

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Eleventh Report — What happens next? Beyond a finding of serious misconduct: Examining the responses to a finding of serious misconduct and building integrity in public agencies — Tabling

MR M. HUGHES (Kalamunda) [11.04 am]: I present for tabling the eleventh report of the Joint Standing Committee on the Corruption and Crime Commission titled *What happens next? Beyond a finding of serious misconduct: Examining the responses to a finding of serious misconduct and building integrity in public agencies*.

[See paper [2570](#).]

Mr M. HUGHES: The eleventh report of the joint standing committee deals with a wide range of matters relevant to what happens after a public officer has been found to have engaged in serious misconduct. In this 175-page report, the committee has made 49 findings and 34 recommendations.

The Corruption and Crime Commission is the primary agency responsible for dealing with serious misconduct, which includes corruption and fraud by public officers in Western Australia. If the commission determines that a matter should be investigated, it can execute search warrants, apply for telecommunications service warrants and surveillance device warrants, conduct controlled operations and compel persons to produce documents and other things. In 2003, the then Attorney General, Hon Jim McGinty, MLA, on introducing the Corruption, Crime and Misconduct Bill into Parliament, said —

Western Australians deserve a Police Service and a public sector that are free from the scourge of corruption.

The commission would be “one of the most powerful crime and corruption ... bodies in Australia.”

I believe that since its establishment in 2004 the commission has lived up to promises made by the Hon Jim McGinty, MLA, having turned its attention to a diverse range of allegations of misconduct and, more recently, unexplained wealth allegations. The remit of the commission covers members of Parliament and public agencies including departments, the police, local governments, government trading enterprises and universities. Although the commission deals with allegations of serious misconduct and exposes corruption, its central purpose is to build the sector’s resilience to resist misconduct.

Twenty years on from the introduction in this place of the legislation establishing the commission, the inquiry of the Joint Standing Committee on the Corruption and Crime Commission of the forty-first Parliament arose from the observation that what happens after a public officer is found to have engaged in serious misconduct—that is, to the public officer and systemically at the relevant agency and sector wide—is largely unknown. The committee wanted to examine whether the integrity work of the commission and other agencies was building a more resilient public sector.

Since its inception, the work of the commission has exposed significant corruption and fraud by a few public officers. The most scandalous, as we are all aware, in recent years includes the conduct of Paul Whyte, the former assistant director general at the Department of Communities. The scale and audacity of Mr Whyte’s criminal deception, his theft of \$22 million of public money and his obtaining \$5 million in bribes, shocked the Western Australian public and significantly tarnished the reputation of the Department of Communities and with it that of the public sector. Serious misconduct in the public sector is insidious. It erodes public trust and confidence in public administration.

When the commission tables a report in Parliament, or significant serious misconduct by a public officer is exposed, the media tends to have a limited focus on the individual’s conduct and possible prosecution. The committee went wider and examined the range of outcomes that follow a finding of serious misconduct and whether lessons are being learnt from investigations, what is being done to build integrity and minimise misconduct risks in the sector and whether there is appropriate transparency and agency accountability. The report’s findings and recommendations provide an effective summary of the committee’s views regarding these matters. The committee considers that many recommendations are relevant to the current reform of the Corruption, Crime and Misconduct Act 2003 and the Local Government Act 1995. The committee is strongly of the view that although the commission has had a few additional functions assigned to it by legislative amendment, no function is more important than its serious misconduct function.

Some members may not be aware that the commission receives and assesses thousands of allegations of serious misconduct each year; indeed, 5 895 allegations were brought to the attention of the commission in 2022–23. However, as I said at the beginning of my tabling statement, corruption and fraud are insidious and continuous vigilance is required to protect public money and prevent serious misconduct. I note, however, that most public officers in Western Australia are above reproach in the exercise of their duties.

It is a practical necessity, but also appropriate, that the commission refers most allegations requiring further action to the employing agency to investigate. In 2022–23, 836 allegations, 14 per cent, were referred to agencies. The

agencies then reported back to the commission after finalising these matters in a closure report. Employing agencies have an absolute responsibility to ensure that they have adequate policy and procedures in place to identify and safeguard against misconduct risks, as well as ensuring a robust speak-up culture in which employees who are suspicious of a work colleague whose work practices raise concern, regardless of that person's authority, speak up. Responsibility for integrity within an organisation and imposing a sanction on an employee, of course, lies with the employing agency. However, the commission overlooks referred matters. This report examines why and how referrals occur and the commission's oversight. The commission will only comment on the sanction imposed by an agency if it is grossly inconsistent with the outcome. The commission actively overlooks some referred matters and continues to rely heavily on overlooking internal police investigations into police misconduct. It is important to note that under the Corruption, Crime and Misconduct Act, all police misconduct is considered to be serious misconduct. We think the oversight of referred matters can be improved. We have recommended measures to enhance the commission's oversight of outcomes, including creating a template closure report with minimum requirements. Among other improvements, the committee recommends that an agency dealing with a referred matter must provide a summary to the commission of why it considered the sanction or other outcome an appropriate outcome in all the circumstances. This is particularly important given that a local management or improvement action outcome, which includes verbal guidance, is commonly imposed for serious misconduct. In 2021–22, local management/improvement action was the outcome for 70 per cent of outcomes for police misconduct and 44 per cent of outcomes for serious misconduct in the rest of the public sector in matters recorded by the commission.

