of risks associated with procurement, conflicts of interest, and the like. So we were looking to them to see how they actually documented that. It was their opportunity to demonstrate that they had done it. With any selection size of 33, there are some things that are done well, some things that are not done well.

We certainly did highlight across the board where they fell down in terms of those considerations, and that is what we were doing for this audit. We were shining a light on where they have not taken the opportunity to fully demonstrate their consideration or adherence to those particular principles. It is not to say the right or the wrong procurement outcome was achieved, but they certainly could have done better to demonstrate their consideration of the value-for-money considerations.

MR PETTERSSON: Thanks.

MR BRADDOCK: Not specific to this particular audit, but in general, across the audits you have done on procurement in the ACT, have you been able to come to a judgement in terms of the cultural compliance in the ACT Public Service to the procurement policies guidelines and procedures? And is the ACT government doing everything it can do to build that culture of compliance to be able to achieve its aims?

Mr Harris: I think the conclusions in this audit touch on that. We essentially say that entities are effectively documenting the rationale, but they are, if you like, following the steps because they have to follow the steps. I think that is the best way of describing it. “There is a process to be going through. If I tick all of these boxes, I have fulfilled the process and that is the end of the matter.” Read in conjunction with my other comments about probity, conflict of interest, and lack of effective assessment of value for money, those are the things that are not being properly addressed. And the documentation is not sufficient to give us confidence that they are addressing those matters effectively.

So, on the face of it—and certainly the evidence, over a number of audits now, is starting to build a picture that this is true—your statement is probably correct. There is an attitude that if I fill in these forms and I tick these boxes, I have complied with the

process, without actually understanding what the forms are meant to do and what is meant to be demonstrated by filling in those forms.

MR BRADDOCK: But they are not even ticking all the boxes, at some point, as your audit shows as well.

Mr Harris: In some cases, yes—or no; whichever is the appropriate! No, they are not ticking the boxes in some cases. That brings me back to my point about more education, more training perhaps, rather than black-letter law. I am not sure that we have black-letter law now; we still have these deficiencies, so that may not be the answer.

MR PETTERSSON: I was hoping you could articulate the relationship between Procurement ACT and the Government Procurement Board, for the benefit of the committee?

Mr Harris: That is a relationship that we do not fully understand but we are coming to understand a little bit more. Martin might, perhaps, have a better degree of understanding to deal with that.

Mr Handley: I have read and understand the privilege statement. I cannot really add much more to that, to be honest. Yes; I did not fully understand it in the audit.

Mr Harris: Having dropped Martin in it—

MR PETTERSSON: You will save him.

Mr Harris: —I will extract him. On the surface, it would appear that the role of Procurement ACT is a support role to the board in terms of administrative support, providing technical assistance and so forth. I do not believe that that is actually the role. There appears to be a separation between the two which I did not quite fully understand until we went through a number of these audits.

That is not to say there is a complete separation between them—there is obviously a relationship between them—but the roles are clearly not what we anticipated. It may well be that some clarification of that role, or some re-alignment of those roles and those relationships, may be appropriate. I have not come to a conclusion about that and, as I mentioned before, some of the other work that we are doing, which will come to the committee in the New Year or later this year, will certainly examine that relationship. I am sure I will have more to say about that relationship and the role of the Procurement Board itself, perhaps. I hasten to add that I have not come to conclusions in that regard at this point.

THE CHAIR: Thank you, gentlemen; that concludes our first session. If witnesses have taken any questions on notice today, could you please get those answers to the committee support office or committee secretary within five working days of the receipt of the uncorrected proof transcript.

Short suspension.

STEEL, MR CHRIS, Minister for Skills, Minister for Transport and City Services and Special Minister of State

BAIN, MR GLENN, Executive Group Manager, Procurement ACT

THE CHAIR: We will now hear from the Special Minister of State and his official. Could I confirm that you have read the privilege statement on the pink card in front of you and that you understand the privilege implications of the statement.

Mr Steel: Yes.

Mr Bain: I have, thank you.

THE CHAIR: Okay, great, thank you. Do you have an opening statement, Minister Steel?

Mr Steel: No, thank you.

THE CHAIR: We will go straight into the questions then. Minister, the report mentioned the value-for-money procurement process, and the Auditor-General mentioned the conflict of interest and how a lot of people needed some more training, because there was evidence that only a third had signed declarations of confidentiality and conflicts of interest out of all the audits that they had considered. What is your response to that?

