



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

***CLOSED HEARING WITH
GAIL ARCHER SC AND FURTHER
ANALYSIS OF PROPOSED REFORMS TO
THE *CORRUPTION AND CRIME
COMMISSION ACT 2003****

**Report No. 20
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Joint Standing Committee on the Corruption and Crime Commission

Closed Hearing with Gail Archer SC and Further Analysis of Proposed Reforms to the *Corruption and Crime Commission Act 2003*

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Report No. 20

Presented by:

Hon Nick Goiran, MLC and John Hyde, MLA

Laid on the Table of the Legislative Council and Legislative Assembly
on 29 September 2011.

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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

Ms Gail Archer SC concluded her term as Acting Commissioner of the Corruption and Crime Commission (CCC) in February 2011, having previously authored the statutory review into the CCC Act in 2008. This Committee's reports 10, 13 and 15, all dealing in part with recommendations for jurisdictions and roles of an agency to combat organised crime, were tabled in September 2010 and in February and June of 2011, respectively. Responses were received from the Attorney General, Hon Christian Porter MLA in which references were made to "principal recommendations of the Archer Review."

The Committee sought to clarify the recommendations made by Ms Gail Archer SC through a summons to a closed hearing before the Committee on 10 August 2011. This report seeks to demonstrate that:

- The recommendation to expand the role of the CCC to combat organised crime was not initiated by Ms Archer. She concurred with the work that had been done and although allowing the recommendation to stand, did not consider it to be a "principal recommendation."
- The recommendations Ms Archer considered most important included powers of delegation for the commissioner and a role for a Public Interest Monitor.
- The role of the CCC in the Education and Prevention of misconduct and corruption is seen as vital and should not be diluted in any way or handed on to another agency.

The role and jurisdiction of the CCC continue to be topics of debate and therefore of importance to the Committee. A report entitled *Report on the Corruption Prevention and Education Function of the Corruption and Crime Commission* was received by the Committee in August 2011. This report details some of the outcomes that have already been achieved and the improvements to process and policy that are continuing to generate beneficial change in the fight against public sector corruption and misconduct. This only serves to reinforce the Committee's contention that the CCC has a vital role in fighting misconduct in the Western Australian Public Sector.

Also detailed in this report are efficiencies achieved through strategic reviews of investigations that the CCC have referred back to the parent agencies. Although the CCC do clearly have an investigative capacity the investigative function of the CCC only takes place when either the agencies are unable or unwilling to investigate or the case is "sufficiently serious to warrant Commission action."¹ This role of strategically monitoring and reviewing investigations would coincide with their current role of monitoring police corruption but a similar role could be foreseen for the CCC should the organised crime function be granted to the WA Police.

¹ Corruption and Crime Commission of Western Australia, *Report on the Corruption Prevention and Education Function of the Corruption and Crime Commission*, 29 June 2011., p 33 of this report.

CHAIRMAN'S FOREWORD

It has been, and continues to be, the Committee's view that given the historical link between organised crime and police corruption, that the fight against organised crime is best served by the CCC in monitoring the WA Police for corruption. Similarly, the Committee believes that the CCC's work in educating Western Australian public servants about the risks and dangers of impropriety represents a vital contribution to good governance in Western Australia. The CCC should continue to use its vast experience and expertise in this specific area, rather than exercise an expanded direct investigation role into organised crime.

If any reform is to be considered in amending the CCC Act, the Committee continues to recommend easier and more efficient access to Exceptional Powers under Part 4 of the CCC Act, with the CCC retaining their vital oversight role of both the WA Police and the wider WA Public Sector.

I acknowledge the contributions of the CCC and Ms Gail Archer SC to this report and thank them for their time and effort.



HON NICK GOIRAN, MLC
CHAIRMAN

Recommendations

Recommendation 1

If the CCC is given an enhanced organised crime investigation function, its functions of preventing, identifying and dealing with misconduct should be maintained at (at least) its current capacity.

Recommendation 2

The appointment of a Public Interest Monitor be considered as vitally important.

Recommendation 3

The delegation of powers from the Commissioner of the CCC to a deputy or nominated person, be considered as an integral part of any changes to the CCC Act.

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 Committee.

