



***JOINT STANDING COMMITTEE ON
THE CORRUPTION AND CRIME
COMMISSION***

**CORRUPTION AND CRIME COMMISSION
REPORT ON THE INVESTIGATION OF
ALLEGED PUBLIC SECTOR MISCONDUCT IN
RELATION TO THE ACTIVITIES OF AN
ASSOCIATE TO A JUDGE OF THE DISTRICT
COURT OF WESTERN AUSTRALIA**

**Report No. 8
in the 38th Parliament**

2010

Published by the Legislative Assembly, Parliament of Western Australia, Perth, March 2010.

Printed by the Government Printer, State Law Publisher, Western Australia.



Joint Standing Committee on the Corruption and Crime Commission

Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Activities of an Associate to a Judge of the District Court of Western Australia

ISBN: 978-1-921355-81-3

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committee on the Corruption and Crime Commission. Report 8)

328.365

99-0

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WESTERN AUSTRALIA**

Report No. 8

Presented by:

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Assembly on 18 March 2010

Laid on the Table of the Legislative Council on 23 March 2010

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COMMITTEE'S FUNCTIONS AND POWERS

On 25 November 2008 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

This report attaches, as an annexure, a précis of a Corruption and Crime Commission report that was submitted by the Commission to the Committee and to the Attorney General on 25 February 2010.

The précis was provided by the Commission at the request of the Committee. In preparing the précis, the Commission removed from its original Report some sensitive operational information and some information about the criminal activities and background of persons that Ms A, an Associate to a Judge of the District Court, chose to associate with.

The Committee considered that it was important for the précis to be tabled with Parliament for two reasons:

- to bring to Parliament's attention the investigation and recommendations of the CCC; and
- to better Parliament's understanding of the CCC's ability to present reports to the Committee, and of how the Committee has chosen to deal with this particular report.

With respect to the second point, both the Commission and the Committee have been fully aware that this procedure exists, and there has been discussion between the Commissioner and the Committee as to when and in what circumstances it might occur. As this, however, is the first time that a presentation directly to the Committee has actually occurred, it seems appropriate to outline the Committee's view on the Commission's choice to adopt this course of action in this particular case.



HON NICK GOIRAN, MLC
CHAIRMAN

MINISTERIAL RESPONSE

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the CCC contained in the CCC Report which is appended to this Report.

CHAPTER 1 CCC REPORT

1.1 Tabling of the CCC Report with the Committee

On 25 February 2010, the Corruption and Crime Commission (“the Commission”) presented to the Joint Standing Committee on the Corruption and Crime Commission (“the Committee”) its *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Activities of an Associate to a Judge of the District Court of Western Australia* (“the Report”).

The Report was presented to the Committee and the Attorney General pursuant to section 89 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”), which states that:

A report of the kind mentioned in section 84, 85 or 88 may be made by the Commission to the Minister, or another Minister or the Standing Committee instead of being laid before each House of Parliament ...

In the above passage, “the Minister” is a reference to the Minister responsible for the administration of the CCC Act. This was the Premier, until allegations were made against the Premier concerning the removal of a Peppermint Grove property called The Cliffe from the state Register of Heritage Places,¹ and responsibility was assigned to the Attorney General.

Notwithstanding a Privileges and Procedures Committee report effectively exonerating the Premier being tabled with Parliament on 17 September 2009, responsibility for the administration of the CCC Act has not yet been formally divested back to the Premier.

The Corruption and Crime Commissioner, the Hon. Len Roberts-Smith, RFD, QC (“the Commissioner”) has informed the Committee that the Attorney General was provided the Report not in his capacity as “the Minister”, but rather as “another Minister” being the Minister responsible for the Department which was the subject of the Commission’s inquiry. The Committee includes this information by way of public record only.

The Report was accompanied by a covering letter to the Committee from the Commissioner citing three reasons why the Commission had chosen to present the Report to the Committee and the Attorney General, instead of tabling the Report direct with Parliament.