Mr Steel: We have accepted the recommendations of the Auditor-General and we have already been in the process of implementing those recommendations. In fact, we have also released probity guidelines since the procurements that were the subject of the Auditor-General's review took place. The guidelines are assisting directorates in undertaking the appropriate measures in relation to conflict of interest and broader probity issues. I will hand over to Glenn Bain to talk a bit little further about what work has been done.

Mr Bain: The timing, not so much of the audit but of the set of procurements that were the subject of the audit, was unfortunate, because our publication of the probity procurement guide happened after those procurements had taken place, but at the same time as the audit was taking place. It is actually reflected in some of the statements in the audit report that we do now have this.

The publication has addressed, to a large extent, some of those training and awareness needs, if you like. The probity guide was developed in consultation with the government solicitor, as well as with the Integrity Commission so that we could get the settings right about what advice we should be giving so that people could be made more aware of how to recognise a potential conflict of interest and what to do with it, right from disclosure statements all the way through to proper management of any potential conflict. That guide also goes to great direction about broader probity principles, as well as the idea of engaging specialist advice as appropriate.

THE CHAIR: I am actually quite stunned at the finding that only a third had signed a declaration of interest. That is quite shocking because that is quite a huge number. Why is that? Why did a third of the procurements audited not sign a declaration of a

conflict of interest?

Mr Bain: It is not always the case that you need to sign one. We are recommending that, now, as a matter of course so that you can be sure that you can provide assurance—to the delegate in this instance—that there is no conflict of interest that has not been dealt with. It is not to say that there will not be conflicts of interest from time to time, but certainly, there are instances where, on a low-value, low-risk procurement activity, it is not necessarily required to sign off on conflict of interest for the evaluation panel or everyone involved in the decision making. As I said, we have tightened that up in our guidance now, such that, as a rule, you do. We are suggesting that for every procurement you do that, but that is largely more to bring people's awareness up and get them thinking about it, rather than any technical need for a sign-off.

THE CHAIR: Are you saying that it was only for the low value-for-money that you did not really recommend having a declaration of conflict of interest but the high value-for-money procurement needed that declaration of interest?

Mr Bain: I think wherever there is a high value, or any procurement risk that would attach, then, yes, it should be a matter of course. I would not say there was a recommendation not to use it, but there was not a positive recommendation to use those disclosure statements. They have always been available, but they have not always been recommended for use.

Part of the issue here—and I think one of the committee members raised it earlier—is that it is very difficult thing sometimes for public servants for whom a procurement is a once-in-a-career or once-in-every-five-years exercise. And even if it is a low-value, low-risk one, they are not always mindful of what they should be looking for. And they do not always get direct support from Procurement ACT. We provide indirect support for low-value, low-risk procurements up to about \$200,000. And above that, they would come to us and get the guidance that should be appropriate for that procurement.

THE CHAIR: So why didn't you see it as a recommendation for someone to declare a conflict of interest in any procurement?

Mr Bain: Why do we now recommend that?

THE CHAIR: Yes. Why didn't you think that it was recommended—that it was not that important for somebody to declare a conflict of interest?

Mr Bain: No, I do not think we have ever recommended that. All I am saying is that there was not necessarily a need for a formal disclosure statement to be signed by everyone involved.

THE CHAIR: I am just trying to understand the reason behind it. If you did not think it was that important, then you obviously did not have a guideline for it.

Mr Bain: There was probity guidance in the form of circulars in practice, but they were not explicit about the use of disclosure statements, no.

THE CHAIR: Were there any events that happened that made you think, “Okay, now I need to tighten up the guidelines and make sure that people actually do a declaration of conflict of interest”?

Mr Bain: Not a particular event. It was really out of a discussion with other interested parties—the Government Solicitor’s office, the Integrity Commission and other parties—saying, “We really should tighten this up and make it something that people automatically think about when they start a procurement activity.”

THE CHAIR: And how long ago was that discussion?

Mr Bain: It was during the formation of the latest version of the probity principles.

THE CHAIR: Which was?

Mr Bain: Which was 2019.

THE CHAIR: So it was in the process for about a year when the Auditor-General started doing this audit?

Mr Bain: That is right.

THE CHAIR: Okay. Thank you.

Mr Steel: But the Integrity Commission themselves in their first annual report made specific recommendations about this issue.

Mr Bain: That is right.