CHAPTER 1 BACKGROUND TO THIS REPORT

1 In March 2008 a comprehensive report prepared by Gail Archer SC on proposed amendments to the *Corruption and Crime Commission Act 2003* was tabled in Parliament. This report contained 58 recommendations concerning potential amendments to the Act. These recommendations ranged from the maximum tenure of Corruption and Crime Commission (CCC) staff to the jurisdiction of the CCC.

2 The current Joint Standing Committee on the CCC (the Committee), supported 26 of the recommendations, and offered qualified support for a further nine recommendations contained within the report, detailed in the Committee's thirteenth report in the current Parliament, entitled *Analysis of Recommended Reforms to the Corruption and Crime Commission Act 2003*.

3 A detailed analysis of preferred models and jurisdictions to combat organised crime was undertaken by the Committee in its tenth report in the current Parliament, entitled *How The Corruption And Crime Commission Can Best Work Together With The Western Australian Police Force To Combat Organised Crime*, which was tabled on 9 September 2010.

4 After reviewing the available evidence, the Committee came to a firm view that:

...the CCC's crime fighting role (as distinct from its corruption fighting role) is best left to its present function under the CCC Act, which is to confer Exceptional Powers upon the WA Police to fight organised crime.²

5 The Committee believed that:

The CCC's most important function is to ensure that corruption in the WA Police is not allowed to flourish and propagate. The CCC can only effectively discharge this obligation if it remains authentically independent from the WA Police and maintains its reputation for integrity. The CCC's independence will be compromised and its integrity threatened if it is permitted to engage in joint operations with the WA Police to combat organised crime.³

6 The Committee therefore made the following recommendation:

The CCC should not be granted an enhanced serious and organised crime jurisdiction.⁴

² Joint Standing Committee on the Corruption and Crime Commission, *How The Corruption and Crime Commission Can Best Work Together With The Western Australian Police Force To Combat Organised Crime*, 9 September 2010, p xv.

³ *Op. cit.*, p 191.

⁴ *Ibid.* See Recommendation 6.

- 7 On 18 May 2011 the Committee received a response to reports 10 and 13 from the Attorney General, Hon Christian Porter MLA. In that letter the Attorney General stated:

One of the principal recommendations of the Archer Review, which continues to be supported by the WA Police and the Corruption and Crime Commission, is for the Corruption and Crime Commission to be granted an enhanced organised crime function, and a new serious crime function, with the aim of improving the CCC's capacity to achieve its statutory objective to 'combat and reduce the incidence of organised crime'.

[...]

As a consequence of its deliberations and consideration of Reports 10 and 13, within the wider context of reforming the CCC, the Government proposes to prepare a Bill. Such a Bill would introduce amendments to the CCC Act to confer on the Corruption and Crime Commission an organised crime investigative function, enabling the Corruption and Crime Commission an increased jurisdiction to assist police investigations into organised crime. This would, if enacted, implement in full the principal recommendations of the Archer Review. The Government has carefully considered the cautionary view regarding such an approach expressed in the Committee's Report 10, but has decided that the benefits and cost effectiveness likely to be achieved by enhancing the State's capacity to combat organised crime through such an approach exceed the risks which the Committee sees in enabling the Corruption and Crime Commission to work collaboratively with police.⁵

- 8 The Committee tabled its fifteenth report, which concerned the corruption risks of controlled operations and informants, in Parliament on 16 June 2011. The Committee then received a response to this report from the Attorney General on 28 June 2011. In that letter, the Attorney General re-emphasised the following point:

Analogous with my response to the WA Parliament dated 18 May 2011 regarding Committee Reports 10 and 13, the State Government intends to confer on the Corruption and Crime Commission (CCC) an organised crime investigative function under the proposed amendments to Corruption and Crime Commission Act 2003 (WA) (the Act). If enacted, this would implement, in full, the principal recommendations of the Archer Review.⁶

⁵ Hon C. Christian Porter MLA, Treasurer; Attorney General, *Letter to the Joint Standing Committee on the Corruption and Crime Commission: Report 10 (9 September 2010) and Report 13 (17 February 2011)*, 18 May 2011.

⁶ Hon C. Christian Porter MLA, Treasurer; Attorney General, *Letter to the Joint Standing Committee on the Corruption and Crime Commission: Report 15 (16 June 2011)*, 28 June 2011.