The Commission considers it appropriate to make the report to you instead of laying it before each House of Parliament under section 84 or dealing with it under section 93 of the Act because of:

¹ On 29 June 2009, the Corruption and Crime Commissioner forwarded to the Speaker of the Legislative Assembly, the Hon. Grant Woodhams MLA, complaints dated 31 March and 15 April 2009 sent to the Corruption and Crime Commission by a Mr Brian Waldron. The complaints contained allegations concerning the Hon Colin Barnett, MLA, and the Hon Michelle Roberts, MLA, in relation to the removal of a Peppermint Grove property called The Cliffe from the state Register of Heritage Places.

- *the details it contains of the persons with whom the Judge's Associate (who was the subject of the investigation) had a personal association;*
- *the security risk in revealing deficiencies in sensitive computer systems; and*
- *serious health and personal considerations affecting the Associate, who has since resigned.*

It should be noted that this was an unusual event. The Committee will on occasion receive a confidential briefing from the Commission which it does not table with Parliament. This, however, has been the first occasion, certainly in the memory of the serving Members of the Committee, in which the Commission has presented to the Committee a report which fell within the characterisation of a report prepared under section 84 of the CCC Act, but which had not also been tabled by the Commission direct with Parliament at the same time.

1.2 Hearing with the Commissioner

The Committee met with the Commissioner on 3 March 2010 and discussed both the content of the Report and the reasons cited by the Commissioner as to why the Report had not been tabled directly with Parliament.

The end result was that the Committee requested the Commissioner to provide the Committee with a précis of the original Report, suitable for tabling with Parliament.

Set out below is the Committee's consideration of the reasons given by the Commissioner for not tabling the Report with Parliament.

1.3 Consideration of the first issue - *details of persons with whom Ms A had a personal connection*

The Committee agrees with the Commissioner's assessment that it is inappropriate for the Commission's original Report to be tabled with Parliament, as it contains sensitive operational information of the persons with whom the Judge's Associate (who was the subject of the investigation, and is referred to henceforth as "Ms A") had a personal association. Publication of this information would not be beneficial, as to do so would both reveal sensitive Commission operational information, and may also prejudice upcoming criminal trials.

The details of the investigation undertaken by the Commission were set out in the original report. From this level of detail the Committee formed a very clear view as to the scope and sophistication of the Commission's investigation and the Committee commends the Commission on the success of the operation. It is clear from the operational details revealed in the original report that the Commission's investigation was thorough, and it brought home to the Committee in the clearest possible terms the threat that criminal activity poses to the integrity of the public sector.

It is abundantly clear from the level of detail in the Commission's original Report that Ms A had numerous associations with drug dealers. Were it not for this level of detail, the Committee would likely have not been able to fully appreciate the extent to which Ms A's inappropriate relationships influenced her actions, which ultimately led to serious breaches of security within the databases maintained by the Department of the Attorney General.

The prospect of criminal activity begetting public sector corruption is abundantly demonstrated by the circumstances of this case. The Commission's Report drives home the Commissioner's recent statement that there is no such thing as an innocuous enquiry of a confidential database when the persons driving the enquiry are operating with criminal intent.

The Committee also applauds the Commission for the fact that information provided by the Commission to the Western Australia Police enabled the Police to charge persons with criminal offences.

Accordingly, the Committee considers that the risk of disseminating sensitive operational information was a valid reason for the Commission to have presented the Report to the Committee instead of tabling the report directly with Parliament.

The Committee requested that the Commission re-draft the Report, essentially to the effect that mention of individual persons with whom Ms A had a personal association be redacted. The Report provided at Appendix One is therefore in essence the original Commission Report, but with the Commission having removed details of its intelligence-gathering procedures and abilities, and the specifics of charges laid by Police as a result of the Commission's investigation.

1.4 Consideration of the second issue - *the security risk in revealing deficiencies in sensitive computer systems*

The Commission considered that the security risk in revealing deficiencies in sensitive computer systems favoured presenting the Report to the Committee, and not tabling it with Parliament. In the Committee's view it is more likely that action will be taken to remedy these deficiencies if the information pertaining to these computer systems contained in the Report is made public.

The Report details significant deficiencies in many computer records management systems used by the Department of the Attorney General. The Committee regards the drawing of public attention to security deficiencies within the public sector - particularly deficiencies that not only allow for, but indeed facilitate and may even engender misconduct - as being a significant component of the work of the Commission. Accordingly, not only does the Committee not regard this reason as being sufficient to prevent the publication of the Report; the Committee regards the fact that the Report (and the précis) details the lack of security within the Department of the Attorney General's computer records management systems as being the prime reason why it is tabling the précis.