Mr Steel: So that has actually been on the record, and Procurement ACT have had that discussion with them about how we can make sure that the guidance that we provide now is in line with best practice.

MR PETTERSSON: In the previous hearing I asked a question of the Auditor-General about the role of the Procurement Board and Procurement ACT. As you saw, the Auditor-General could not quite articulate that relationship. I was wondering if you could do so for us.

Mr Bain: Certainly. Thanks for the question. It is a relationship that, I must say, causes some confusion for people looking in. The way that the board and Procurement ACT work together is two-fold. In the first instance, we provide secretariat support to the board. A member of Procurement ACT acts as the secretary for the ACT Government Procurement Board, making bookings, taking minutes and providing advice from the board back out to proponent directorates.

That is the formal relationship. The informal relationship, though, is that we observe board meetings. We have a senior executive attend to observe the meetings so that trends or patterns of comments and behaviour can be brought back, and we can feed them through into our policy development and guidance material. But we also take

that opportunity to provide specific procurement advice to the board on individual proposals.

If they are not for capital works, most of those proposals—by the time they get to a threshold at which the board would be considering them—have been worked on in conjunction with Procurement ACT and the proponent in any case. So there is a very good relationship with Procurement ACT feeding through feedback that we have heard from other procurements of a similar ilk, from the board. We also present to the board policy, both in preparation stages and final stages, so that they can flow that through in the thinking and advice that they provide. We take part in their annual planning exercises to the extent that we consolidate the annual procurement plans of directorates, take it to them and work through with them what their likely workload is going to be over the next 12 or 18 months.

MR PETTERSSON: It seems like quite a tight-knit relationship, with information going in both directions between the board and Procurement ACT. Would there be any benefit in providing a clearer separation of the roles and the independence of those two entities?

Mr Bain: There are certainly a number of models in other jurisdictions that do not have quite the same relationship as envisaged in our act or in practice. It is probably not really for me to comment on what might be a better version, but there certainly are other models around.

Mr Steel: It might be helpful, on notice, to provide a diagram of the structure. I think the important thing to note is that the way that the Government Procurement Act is structured, the delegate in each directorate signs off on procurements. So the procurement board is part of the governance framework for procurements taking place, whereby certain procurements go to that board so that there is an external oversight of what is actually happening in relation to a procurement, and so any further advice that needs to be given can be given.

So the board itself is part of providing that independence. Procurement ACT is involved in that—not directly as part of signing-off on the procurement but providing advice so that that procurement can occur in the best way. So, yes, we can provide that type of diagram if that suits the Auditor-General and yourselves, to understand the role of the board.

MR PETTERSSON: Wonderful.

THE CHAIR: Can I just add that Mr Pettersson's point is quite interesting—that there is such a close relationship between the board and Procurement ACT but other jurisdictions do not have that closeness. Are you saying that in other jurisdictions the board is quite an independent body from their procurement?

Mr Bain: Well it ranges from having no board at all in some jurisdictions—South Australia recently, as part of their procurement reform, dissolved the board—through to a Victorian example where the board has very strong powers in procurement decisions, methodologies. But again, as the minister suggested, our framework, as established in the Government Procurement Act in the first place, is such that that

would require significant change certainly to the legislation but, obviously, that would also flow through to our general framework.

So, although external non-government members and government members comprise the board—and they have very good understanding and practice of providing, to the extent they can, objective advice to directors general and the minister—where it is warranted quite often an internal member of a directorate that has a proposal sits out of that discussion and decision-making, just so that it cannot be seen as being—

THE CHAIR: A conflict of interest.

Mr Bain: —just a club; that is right. So in practice they have made it even more independent, if you like, than it might read at first.

THE CHAIR: Right. How many members are in that board?

Mr Bain: There seven or nine? Up to nine.

THE CHAIR: How many non-government and government members?

Mr Bain: The chair and the deputy chair are government members—senior executives in the public service—and there are two other government members. The rest of the board is made up of members that are not public servants.

THE CHAIR: Okay. Why is the chair a member of the government when it is procurement of government stuff? Shouldn't you have some non-government person so they could look at it with an external independent view, as opposed to having a chair of the board being a member of the government?

Mr Bain: That is the model established under the act, so it is not just a matter of practice.

THE CHAIR: Okay. So the chair and deputy are both members of the government.

Mr Bain: Must be.

THE CHAIR: Why is that, Minister? It is in the act, but why?