The purpose of this report

- 9 The purpose of this report is to clarify what were the principal recommendations made by Ms Gail Archer SC in her review of the *Corruption and Crime Commission Act 2003*. The origin of recommendations around an expanded role for the CCC against organised crime are also examined, particularly with regard to the current role of the CCC in corruption prevention and education, together with the nature of Ms Archer's current views on aspects of her report considering her subsequent experience as Acting Commissioner of the CCC.

CHAPTER 2 CLOSED HEARING WITH THE COMMITTEE

Closed hearing with Ms Gail Archer SC

- ¹⁰ Having considered the response provided by the government to Reports 10 and 13 at a meeting on 25 May 2011, the Committee resolved to seek the attendance of Ms Archer before a closed hearing of the Committee. Ms Archer received a summons on 30 June 2011 to attend before the Committee on 10 August 2011. In that summons, the Committee indicated that it wanted to speak with Ms Archer about the responses provided by the Attorney General to Committee reports 10, 13 and 15. Ms Archer was provided with copies of these responses.

Origins of the recommendations

- ¹¹ When questioned about the origins of her recommendations regarding an expanded organised crime fighting role for the CCC, Ms Archer replied:

The background to this issue in respect of my report starts with Commissioner Kennedy's royal commission report when he recommended that the new body have the capacity to investigate organised crime. In the course of that, Commissioner Kennedy considered the pros and cons. He had an extensive consultation with relevant bodies and people that would have an idea about what the risks might be and ultimately he concluded that the risks were outweighed by the benefits. His recommendation was rejected and instead, the CCC was given the power to oversee the police use of exceptional powers. Now, at the time that I wrote my report it was clear that that power was not being effectively utilised and so I concluded that experience had shown that that framework was not effective to allow the CCC to discharge one of its main functions.

[...]

Also at the time that the CCC act was being debated, the legislative committee wanted it to have the organised crime function in accordance with Commissioner Kennedy's recommendation and that was not put into the act, and so the legislative committee basically insisted that that issue be revisited in the course of the review.⁷

- ¹² The decision to review this expanded role for the CCC was therefore not one initiated by Ms Archer. She confirmed this:

...the requirements of the review, in addition to looking at the overall effectiveness and operation of the act, which is an enormous task, listed eight specific things that the reviewer needed to look at and one of those was the organised crime function.⁸

⁷ Gail Archer SC, Barrister, *Transcript of Evidence*, 10 August 2011, p 2.

⁸ *Op. cit.*, p 3.

Reasons for an expanded role for the CCC

- 13 In explaining the reason for making a recommendation for an expanded role for the CCC Ms Archer stated:

I scrutinised report 31 and it was clear to me that it was the result of a very detailed and careful analysis of the issues, and that relevant people had been consulted in order to obtain their views. For those reasons I said in my report that it was unnecessary to reinvent the wheel and by that I meant that it was not necessary to set out again the reasoning for endorsing the CCC having this power.⁹

[...]

[T]here were two other things that influenced my view at the time and the first thing was the views of Commissioner Kennedy because he is someone whose opinion I would hold in the highest regard, and he had been aware of the risks and he had still come to that view. The second thing was—although I had not put this in my report because it was not necessary—the views of Robert Needham the chairperson of the CMC and the two assistant commissioners both of crime and misconduct. And while all three of them raised issues and difficulties that they had and were dealing with, all three of them were very positive about their organisation having that function. That was why I endorsed the recommendations of the joint standing committee at that time. Since that time, the CCC and the police have made good use of the exceptional powers function and that seems to be working really well. I think that that is relevant to reassure us that one of the main functions of the CCC is in fact being achieved to some degree.¹⁰

The use of exceptional powers

- 14 The Chairman sought some expansion and clarification on the use of “exceptional powers:”

The CHAIRMAN: *Just further on that point before you continue: in your experience as acting commissioner, is it the case that there are any concerns around a delay by the police having to apply to the CCC that might justify the police maybe needing to not proceed with that process and have the ability to self-authorise these exceptional powers? In other words, in your time as acting commissioner was it your experience that the CCC basically dropped everything when one of these types of applications were brought on?*

Ms Archer: *The latter; the CCC did drop everything when those applications were brought on. But there is still a timing issue, and that is probably because of the very rigid, narrow requirements of the legislation in that a lot of things had to be established before the power could be granted, and that takes time. It required the police to produce all of the necessary material and to do that in affidavit form, none of which can happen instantaneously. So the timing issue is more about making the process more practical, rather than needing it not to be with the CCC.¹¹*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Op. cit.*, p 4.