This view was conveyed to the Commissioner, and the Committee notes that the précis provided by the Commission provides the same level of analysis and contains the same recommendations as

to the deficiencies in the computer systems as was contained in the original Report presented to the Committee.

1.5 Consideration of the third issue - *the serious health and personal considerations affecting Ms A*

The Commissioner informed the Committee that the serious health and personal considerations affecting Ms A was a factor in his decision not to table the Report with Parliament.

The Committee's view is that to not make this report public will open the Commission to allegations that it is favourably treating Ms A over other persons previously the subject of public misconduct opinions. Ms A pleaded guilty to the 23 criminal offences that underpin most of the criminality said by the Commission to constitute misconduct, and her criminality is a matter of public record.

The Committee sought elaboration from the Commissioner with regards to the "serious health and personal considerations affecting the Associate". The Commissioner elaborated on these reasons, and informed the Committee of the representations he had received concerning Ms A's health and mental state, including correspondence from Ms A's medical practitioner.

The Committee was not satisfied that this constituted a strong reason for withholding the Report, and the Commissioner agreed that this factor alone was not determinative. The Committee was satisfied, however, that this did justify the decision of the Commission to refer to the Associate as Ms A. According to the Commissioner:

The Commission has concluded that it is not necessary to name the Associate in this report. She is no longer employed in the public sector and has been convicted of offences arising out of this investigation. Further disciplinary action is not a consideration. The Commission has also had regard to her personal circumstances, which outweigh any public interest in naming her. The Commission accordingly refers to her throughout this report as "Ms A".

The Committee is also concerned to prevent the practise of persons in the future regularly raising ill-health as a reason for non-publication of Commission reports. It should, in the Committee's opinion, be readily and abundantly understood by anyone who might seek to engage in misconduct in the public sector of Western Australia that not only will they be subject to possible criminal proceedings, but that they will also be the subject of public reporting by the Commission.

1.6 Summary

During the hearing, the Committee formed the view that the reservations cited by the Commissioner, while not invalid, were not sufficient to prevent the publication of the bulk of the information contained in the Commission's Report.

The Committee formed the view that two of the three reasons cited by the Commissioner were not of sufficient strength to counter the public interest in having the Report tabled with Parliament. The Committee nevertheless accepts that the entirety of the original Report should not be tabled because of the inclusion of sensitive operational information, and information pertaining to upcoming criminal trials.

Accordingly, the Committee requested that the Commission provide a précis of its original Report, removing some detail so as to alleviate this concern. The Commissioner agreed with this proposal and provided a précis of the Report to the Committee on 5 March 2010.

This précis appears in its entirety at Appendix One to this Report.

1.7 Future tabling of CCC Reports with the Committee

There will be circumstances, as in the present case, where the Commissioner will form the view that the Commission's statutory responsibilities are best discharged by presenting a report to either the Committee or a Minister (or both), and not tabling directly with the Parliament.

When such a report is tabled with the Committee, Parliament can rest assured that the Committee will test the validity of the reasons given for non-publication, and will inevitably call in the Commissioner to discuss these reasons. The Committee considers the presentation here of a précis of the original Report to represent a sensible compromise between the Commissioner's original reasons for non-publication, and the Committee's desire to have Parliament informed of the Commission's investigations and recommendations.

APPENDIX ONE



CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

PRÉCIS OF CORRUPTION AND CRIME COMMISSION REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT IN RELATION TO THE ACTIVITIES OF AN ASSOCIATE TO A JUDGE OF THE DISTRICT COURT OF WESTERN AUSTRALIA DATED 25 FEBRUARY 2010

Introduction

1. This is a précis of a report on the investigation by the Corruption and Crime Commission ("the Commission"), commenced in December 2008, of alleged public sector misconduct in relation to the activities of Ms A,² who was Associate to a Judge of the District Court of Western Australia ("the District Court"). The investigation commenced as a consequence of analysis of information received by the Commission, which led to a suspicion that Ms A may have engaged in misconduct.
2. It appeared, from this analysis of information, that Ms A was a user of prohibited drugs, seemingly had a number of criminal associations and may have been engaging in unlawful activity resulting from the suspected use of prohibited drugs over a number of years. At the outset the Commission was concerned that any incidents of misconduct may have been related to Ms A's access to protected information, in her capacity as Associate to a Judge of the District Court.
3. During the course of the investigation two broad issues were considered:
 - Did Ms A engage in misconduct as defined by section 4 of the *Corruption and Crime Commission Act 2003 (CCC Act)* and, if so, was it serious misconduct?