The consequences for public officers who abuse the trust placed in them is quite rightly of concern and interest to the public. The public expects consequences for the wrongdoer to be proportionate in response to the nature and extent of the serious misconduct. However, data on what follows a finding, including sanctions and prosecutions, is not readily available to the public. Tables 4.1 and 4.3 of the committee's report reveal the sanctions of local management/improvement actions imposed on public officers after a finding of serious misconduct over the last few years as recorded by the commission. In our view, these tables, and the prosecution table at appendix 6 of the report, must be published and easily accessible to the public. The committee also recommends that the government directs agencies to recover financial losses arising from serious misconduct wherever feasible and possible and that the Public Sector Commissioner clarifies and strengthens its advice to agencies about paying voluntary severance when there is an allegation of serious misconduct. As noted in chapter 4 of the report, voluntary severance payments have been made in these circumstances but no action was taken to recover any payment, even after officers were imprisoned for their conduct.

There is understandable public interest in whether and when a prosecution follows a finding of serious misconduct. It is important to emphasise, however, that the commission is an investigative agency, not a prosecution agency. This distinction is not necessarily well understood by the public. During a misconduct investigation, the commission seeks to ascertain how the misconduct came about, why it was not prevented or detected, whether it extends beyond the individual agency, whether it is the result of systemic shortcomings and what agency policy or procedural changes are necessary to prevent or deal with such conduct in the future. Although it is positive that the Director of Public Prosecutions reported in 2022 that there were no significant issues in prosecutions arising from commission investigations, one prominent discontinued case in 2023 highlighted the very real risks and challenges in prosecuting matters arising from commission investigations. Prosecutions arising from commission investigations must be adequately resourced. We recommend that the police, the DPP and the commission enter into arrangements to ensure the effective prosecution of matters to avoid cases being discontinued for avoidable reasons.

The committee is firm in its view that, ultimately, public agencies are responsible for their own integrity and that they need to be vigilant and proactive, not reactive, in preventing misconduct. Identified instances of serious misconduct must be used to shine a light on the action needed at an agency level or sector-wide to prevent serious misconduct and minimise misconduct risks. It is an absolute imperative that our agencies learn from serious misconduct by officers and change their policies and procedures to mitigate against the opportunity of similar serious misconduct reoccurring.

It may surprise members to learn that the Corruption, Crime and Misconduct Act does not provide the commission with a clear misconduct prevention and education function for public authorities. This was not always the situation. Since 2015, the commission has only had this function for police. It has a capacity development function and supports the Public Sector Commissioner in undertaking its misconduct and prevention function. The commission's capacity development function and supporting role are muddy. The result is that the current arrangement is a real impediment to the role of the commission. Plainly, it is in the public interest for the commission to have a clear misconduct prevention and education function for all agencies within its remit, as is the case in other jurisdictions. This function will give the commission the power, flexibility and confidence to respond to integrity priority areas on an as-needs basis. This will give the commission a clear power to report and recommend action to minimise misconduct risks in all agencies.

I turn now to the matter of the commission making specific recommendations versus making observations. In its reports, the commission often comments on risk rather than formally recommending action. Although the committee understands the stated position of the commission, it also recommends that as standard practice, and whenever possible, commission reports tabled in Parliament formally recommend required agency action to minimise misconduct risks when the commission identifies misconduct risks. An agency's response could then be published, providing transparency and accountability. This happens in other jurisdictions.

Over the last few years, the Public Sector Commission and the Office of the Auditor General have published resources and proactively worked with agencies to build integrity in the sector. Agencies are implementing integrity frameworks, many for the first time, that outline governance systems, mechanisms and controls to minimise misconduct risks. Public Sector Commission resources and tools, including its integrity framework maturity self-assessment tool, are designed to shift focus from the rather ad hoc integrity policy and education of the past to coordinated, context-dependent risk-based approaches that emphasise a culture built on integrity. The above is consistent with the desire of Corruption and Crime Commissioner McKechnie that there be greater recognition in the public sector of the risk of corruption and that this risk must be treated like any other risk, such as work health and safety. I wholeheartedly agree. Integrity must be embedded into all aspects of the work of public agencies.