[...]

Ms Archer: Yes. Having got to that point, the two things that have happened relevantly to my opinion since then is the fact that the exceptional powers is now being utilised more effectively, so that purpose of the CCC is being addressed in some way, at least. The other thing is all the work that this committee has done, which I have had the benefit of reading over the weekend. I think it is fair to say that the issues are very complex and there are pros and cons on both sides, and it is a balancing exercise. I am happy to say that it is not my decision to make; no-one elected me to Parliament. That is really all I can say.

Principal recommendations of the Archer Report

- 15 The Committee sought from Ms Archer her assessment of the “principal recommendations” of her report:

The CHAIRMAN: Just in terms of the government’s response, it refers to this issue being a principal recommendation of what they refer to as the “Archer review”. In the context of what you have just described to us, do you see this being a principal recommendation?

Ms Archer: I think that that word can have many meanings. From my point of view, there were 58 recommendations that I ultimately made, and the primary purpose of the review was to look at the effectiveness and operation of the act as a whole. The recommendations relating to things that were significant impediments to the operation generally are the things I would characterise as the primary recommendations. Those are things that relate to the fact that the actual commissioner cannot delegate some powers, which makes the running of the CCC almost impossible. Frankly, I do not know how it has occurred, because he or she cannot delegate the power to conduct private hearings, for instance, and does not have a deputy, and I felt that those recommendations were the most important. The other thing that I saw as being most important was the public monitor. The reason I thought that was important was because there were so many different views about that issue, and it was something that nobody had really reached a firm opinion about; whereas, in comparison, the organised crime, everybody seemed to be singing off the same song sheet at that time. Looking at the law enforcement agencies across Australia, at that time the view was that this was a good thing. That was where people had got to. But in relation to the public interest monitor, it was quite different. There were very divergent views, and I spent a lot of time focusing on that issue, and I would categorise that as one of the primary recommendations of the report.¹²

The role of the CCC

- 16 The Committee asked in general terms for Ms Archer’s views on recommendation 3 of report 10 which had stated:

Any suggestion that a new serious and organised crime function of the CCC be funded at the expense of the CCC’s existing misconduct function should be rejected.

¹² *Op. cit.*, p 5.

17 She subsequently replied:

...if I was asked in the context of should the CCC have an organised crime function at the expense of other functions, I would have said no.¹³

18 The Committee sought further evidence from Ms Archer as to what she believed, given her role and experience, were the most important roles for the CCC:

The CHAIRMAN: *If I said that the most important function of the CCC is its oversight of misconduct and corruption within the WA police force, would you agree with that statement?*

Ms Archer: *No. I also think the oversight of public officers generally is of equal importance. I understand everyone wants to focus on the police because the opportunities for them to be corrupt are perhaps greater, and it is racier when they are corrupt than when somebody is ordering \$3 million worth of toner, but I think that one of the things that makes the CCC in Western Australia such an extraordinary organisation is the success that it has had in educating and combating corruption in the public sector generally, and I think that our public service just looks so good to the rest of the world because of the CCC. So, to me, it is a very important function that the CCC currently carries out.*

The CHAIRMAN: *What you are referring to there is the entirety of its misconduct function —*

Ms Archer: *Yes.*

The CHAIRMAN: *— in conjunction with its educative function.*

Ms Archer: *It has to be included in the misconduct function, because, without education, all you are doing is hitting people over the head.*

The CHAIRMAN: *So you are saying those things are all equally important. Of course, the third function that it has is its limited role in relation to organised crime.*

Ms Archer: *That is right.¹⁴*

19 Ms Archer went on to say:

...Everyone is more interested in organised crime than they are in a public servant ordering lots of toner. Which organisation looks at what thing is a matter for the government to decide, but it seems to me that the CCC has a unique skills set, it has unique powers, it has experience in using those powers, and they can be very neatly put to dealing with corruption in the public service. Whether you want to use those powers to also tackle organised crime, or whether you want to give those powers to the police so they can tackle organised crime, or whether you want to have a crime commission like New South Wales to tackle organised crime, I do not really think it matters. Somebody has got to use these

¹³ *Op. cit.*, p 6.