²The Commission has concluded that it is not necessary to name the Associate in this report. She is no longer employed in the public sector and has been convicted of offences arising out of this investigation. Further disciplinary action is not a consideration. The Commission has also had regard to her personal circumstances, which outweigh any public interest in naming her. The Commission accordingly refers to her throughout this report as "Ms A".

- Could any systemic failings within either the District Court administration or Department of the Attorney General (**DotAG**) be identified that may have facilitated the occurrence of acts of misconduct identified, as a consequence of the investigation by the Commission?
4. Ms A, as a Judge's Associate since November 2000, was a public officer during the period relevant to this investigation, as she was a "person holding office under, or employed by the State of Western Australia, whether for remuneration or not": section 1 of *The Criminal Code*.
 5. As a result of the Commission investigation Ms A resigned from her Associate position, effective 31 July 2009.

This is a revised report

6. This report is a revised report of a report that was provided originally to the Joint Standing Committee on the Corruption and Crime Commission and the Attorney General on 25 February 2010. The report was accompanied by a letter of the same date in which the Commission stated that it considered it appropriate to make the report to the Committee and the Attorney General instead of laying it before each House of Parliament because of:
 - the details it contains of the persons with whom Ms A had a personal association;
 - the security risk in revealing deficiencies in sensitive systems; and
 - serious health and personal considerations affecting the Associate concerned, who has since resigned.
7. The Committee requested the attendance of the Commissioner at a closed hearing of the Committee on 3 March 2010 to discuss the Commissioner's reasons for not tabling the report with Parliament.
8. With the authority of the Committee, the Commission can reveal that there was a discussion as to each of the three reasons given, and that the Committee requested the Commission to provide a revised version which would be suitable for tabling with Parliament.

Commission Investigation

9. Ms A was an Associate of a District Court judge from 2000 to 2009. As an associate Ms A had access to the following databases:
 - TOMS (Total Offender Management Solution) - TOMS is a restricted access database Department of Corrective Services database which contains details about prisoners in Western Australia. District Court associates are given access to TOMS

to enable them to arrange electronically for prisoners to appear in the District Court as required.

- CHIPS (Lower Courts Criminal [Case] Management System³. CHIPS contains details of court dates and charges outstanding in relation to criminal offenders. It shows which judicial officer has been listed to hear a particular matter. District Court Associates are given access to CHIPS to make enquiries in respect of Magistrate Court charges being determined by the District Court pursuant to section 32 of the Sentencing Act 1995.⁴
 - Integrated Courts Management System
10. The Commission investigation revealed that Ms A was accessing the above databases to obtain details about drug dealers and passing that information onto third parties. In addition Ms A also lodged a fraudulent insurance claim and a fraudulent police report asserting that she had possessions stolen from her driveway.
 11. The Commission charged Ms A with 2 counts of fraud and 23 counts of unlawful use of a computer.
 12. On 17 August 2009 Ms A pleaded guilty to all 25 charges in the Perth Magistrates Court.
 13. On 5 October 2009 Ms A was sentenced to imprisonment for 14 months with parole eligibility (eight months concurrent for the 23 charges of unlawful use of computers, six months for the fraud charge and three months concurrent for the charge of creating a false belief). An order was made for the restitution in favour of HBF Insurance in the sum of \$5,940.60.
 14. On 24 November 2009 Ms A lodged an appeal against sentence and on 7 December 2009 Justice Hall of the Supreme Court allowed the appeal and resented Ms A to a term of imprisonment for 10 months, suspended for 18 months with a supervision requirement (i.e. conditional suspended imprisonment).