Mr Steel: Well, the government is making decisions on what it procures, and it is an important role for government to take. But as part of the internal government structure that we have there is a level of oversight within government that is provided, through the Procurement Board, of the individual decisions by delegates in each directorate. So ultimately it is up to the delegate to make a decision about value for money, which they do on each procurement, but the board is there to provide a level of oversight for certain procurements that have greater risk. I think the board's structure reflects a good level of oversight at the moment, together with the work that we need to do to further educate the directorates about how to undertake procurements as per the recommendations of the report. The Procurement Board will no doubt be involved in providing a level of guidance in relation to that education material, as well.

THE CHAIR: Interesting.

MR BRADDOCK: A common theme that we are seeing in the audit reports is that Procurement ACT has the correct guidance procedures and so forth sitting on the shelf, but that they are not necessarily being operationalised by employers and directorates who, as you said, once every five years or less frequently do the procurement. So my question is in terms of how we create that culture of compliance within those other directorates? Can you take me through how Procurement ACT and the other directorates do that? Also, what management actions are taken when an employee does not follow the appropriate guidance? How often is that undertaken?

Mr Steel: Firstly, there have been changes to some of those guides, particularly the probity in procurement guide, since the audit was undertaken of those particular procurements. So there actually have been changes that require further education to embed those new guidance documents, and that work is being undertaken this financial year. But, yes, I will hand over to Glenn to talk a little bit about how that education has occurred in the past and what we are planning now with these new guidance materials.

Mr Bain: Thanks, Minister. A really interesting question to explore is how you make the horse drink once you have taken it to the water. We have been exploring different ways to get that happening. What we are doing now had not been practised before. We have established a procurement community of practice of in excess of 200 people—it might be getting close to 300 people—throughout all of the directorates, who have an involvement either day to day or even periodically in procurement activity. They come together and discuss matters that are important to them and matters that are important to us.

We use that as an awareness raising forum, as well. We have it structured such that there are a number of working groups where there are particular points that need to be worked through. The training one is a very lively subgroup, which has suggested, and in fact formed, the interest group against which we have tested our e-learning products, for example. So we have moved from a static regime where you go out and do your once-a-month training with the directorates. Usually just new starters would turn up and you would run through basic procurement 101 with them. Now it has become a much more nuanced training offering in that sense.

We have the e-learning product that picks up the basics of procurement principles, the interaction of the framework with the Financial Management Act and all of those sorts of things. We have specific training on particular policies such as the secure local jobs code and the Aboriginal and Torres Strait Islander Procurement Policy. Those sorts of things have specific training elements now made available. And one of the things that I am exploring through that community of practice is the idea of an accreditation whereby not just as a procurement officer, but as a delegate, you have some level of training before you can actually discharge those responsibilities.

That is something that is not formally recognised in the territory at this stage, and it is something that seems to get part way towards an assurance for directors-general that the people they are relying upon to do this work and to provide them advice for exemptions, for example, as was the subject of this review, are actually trained and

understand the roles and the principles behind them.

MR BRADDOCK: For my clarification, is there currently no mandatory proficiency or competence to be a delegate?

Mr Bain: No, there is not.

Mr Steel: The delegate is typically director-general of a directorate, though. So they are people that have significant experience and would not be appointed to those roles if they did not have that type of experience.

MR BRADDOCK: Yes.

Mr Bain: That is certain. The exemption delegations which were the subject of the audit are very closely held at the level of director-general, or deputy director-general in some instances, but certainly nowhere below a band 2 senior executive. You have very senior people making those decisions.

MR BRADDOCK: Yes. Are we measuring the performance of those people in terms of their adherence to the various procurement guidelines and principles?

Mr Bain: I do not measure any compliance in that sense, no.

THE CHAIR: Why is that? Sorry, Mr Braddock, I am just curious.

MR BRADDOCK: No, we will keep going with that question then I will keep going on my train of questions.

Mr Steel: I think that is the subject of the Auditor-General's report. What we are discussing is that there has not been a review of this. That is what we are discussing here today.

MR BRADDOCK: Yes.

Mr Bain: When matters come to our attention, such as procurement activity that goes awry or that could have been done in a better way, we bring that up with the directorate both at operational level, through monthly meetings that my officers have with each directorate and their procurement leads, and also in quarterly and six-monthly meetings with directors-general, at which we undertake to bring across what is going on in their directorate in the procurement space. So it is not as if we ignore it; it is just that we do not formally monitor or run a compliance regime.