¹⁴ *Op. cit.*, p 7.

sorts of powers to tackle organised crime. Where it goes is a matter for the government, but the CCC's value is public sector corruption.

The CHAIRMAN: *Okay. Hearing your evidence then, the main value of the CCC is its role in misconduct and education. It does have a role with regard to organised crime, which someone needs to do, whether it is the CCC or somebody else, but absolutely they need to continue to do those other two functions.*

Ms Archer: *Well, that is my personal opinion; it is no more than that. But I do think that the fact that Western Australia has this body that looks at public corruption is a great thing.¹⁵*

Possible implications of an expanded CCC role

- 20 The Committee sought the advice of Ms Archer regarding the possible complications of expanding the CCC's role to combat organised crime and the public perception of such an expanded role:

The CHAIRMAN: *First of all, would you agree with Hon Len Roberts-Smith that in Western Australia we ought not to second WA police into the CCC?*

Ms Archer: *I think there is a danger; and, if you were going to do it, you would have to have two separate sections, like the CMC, so you have got your misconduct section and you have got your crime section, and if you have seconded police officers, they are working in the crime section; they are not working in the misconduct section; and you have a separate head, like a subhead assistant commissioner, of those two sections, so that one hand does not have to know what the other hand is doing, and so the tension is kept to a minimum. But I do not actually have a philosophical objection to police officers working in the CCC because they have got unique skill sets. You just need to be sure that they were not corrupt.*

[...]

The CHAIRMAN: *...when you are talking about the peak integrity body in Western Australia, the perception is the most important asset that the organisation has. So would you have any concerns, if the reforms do lead to Western Australia going down that path, about that conflict, perceived as it might be, having a detrimental impact on the integrity of the commission in the public's view?*

Ms Archer: *I think it would need to be carefully managed, and I think it would be useful to find out from the Queensland experience how they managed it, because I am not aware of that being an attack on their integrity, but I could be wrong about that. That was not an issue that I looked at. But if I can just comment on that analogy in the law firm, I am not sure that that analogy is entirely apt, because you are not talking about having a CCC that uses corrupt officers to investigate organised crime and then is looking at corrupt officers in its misconduct function. While both sides come from the same group, they do not necessarily overlap, and hopefully they do not overlap, so it is not quite the same thing. I*

¹⁵ *Ibid.*

do accept, though, the practical reality that certainly police officers of a certain vintage have been brought up in a system that relies on mateship and that there will always be a risk that mateship will trump integrity. That is something that everyone would be aware of and would need to manage; and if, after scrutinising that, it did not seem to be possible to make the system work, then it should not be done.¹⁶

[...]

The CHAIRMAN: *Because that is when the actual conflict arises. Theoretically, as long as you have got the clean guys that you are working with in organised crime and you do not have to worry about, say, any of their activities, then theoretically it could work. What Mr Grayson says at page 260 of our report is the following—*

I do not believe the investigation of organised crime sits comfortably with an anticorruption body, particularly when you are relying on the organisation you are overseeing—and at times investigating—for operational support and intelligence. One moment you are seeking assistance and the next you are investigating its members

I will just pause there for a moment to reflect on that. Of course, what we have discussed this morning is that you might not be talking about the same group of people; so, if you are not talking about the same group of people, then potentially if you have the right systems in place, it could work. However, he goes on to say—

There have been occasions on which the very officers who are part of our joint investigations were targeted and prosecuted by us.

Just pre-empting what you might say, you might say that we need to find out how the Queensland CMC managed that situation, but I have to say that it really troubles me that that direct conflict of interest has to be dealt with by the peak integrity body. I still tend to think that it is a perfect example of why those two functions need to be done by two entirely different organisations. So, someone needs to look after the organised crime aspects, whether that be the police or, as you say, a crime commission like in New South Wales, and somebody else needs to look after the oversight of the police because there is the potential that those two groups may collide as, according to Mr Grayson, has occurred in Queensland.

Ms Archer: *I think that there will be risks about interest colliding wherever you put the function as, regrettably, experience has shown around Australia.¹⁷*

Amendments to the CCC Act

- 21 Ms Archer was asked for her views on the prospects of amendments to the CCC Act allowing the WA Police to fulfil an organised crime fighting role while the CCC maintained its current functions:

¹⁶ *Op. cit.*, p 9.