Misconduct opinion

15. Ms A had, often close personal, relationships and dealings with 19 improper or inappropriate associates, who could be variously described as:
 - having an extensive criminal history or lengthy drug-related criminal records;

³ The acronym CHIPS refers to the Children's Court (CHI) and the Court of Petty Sessions (PS), which was adopted as a titled for the Lower⁴ Courts Criminal [Case] Management System during the development of the system in the 1990s. The Court of Petty Sessions amalgamated with the Local Court and the Small Claims Tribunal to form the Magistrates Court of Western Australia, which commenced operation in 1 May 2005.

⁴ An offender who is to be sentenced by a superior court for an offence may request the court to also deal with any pending charges against him or her. On such a request being made, a list of pending charges against the offender is to be prepared and served in accordance with rules of court

- having been convicted of offences involving the supply, possession and use of prohibited drugs (methylamphetamine, amphetamine, methylenedioxy-methamphetamine (MDMA or ecstasy), heroin and morphine), cultivation of a prohibited plant with intent to sell or supply, possession of a utensil connected with the manufacturing of a prohibited drug, stealing, dishonesty, extreme violence and grievous bodily harm;
 - a dangerous career criminal, having received suspended and custodial terms of imprisonment;
 - having significant organised crime and Outlaw Motorcycle Gang (OMCG) connections;
 - heavy and regular user of amphetamines;
 - a drug trafficker;
 - criminal associate of persons and syndicates involved in the large-scale supply of drugs; and
 - being heavily involved in prostitution.
16. In the opinion of the Commission, the following activities by Ms A whilst Associate to a Judge of the District Court, identified as a consequence of the Commission investigation, constituted acts of either misconduct or serious misconduct as defined by sections 3 and 4 of the CCC Act:
- involvement in the use and/or supply of prohibited drugs;
 - undeclared associations with persons involved in serious criminal activity;
 - making a fraudulent insurance claim;
 - making a false report to the Western Australia Police;
 - making a fraudulent travel expenses claim;
 - unlawful access of restricted databases; and
 - misuse of information classified as restricted or confidential.
17. Ms A's acts of misconduct were generally underpinned by her ongoing and significant drug habit, which led her to associate with persons who were highly inappropriate and improper associates for a person in her position, and which she did not disclose to the Judge for whom she worked nor to anyone else in authority at the District Court. She became severely compromised in her position as Associate to a Judge of the District Court. Such a

position is one which has considerable authority and responsibility, and requires integrity and honesty. Particular trust is reposed in a person who occupies the position of Associate.

18. The combination of circumstances revealed in the course of the Commission's investigation presented a real and immediate risk to the integrity of, and public confidence in, her Judge, the District Court itself and the administration of justice in Western Australia. The extent of that risk is shown by the nature of those persons with whom she was associating, and their own backgrounds and connections. The Commission emphasizes however, that in forming any opinion of misconduct by Ms A, the Commission has applied the view that those matters are relevant only to the extent that she was, or ought reasonably to have been expected to be, aware of them.
19. The Commission also points out that neither the Chief Judge nor the Judge for whom Ms A worked, or anyone else at the District Court, knew about the associations and matters discussed above.
20. Ms A's acts of misconduct and serious misconduct are largely reflected in the 25 criminal charges, and ultimately convictions, that resulted from the Commission investigation.

Public servants and drug use

21. Regular and frequent drug use inevitably exposes the user to criminal elements within society, and/or may result in a user actually engaging in criminal activity.
22. The consequences of such conduct and associations may to some extent be seen in what actually happened in Ms A's case. But of course there is obvious potential for far more serious misconduct (including high-level corruption) arising out of such circumstances. They present very real opportunities for serious and/or organised crime figures to blackmail, threaten or otherwise suborn public officers. For a Judge's Associate to compromise themselves in this way poses a very serious potential threat (including of physical harm) to persons involved in the justice system (be they accused persons, prisoners, witnesses, law enforcement officers, judges, court staff or others) and to the integrity of, and public confidence in, the court itself and to the administration of justice.