The committee recommends measures to further enhance integrity. In particular, the committee is strongly of the view that the government should establish a centralised public employment register that records public officers who have been dismissed on the grounds of misconduct or have resigned during a misconduct investigation. Commissioner McKechnie supports a register, as does the Department of Local Government, Sport and Cultural Industries. In addition to robust employment practices, a register is the best way to inform prospective employers of a prospective employee's misconduct history and avoid a recycling of names that causes the commission to say, in its words, "We've seen that one before". As they say, the best defence is a good offence. There is a precedent for this approach. In the United Kingdom, the government's Public Sector Fraud Authority manages the internal fraud hub, which is a database of civil servants dismissed for fraud or dishonesty, including those who would have been dismissed had they not resigned. The committee believes a central public employment register is particularly important in local government. The committee deals with concerns particular to local government in chapter 8. We recommend laws to stop local governments entering into termination or resignation agreements with confidentiality clauses and/or payments that are above entitlements if the chief executive officer or employee is the subject of a serious misconduct allegation or finding. The committee also recommends that legislation be proposed to establish a local government inspector and monitors, and to include robust powers to intervene and proactively work with local governments to achieve better misconduct outcomes.

As the Corruption, Crime and Misconduct Act is being reformed, in the future, findings and recommendations in our report may need to be read in the context of new legislation. I note that people employed under contract by government agencies do not currently fall within the remit of the commission. It is clear to me that, given the prevalence and extent of contracting out government services, this anomaly must be rectified.

In closing, since the committee commenced this inquiry on 23 March 2022, we have progressed this inquiry while undertaking our oversight and monitoring role. The committee was very dependent on the experience and expertise of the committee's secretariat for managing and processing the information sought from agencies and submissions from other interested parties. In that regard the committee was very ably and conscientiously supported by principal research officer Ms Suzanne Veletta and research officer Ms Jovita Hogan. On behalf of the committee, I wish to record the committee's sincere appreciation for their work. I also want to sincerely thank my fellow committee members, Deputy Chair Hon Dr Steve Thomas, MLC; Hon Klara Andric, MLC; and Hon Mia Davies, MLA, for their commitment to this inquiry. Hon Mia Davies, MLA, has been a welcome addition since February 2023, and I thank Mr Shane Love, MLA, for his contribution prior to that date. The collegiate, bipartisan and collaborative approach of committee members in the forty-first parliament has enabled us to make a range of recommendations that we believe will contribute to real change and better integrity outcomes for the state of Western Australia.

MS M.J. DAVIES (Central Wheatbelt) [11.23 am]: I rise very briefly to make a couple of comments on the report that has just been tabled by the member for Kalamunda and to offer my thanks and appreciation. I came onto this committee halfway through the inquiry, and it was already substantially underway. A significant amount of work had been done, so I also offer thanks to the member for Moore, Shane Love, who began as part of that committee and then passed the baton on to me. I also thank our colleagues in the Legislative Council, Hon Dr Steve Thomas and Hon Klara Andric, and Suzanne and Jovita, who are in the Speaker's gallery. This is the first time I have been on a committee for many years. It was a shock to go back into one as weighty as the oversight committee and the role that this particular committee has, and to re-familiarise myself with the process. Undoubtedly important work is done by the Corruption and Crime Commission and its operations, and also by the parliamentary inspector. From the interactions that we have, having now sat with the committee for a year, we can tell that there is a genuine desire to make sure that this is the best that we can offer in Western Australia for the integrity of our public service, particularly those on the frontline who have regular interactions with the public. The effect of what happens when you are engaged with the CCC can be quite devastating for any member of the public service who is required to

participate. Post that event, particularly if there has been significant or serious misconduct, there naturally needs to be justice and always a view to improving outcomes for our public service because it reflects on everyone when these very few individuals behave in a way that no-one would condone or endorse. The work of the CCC is challenging and we have seen that. We have reviewed evidence, and further evidence and information provided by other jurisdictions indicates that I do not think we are orphans when it comes to grappling with how best to deal with the outcomes of some of these investigations. The work that has been done and the report that has been tabled today offer some very good guidance for everyone who is involved. That means the departments, because they are ultimately responsible for the integrity of those who work within them, the CCC itself, and those who take a keen interest in making sure that we have a public service of the highest integrity because that is what Western Australian taxpayers deserve.

Thank you for the privilege of being involved in this committee. I found it very enjoyable. I thank the chair for, as he said, the collegial approach in which this committee brings the report to Parliament. Again, I say thank you very much to those who have supported us behind the scenes in what has been a mammoth task, and I have only been involved in half of that. With that, I conclude my remarks.