¹⁷ *Op. cit.*, p 10.

THE CHAIRMAN:...during the evidence that led to the creation of report number 10, the proposition was put to the police commissioner that if the government decides to go down this path of giving organised crime investigation capacity to the CCC, it is going to cost money, unless you dilute some of the existing functions, which we say is totally unsatisfactory. So, the proposition was put to the police commissioner whether the better alternative might be to amend the CCC act so that it is easier for the police to apply to the CCC for the exceptional powers, including such things as if it is likely a crime is going to be committed, one can anticipate these things and apply, rather than almost having to wait after the event, and the definition of “serious and organised crime”, those types of relatively modest legislative amendments. Could that be done, was the proposition put to the police commissioner—that the money, which would otherwise be spent in creating the Chinese wall and other things within the CCC, be given to the WA Police on the proviso that it is specifically spent in their serious and organised crime division—and might that be a better alternative? My recollection of his evidence is that yes, that is certainly a possibility. I am curious, just to conclude on this point this morning, to just ask for your view on that; whether in light of everything that you have heard and all of the reports that you have received, that cautionary approach might still result in the same outcomes that we would all like to see in the fight against organised crime and the fight against misconduct and corruption in the public sector.

Ms Archer: I would not discount it but I do not have sufficient information to know the answer on it, I am sorry.¹⁸

¹⁸ *Op. cit.*, p 12.

CHAPTER 3 SALIENT POINTS ARISING FROM THE CLOSED HEARING WITH MS GAIL ARCHER SC

22 Several points were raised through Ms Archer's evidence:

- The organised crime function of the CCC was only one of eight areas that Ms Archer was asked to look at in her review.
- Due to the amount of work already completed, evidence and data gathered and previous recommendations made in favour of an expanded role for the CCC, Ms Archer decided not to "re-invent the wheel" and allow those recommendations to stand without further review.
- 58 recommendations arose from Ms Archer's review and she considers those relating to "significant impediments" to the operation of the act to be the principal ones made by her.
- Ms Archer considers the issue of creating a Public Interest Monitor to be of "overwhelming importance".
- The current misconduct role of the CCC, including its education function, is one that is of vital importance and should not be diluted in any way.
- The value of the CCC is found in its unique skills set which fits with the investigation of public sector corruption.

Recommendation 1

If the CCC is given an enhanced organised crime investigation function, its functions of preventing, identifying and dealing with misconduct should be maintained at (at least) its current capacity.

Recommendation 2

The appointment of a Public Interest Monitor be considered as vitally important.

Recommendation 3

The delegation of powers from the Commissioner of the CCC to a deputy or nominated person, be considered as an integral part of any changes to the CCC Act.

CHAPTER 4 THE CORRUPTION PREVENTION AND EDUCATION FUNCTION OF THE CORRUPTION AND CRIME COMMISSION

- 23 The *Corruption and Crime Commission Act 2003* requires a “prevention and education function”¹⁹ and a “misconduct” function.²⁰ While the latter function identifies misconduct and ensures that misconduct behaviours are appropriately dealt with, the former focuses on “the importance of organisational systems and cultures”²¹.
- 24 The CCC has jurisdiction over about 67,000 public service officers who come under the Public Sector Commission (PSC), plus another 75,000 public officers (such as doctors, police officers, university and local government employees), not under the PSC who would otherwise have no oversight body.²²
- 25 The prime focus of the CCC has been in preventing misconduct and concurrently identifying and ensuring that misconduct issues are appropriately dealt with by parent agencies. The investigative function of the CCC only takes place when either the agencies are unable or unwilling to investigate or the case is “sufficiently serious to warrant Commission action.”²³
- 26 The Corruption Prevention Directorate of the CCC has “directly contributed to measurable, appreciable improvements in the misconduct management mechanism in public authorities...”²⁴
- 27 The Committee agrees and recognises that anecdotal evidence supports the contention that the CCC has achieved outstanding results in this vital area of education and prevention of misconduct.
- 28 Wide-ranging research has been planned and implemented, education seminars and misconduct practitioner forums delivered, regional outreach programs conducted, conferences organised and publications developed.²⁵
- 29 It is apparent that the most significant outcomes for the CCC have been achieved in the area of education and prevention of misconduct. They have also had a key role in the capacity building of public sector agencies and officers to identify and deal with misconduct when it does occur.²⁶

¹⁹ *Corruption and Crime Commission Act 2003*, s 17.