Systemic Issues within the Administration of the District Court of Western Australia and the Department of the Attorney General

23. Judges' Associates are employed by the Attorney General of Western Australia, upon the recommendation of the Chief Judge, under contracts of service, pursuant to section 27A(1) of the District Court Act.
24. The various computer systems and databases used within the District Court are not under the control of the Judges; they are "owned" and controlled by DotAG or the Department of Corrective Services (DCS).
25. In the Commission's assessment, DotAG and the District Court administration did not have strategies in place to undertake an adequate or effective risk management assessment of

potential threats to the integrity and reputation of the District Court caused by Ms A's actual or suspected inappropriate or improper associations and/or drug-related associations. In particular, they did not:

- undertake steps necessary to ensure, with respect to information management systems, that sufficient safeguards were in place to mitigate against unauthorised access and disclosure, including audit tracking, and monitoring, of access to confidential and sensitive information in order to identify anomalous use; nor
- conduct adequate or regular vetting of court staff; nor
- have adequate procedures in place to deal with allegations of misconduct by court staff.

Appointment of Court Staff Without Vetting or Screening

26. Ms A was appointed as Associate to a Judge of the District Court in November 2000, upon the appointment of that Judge to the District Court. The Commission was advised by the Judge that Ms A had worked for him when he was a lawyer in private practice and that he was satisfied with her performance; integrity and ability. He therefore recommended her to the Chief Judge as his preferred Associate.
27. There is no information held by the Commission that indicates Ms A had a drug habit at the time of her appointment, but information held by WAPOL does indicate that she had known some of her associates referred to in this report for a long period of time. Some of these persons had substantial criminal records and were known by WAPOL in relation to the supply of prohibited drugs. Had these associations been disclosed, or otherwise become known in the course of an appropriate vetting process, the potential risks to the District Court would have been identified. That did not happen.
28. As many staff of the District Court have access to restricted, sensitive and confidential information, much of which is of potential value to persons involved in serious and organised criminal activity, there is an obvious and real risk of corruption or other forms of misconduct. As it is vital that the integrity and reputation of the District Court and its Judges are protected, DotAG (in consultation with the Chief Justice of the Supreme Court and the Chief Judge of the District Court) should conduct a systemic review of policies, practices and procedures in order to assess the threats to the integrity and reputation of the District Court. This should include the vetting of court staff, audit tracking and monitoring of databases used by court staff and the capacity to identify and deal with misconduct.
29. It is a concern that vetting of prospective staff when Ms A was appointed as Associate in 2000 involved only a criminal history check of the proposed appointee (although not even that was conducted on her). Self-evidently, a vetting process which is limited to identifying criminal convictions only would not have identified many of Ms A's associates who were otherwise known to law enforcement agencies. In the opinion of the Commission the vetting threshold for prospective staff of the District Court, particularly in relation to the

appointment of staff with access to confidential information or material, should be higher than that. Adequate vetting in 2000 may have resulted in Ms A disclosing (or may have otherwise revealed) associations considered inappropriate or improper for a potential Associate to a District Court Judge. This at the very least would have enabled the District Court to be aware of potential threats to its integrity and reputation by employing Ms A as an Associate, and it would also have afforded the District Court the opportunity to avoid or mitigate the risk of potential misconduct (including corruption).

30. Regular vetting of staff would enable the District Court to become aware of any potential threats to its integrity and reputation posed by the continued employment of a staff member identified as being a risk to the agency through the vetting process. This risk may be due to a change in circumstances since appointment or through identification of factors that were overlooked or not presented during the pre-employment vetting stage. By being alerted to potential threats to the integrity and reputation of the District Court, DotAG would be better positioned to manage and deal with such threats. Regular vetting would also serve to remind and further educate staff about the standards of behaviour expected of District Court staff, including integrity and the need to maintain proper associations, and the need to disclose those which may be potentially problematical to them, or to the District Court.
31. Under section 95 of the CCC Act the Commission may, by written notice served on a person, require the person to produce a record or other thing specified in the schedule to the notice. The Commission served such a notice on Mr Robert Christie, Executive Manager of the District Court, on 4 June 2009, seeking production of all human resources and personnel documentation and files held by the District Court regarding Ms A, including, but not limited to, any vetting or security assessments conducted before or during her employment. Subsequent to receiving the notice Mr Christie conducted a search of District Court records, but found no record of vetting or security assessments in relation to the employment of Ms A. The Commission is satisfied there were none because no such vetting or assessment was conducted.
32. Whilst it is acknowledged that regular vetting of staff does not guarantee that improper behaviour, inappropriate associations or other agency vulnerabilities will be exposed, the failure of DotAG to conduct any vetting of Ms A, either before her appointment or during the course of her employment; in the opinion of the Commission, in part explains why Ms A's ongoing misconduct was able to go undetected for a considerable length of time, exposing the District Court to potential threats to its integrity and reputation.
33. A recommendation contained in the Corruption and Crime Commission report entitled Protecting Personal Data in the Public Sector, September 2005, is of regular vetting of staff by the District Court in relation to the matters considered in this report.