MR BRADDOCK: Okay. Is there any management action taken as a result of that, whether it is further training that might be required, counselling or termination of employment, if it is such a terrible breach?

Mr Bain: I do not know. Certainly, I would not be implementing any of that unless it was one of my staff that was found to have had a failing or a shortcoming. I presume that in the normal management of the directorates, those things would be taken into consideration.

THE CHAIR: I have a follow-up question, but I might save that for a question on notice. In regard to the value-for-money and procurement process, the Auditor-General found that there was no evidence that whole-of-life costs were factored into the value-for-money assessment. It is quite stunning that when you go through the procurement you do not actually go through the lifecycle of what you are asking for. What is your response to that, and can you elaborate?

Mr Bain: What I can say is that we have tightened that up in our guidance material. Some of that is due to be released in the coming weeks, so had this been held in January, you would have a different answer.

THE CHAIR: This is going to be the answer to all my questions.

Mr Bain: I know; it is awkward. It is one of the elements of advice that we have tightened up in terms of providing formal guidance in documented form. Informally, though, it is something that our officers encourage the directorates to think about when they are developing their proposals in the first place. It is something that should be thought of right from once you have identified the need, not just right at the end when you get to a contract level. So we are trying to move that thinking very much forward in that timeline.

THE CHAIR: Right. So you have mentioned it to the directors-general before; they just do not comply with it—they just do not follow your recommendation or your guidance!

Mr Bain: Well, that is a matter for others to determine. What I can say is that they are better informed now, and their directorate officers undertaking procurements are better informed now, on when and how to consider those factors.

THE CHAIR: Yes. But it is safe to say that in the past, you have given them recommendations and guidelines to consider long life of the product that they are considering, rather than just the beginning. You have given them that advice; however they have not followed through.

Mr Bain: Very much so.

Mr Steel: I think the focus is on documentation here. It may have been contemplated, it may have been assessed, but it may not necessarily have been appropriately documented in the case of procurements. What the Auditor-General's recommendations are focusing on is around documentation of risks in relation to procurements, and a range of other things. So, yes, it may absolutely have been contemplated in the procurement process and any business case that was brought forward in relation to that, but it may not be appropriately documented.

Mr Bain: I think it is very important to understand the parameters of this review. They were looking at procurements only where an exemption has been granted; it was not just a general cut of procurement activity. And that might have put a slant on the documentation of those sorts of considerations.

THE CHAIR: So the new guidelines actually specify that directors-general need to document the life cycle—

Mr Bain: Very much so. The material that we have developed, which is to be published soon—but also in our general conversations and our support activities with directorates—has very much focused on documentation and taking the whole procurement—it is not just a purchasing function; it is a procurement function—into consideration. Yes.

THE CHAIR: It is wise advice. When will the publication of your new guidelines be released?

Mr Bain: It is on a staggered timeline, as you would imagine, with very few people actually doing it. But some of it is due for release early January, and we hope to have all of the implementation of the recommendations complete by the end of June 22.

Mr Steel: And we have already released the probity guideline, which is available and was published in 2020.

THE CHAIR: Who is involved with writing out the guidelines? Is it just ACT Procurement; are there solicitors involved as well?

Mr Bain: Procurement ACT takes the running on it. As I said, we use the community of practice as input and as sounding boards on it, as it is developed. We also talk to the Government Solicitor and other expert areas. As I have mentioned before, we bounce things off the Integrity Commission and its education and awareness officer as well.

MR PETERSSON: I am sure you heard before, from the Auditor-General, that out of the 33 procurements that were audited not one of them passed with flying colours. They all had a problem or some sort. Now that you have accepted the recommendations of the Auditor-General's report, and you are in the process of implementing reforms, how will you measure the effectiveness of the reforms you are putting in place?

Mr Bain: Most of the reform is in terms of education and awareness. I think probably the only real way that we could measure that is by watching it in practice and as it plays out. We do not see all of that procurement activity; in fact, if it is under \$200,000 we do not see it unless it becomes a notifiable contract. So we do not have great visibility of that procurement activity. And a lot of this exemption practice is for the lower-risk activity, so I cannot speak too clearly on that.

But what I would say is that as a follow-up there would be nothing to stop directors-general from putting in their own assurance schemes for these sorts of things—to check that the documentation meets the template of material that we have provided, for example, and pick up any deficiencies at that point.