²⁰ *Op. cit.*, s 18.

²¹ Corruption and Crime Commission of Western Australia, *Report on the Corruption Prevention and Education Function of the Corruption and Crime Commission*, 29 June 2011., p 30 of this report.

²² *Op. cit.*, p 31 of this report.

²³ *Op. cit.*, p 33 of this report.

²⁴ *Op. cit.*, p 31 of this report.

²⁵ *Op. cit.*, pp 64-66 of this report.

²⁶ *Op. cit.*, p 37 of this report.

- 30 This is achieved through a combination of the education role, together with a process of referral of issues and matters of concern back to the parent agency and reviewing the investigations as appropriate.
- 31 The expertise of the CCC is clearly demonstrated in this education and prevention role and in the review of investigations in preference to the actual investigation of matters themselves.
- 32 The Committee therefore continues to contend that the expertise of the CCC should maintain its focus upon misconduct in the public service and that the investigation of organised crime activities be the responsibility of the WA Police with appropriate support provided by the CCC.

CHAPTER 5 SUMMARY AND CONCLUSION

- 33 The evidence provided by Ms Gail Archer SC clearly demonstrates that a recommendation to expand the role of the CCC to combat organised crime was not initiated by her. She concurred with the work that had been done and although allowing the recommendation to stand, did not consider it to be a “principal recommendation.” The recommendations she considered most important included powers of delegation for the commissioner and a role for a Public Interest Monitor. This importance is reflected in the Committee’s recommendations in this report.
- 34 Ms Archer clearly stated that any appointment of an agency to combat organised crime was one for the government to make and not her. She agreed however that the skills and experience of the CCC clearly met a very important role in identifying, preventing and dealing with misconduct in the public service.
- 35 The CCC’s own *Report on the Corruption Prevention and Education Function of the Corruption and Crime Commission* details the outcomes that have already been achieved and the improvements to process and policy that are continuing to generate beneficial change in the fight against public sector corruption and misconduct.
- 36 The concerns expressed by the Committee about the complications and possible conflicts in the peak integrity body also dealing with organised crime are recognised by Ms Archer, however, she felt that these same issues would arise wherever the expanded organised crime role was allocated.
- 37 The CCC has clearly demonstrated an expertise in the area of education and prevention of public sector misconduct. Any dilution or divestment of this role should not be endorsed.
- 38 Although the CCC should not be used as an agency to investigate organised crime, it is uniquely placed to provide support mechanisms to organised crime investigations. The CCC’s current role in granting access by the WA police to exceptional powers of investigation is a case in point. As indicated in previous Committee reports, minor changes in legislation can make this process more efficient and “user friendly” while still maintaining accountability mechanisms.



HON NICK GOIRAN, MLC
CHAIRMAN

APPENDIX ONE



**CORRUPTION AND CRIME COMMISSION REPORT TO
THE JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION AND TO THE
HON CHRISTIAN PORTER MLA, ATTORNEY GENERAL**

**“REPORT ON THE CORRUPTION PREVENTION
AND EDUCATION FUNCTION OF THE
CORRUPTION AND CRIME COMMISSION”**

29 June 2011



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

The Hon. Nick Goiran MLC
Chairman
Joint Standing Committee on the
Corruption and Crime Commission
Floor 1, 11 Harvest Terrace
WEST PERTH WA 6005

The Hon. Christian Porter MLA
Attorney General
Level 21, Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

Dear Chairman
Dear Attorney General

Pursuant to section 89 of the *Corruption and Crime Commission Act 2003* (WA) ("the CCC Act") the Commission presents its *Report on the Corruption Prevention and Education Function of the Corruption and Crime Commission*.

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 CCC Act.