Security Vetting

... It is ... recommended that all employees and contractors with access to confidential personal information be background screened prior to commencing employment, and subsequently on a regular basis. Furthermore, in addition to

obtaining a National Police Clearance for applicable positions, it is recommended that each agency consider whether further investigation is required of prospective employees to ensure their suitability for the work-related requirements of the position.

34. An effective vetting process will usually also involve a requirement to make a detailed disclosure, confirmed by statutory declaration, in response to carefully-framed questions. Where those are properly constructed, non-disclosure would have to be seen as deliberate and, where subsequently revealed or discovered, itself a ground for disciplinary action or dismissal.
35. The Commission notes that DotAG does consider that a review of existing controls is desirable. A review of DotAG's Criminal Screening and Suitability for Employment Policy commenced in November 2009 and is expected to be concluded by 31 March 2010. DotAG has informed the Commission that the review is specifically considering a requirement for a higher level of screening for all DotAG and judicial support staff, irrespective of the vacancy, and the level of screening required for persons who have access to confidential information. DotAG has further advised that the introduction of a vetting program, as recommended by the Commission, is under consideration and will include an examination of legislative requirements and privacy issues.

Inability of the Department of the Attorney General to Audit Ms A's Computer Usage

36. The investigation by the Commission of alleged public sector misconduct in relation to the activities of Ms A was hindered by the fact that the District Court administration and DotAG were unable to provide the Commission with an audit of Ms A's access (or, indeed, access by others) to restricted and sensitive information available through the TOMS and CHIPS databases. The version of TOMS used by Ms A was web-based and did not have the audit capability of the standard version, and CHIPS did not have a general audit capability at all. It has a limited capability to extract historical access information only for updates to particular records. Hence, there was no audit trail or access history of Ms A's use of either TOMS or CHIPS available for investigation by the Commission.
37. The value of regular audits and monitoring in helping to build integrity in public organisations has been specifically referred to in a recent publication by The Integrity Coordination Group (ICG) entitled Taking Action on Integrity Issues - A Guide for Senior Staff in the Western Australian Public Sector, and is widely recognised as a standard safeguard against misuse of information classified as restricted or confidential.
38. If either the District Court administration or DotAG had been able to provide an audit of Ms A's use of restricted-access databases, the Commission's investigation into the activities of Ms A would have been more efficient and effective, as resulting delays could have been avoided. Instead, as the Commission was unable to utilise programmed audits to scrutinise Ms A's access of restricted databases, other and more time-consuming actions had to be undertaken:

- The Commission, pursuant to section 100 of the CCC Act, whereby an officer of the Commission can be authorised to enter and search the premises of a public authority or officer at any time without a warrant, executed a covert search of Ms A's computer. That was done with the cooperation of the Chief Judge and senior staff of the District Court, and the assistance of an information technology contractor.
 - The Commission used specialised equipment to undertake a forensic examination of Ms A's computer. However, as her computer had been replaced prior to December 2008 and the hard drive of the previous computer wiped clean and disposed of, the Commission was unable to undertake a forensic examination of her computer usage prior to that time.
 - The Commission devised and implemented a labour intensive method of monitoring Ms A's access to restricted databases, and computer usage in general, again with the consent of the Chief Judge and senior staff of the District Court.
39. The lack of system audit capabilities made it unnecessarily difficult for the Commission, and virtually impossible for either the District Court administration or DotAG, to determine whether or not Ms A was accessing restricted databases for purposes unrelated to her duties as a Judge's Associate, whether or not information classified as restricted or confidential had been misused by her and whether or not there was a potential threat to the integrity and reputation of the District Court. This is a systemic problem that, in the opinion of the Commission, in part explains why Ms A's misconduct was able to go undetected for a considerable length of time. Until this problem is rectified there is a risk that unauthorised access of restricted databases by District Court or DotAG staff has occurred or is occurring without detection. There is also a risk that such unauthorised access may be about, or more likely, to occur due to the absence of regular audits and monitoring of computer usage.
40. The Commission appreciates that in this area as in others, considerations of risk are to be balanced against costs and practicality. DotAG has pointed out that due to the age of CHIPS, it would be extremely difficult to implement full audit and ongoing monitoring capability at this time.
41. The combination of a systemic lack of audit capabilities and regular vetting of District Court staff meant that any effort to detect Ms A's misconduct, or to identify potential threats to the integrity and reputation of the District Court, would have been extremely difficult, if not impossible.
42. It is of further concern to the Commission that, although Ms A signed a Department of Justice System Login Request Form, Court and Corporate Systems, on 1 April 2003,⁴⁰ which acknowledged her understanding that the then Department of Justice and subsequently DotAG may monitor and audit computer usage, not only was such an audit not done, it was not even possible. The Conditions of Use stipulated in the System Login and Request Form include the following acknowledgement:

- *I acknowledge that the Department may monitor and audit any communications or use of its facilities.*

43. Several recommendations contained in the Corruption and Crime Commission report entitled *Protecting Personal Data in the Public Sector*, September 2005, are of particular relevance to the inadequate audit capabilities of the District Court and DotAG in relation to the matters considered in this report. These recommendations are detailed below.

Computer Access

It is recommended that all agencies re-evaluate their information management systems to ensure that safeguards are in place to mitigate against unauthorised access and disclosure, including ensuring that:

- *audit tracking of access to confidential personal information is available and that access is monitored to identify anomalous use;*
- *agencies review their supervision arrangements to ensure that staff only access information that is relevant to their work;*
- *agencies include in their policy and induction manuals acknowledgement that unauthorised access and disclosure of confidential information is misconduct pursuant to the CCC Act and that suspected cases will be reported to this Commission;*
- *agencies adopt pro-active measures to reduce the opportunities for unauthorised access and disclosure rather than responding to individual incidences in isolation.*

On-line Induction Program

It is recommended that all new public sector employees be required to undertake an on-line computer-based induction program that provides information to them and instructs them in their responsibilities relevant to handling of confidential information under such legislation as the State Records Act, Freedom of Information Act, Public Sector Management Act, Occupational Health and Safety Act etc.

44. The Commission repeats those recommendations. Specifically in relation to the District Court and DotAG.
45. The Commission has noted DotAG advice that access to CHIPS is not audited as it is only possible to retrieve limited historical information on updates to particular records and is considered a low risk given what DotAG regards as the public nature of that information.

46. With reference to the recommendation about an on-line induction program mentioned above, DotAG has informed the Commission that Records Awareness Training, which includes the components identified in that recommendation, is a requirement under the Record Keeping Compliance Program and has been deployed through DotAG's Electronic Learning Management System.
47. As the recruitment and staffing arrangements are similar, there is no reason to believe the situation in the Supreme Court with respect to the employment of Judges' Associates is any less problematic from a security point of view than the District Court. The lack of an adequate and effective risk assessment process and other deficiencies in relation to staff identified in this report may well be replicated in other Western Australia courts. Accordingly, the Commission makes the following recommendation.

Recommendation

In consultation with the Chief Justice of the Supreme Court of Western Australia, the Chief Judge of the District Court of Western Australia and the Chief Magistrate of the Magistrate's Court, the Director General of the Department of the Attorney General (DotAG) should conduct a systemic review of policies, practices and procedures in order to assess the capabilities of the administrations of the respective State courts to undertake an adequate and effective risk management assessment of the potential threats to the integrity and reputation of each court, and to determine strategies to address identified shortcomings.

The review should include an assessment of the need for and capability of each court to manage the threats identified in this report relating to vetting of court staff, audit tracking and monitoring of access to restricted databases, and the capacity to deal with allegations of misconduct.

48. The Commission acknowledges and records its appreciation for the invaluable assistance, cooperation and support provided by the Chief Judge of the District Court and Mr Robert Christie, Executive Manager of the District Court, during the period relevant to this investigation, and particularly during the covert stage of this investigation from the middle of February to early June 2009