MR PETERSSON: Yes, but the directors-general are the people signing off on these procurements, so I cannot see them being heavily invested in auditing the things they have just signed-off on. So, in terms of—

Mr Bain: I am not sure that—

Mr Steel: They are the ones that are accountable under the Government Procurement Act, so, yes, they would have absolutely the best interest to make sure that their procurement officers were doing this work and the directorate had met the requirements set out under the policies by Procurement ACT and under the Procurement Act and FMA. They are the ones responsible, and if any issues were ever to arise in relation to the procurement, they would be held accountable for those. So they are absolutely part of that.

But, as was mentioned by the Auditor-General, this specifically looked at a very certain category of exempt procurements, which are at the lower-risk end of the spectrum. The KPIs and outcome measures that we could look at is how many people are participating in the training, how many people we have been able to talk to in relation to promotion of the guidelines, and the engagement in the various forums that Procurement ACT runs. Clearly that focus on training by the Auditor-General is one that we are going to be taking seriously going forward in implementing these recommendations.

MR PETTERSSON: I understand the logic of what you have just put forward, but that would equally apply before as it would from here on out. So these things—the procurements—took place and the proper processes were not necessarily followed. The same incentives for the directors-generals would have existed, and these took place. So something needs to change. I think that that is a good suggestion, as a form of measuring the effectiveness. I think I will leave my questioning there.

Mr Bain: I would just add, if I might, Minister, that I have probably given a more peanut-buttered sort of approach to training than what is actually there. We do change our training and train on different elements, depending on the audience. For example, we have done a round, over the last 12 months or so, of training to senior executives across directorates. And they are interested in a different set of principles—if you like—around exercising delegation and that sort of thing.

So while I think the point is well made that nothing in the law has changed since the procurements subject to the review were undertaken, the awareness has been lifted a little bit. That, to me, is the trigger for people taking more responsibility for making sure that these things are not only thought about but, as is picked up time and time in the audit report, documented as to how they were thought about.

MR BRADDOCK: You are saying that because a lot of this procurement happens within the directorates Procurement ACT does not have visibility. Is there any system in place that captures this information across the ACT government in terms of what procurements are happening, how much is being done via exemption, and for you to be able to access the information, should you need to do so?

Mr Bain: There is some rudimentary reporting out of a system that we provide to directorates to use for these low-value, low-risk activities. The reporting is not as detailed or granular as we might like, I think it is fair to say, but we can get an idea of just what level of activity there is in the directorates. And part of that system actually

provides the relevant documentation to be filled in.

Mr Steel: And then for the certain higher level procurements, the Procurement Board, obviously sees that.

MR BRADDOCK: Yes, of course.

Mr Steel: And then there is also the contract register, as well, where ultimately anything that has gone through procurement that results in a contract is then published transparently.

MR BRADDOCK: Yes. You were saying that the granularity might not necessarily be what you like. What is missing in the granularity of that information?

Mr Bain: There are some fundamental elements around it. It was not designed as a reporting tool. It was designed as a tool to provide a once-a-year procurement officer with the scripting, where they essentially put in what it is they want. It prompts them as to the right form of words to use in any approach to market documentation and provides certain templates. It draws on a bank of fundamental contract elements that would then flow into any contract arising from that procurement.

With that in mind, there was not a lot of thought put into its development for reporting against any activity. I can tell, for example, how many people have started a procurement on there, but I cannot always tell how many of them have resulted in a contract or if it has gone through.

MR BRADDOCK: I suppose you could tell the value, for example, as part of the fields they are filling in to obtain the appropriate clauses?

Mr Bain: We can, indeed. As I said, the value is according to the thresholds in the regulation. Up to \$200,000 was the threshold that we set for using this system, because, over that, you should be going to an open tender.

MR BRADDOCK: Thank you.

THE CHAIR: I have no questions. We have finished early. The committee's hearing for today is now adjourned. On behalf of the committee, I would like to thank the Auditor-General, Minister Steel and the official who have appeared today. The secretary will provide you with a copy of the proof transcript of today's hearing when it is available. If witnesses have taken any questions on notice today, could you please get those answers to the committee's secretary within five working days of the receipt of the uncorrected proof.

If members wish to lodge questions on notice, please get those to the committee secretary within five working days of the hearing, day one being the next working day after the hearing.

The committee adjourned at 10.29 am.