Yours faithfully



Mark Herron
ACTING COMMISSIONER

29 June 2011

ABBREVIATIONS AND ACRONYMS

APSACC	Australian Public Sector Anti-Corruption Conference
“the CCC Act”	<i>Corruption and Crime Commission Act 2003 (WA)</i>
“the Commission”	Corruption and Crime Commission
CPER Directorate	Corruption Prevention, Education and Research Directorate
CMIS	Case Management and Intelligence System
DCS	Department of Corrective Services
DoT	Department of Transport
IRCA Unit	Investigations Review and Complaints Assessment Unit
PSC	Public Sector Commission
“the PSM Act”	<i>Public Sector Management Act 1994</i>
WAPOL	Western Australia Police

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EXECUTIVE SUMMARY

- [1] Misconduct involves public officers pursuing their private interests at cost to the public interest.
- [2] The scheme of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”) requires that public authorities^{xxvii} deal with the overwhelming majority of their own misconduct allegations. The role of the Corruption and Crime Commission (“the Commission”) is to support and assist the public sector to develop its capacity to prevent misconduct and, when it does occur, to identify and deal with it appropriately. Each of these, that is, to prevent misconduct, to identify misconduct and to deal with misconduct, are interrelated aspects of the Commission’s work undertaken to achieve one of its two main purposes, that is, “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”.^{xxviii} An elaboration on each aspect is provided below.
- (1) **Prevent Misconduct** — to properly understand the behaviours which can occur within public authorities which amount to misconduct, the related risk factors and circumstances which are likely to give rise to those behaviours, and developing appropriate treatment strategies to minimise the risk of those behaviours occurring.
 - (2) **Identify Misconduct** — to properly understand misconduct and recognise misconduct behaviours when they arise.
 - (3) **Deal with Misconduct** — to officially respond to misconduct behaviours when they arise by:
 - recording the behaviours in official organisational records as having occurred;
 - notifying the Commission in accordance with section 28 of the CCC Act;
 - taking reasonable steps to stop the behaviours from continuing;
 - forming reasonable opinions about the harm caused by the behaviours;
 - rectifying the harm; and
 - if necessary, taking appropriate disciplinary action.
- [3] The CCC Act requires the provision of a prevention and education function^{xxix} and a misconduct function.^{xxx} Initially, the Commission’s

^{xxvii} The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003* (WA).

^{xxviii} Section 7A of the *Corruption and Crime Commission Act 2003* (WA).

^{xxix} Section 17 of the *Corruption and Crime Commission Act 2003* (WA).

approach to the prevention and education function focused on misconduct by individuals and their education. Over time, that focus has shifted to emphasising the importance of organisational systems and cultures.

- [4] In parallel with the above development, the number of allegations of misconduct received by the Commission grew from 2,410 allegations in 2004-2005 to 3,237 allegations in 2009-2010, an increase of 34%. This growth in allegations is entirely attributable to growth in non-police allegations. After accounting for police allegations, non-police allegations during this period grew by 141%.
- [5] This growth does not necessarily indicate an increase in the incidence of misconduct: rather it indicates the impact of the Commission's independent external oversight resulting in greater awareness across the public sector of the degree to which misconduct occurs and the sector's role in dealing with misconduct. This growth trend will likely continue for the medium-term.
- [6] Unlike Western Australia Police (WAPOL), which has experienced independent external oversight since 1985, the greater public sector did not have independent external oversight of its capacity to identify and deal with misconduct until the Commission was created in 2004.^{xxx}
- [7] Given the gradual shift in the Commission's prevention focus to that of organisational systems and cultures, and the continuing growth in misconduct allegations, the Commission has sought efficiencies in its internal systems and processes.
- [8] In 2010 the Commission amalgamated the then Corruption Prevention Education and Research Directorate with the unit^{xxxii} charged with assessing misconduct allegations and then reviewing the outcomes of investigations by public authorities. The new directorate is named the Corruption Prevention Directorate.
- [9] The Corruption Prevention Directorate is charged with delivering support to build the capacity of public authorities to deal with misconduct as part of their normal business processes. This remit covers a vast jurisdiction, not only in geographic terms, but in terms of the number of persons covered.
- [10] The jurisdiction of the Commission is about 142,000 public officers. Of these the Public Sector Commission (PSC) has jurisdiction over about 67,000 public service officers and teachers who are subject to the disciplinary provisions of the *Public Sector Management Act 1994*.

^{xxx} *Ibid*, section 18.

^{xxx} The *Corruption and Crime Commission Act 2003* (WA) was proclaimed in the *Government Gazette* on 30 December 2003, establishing the Corruption and Crime Commission ("the Commission"). The Commission came into existence on 1 January 2004.

^{xxxii} That is, the Investigations Review and Complaints Assessment (IRCA) Unit.

- [11] The approximately 75,000 public officers who are not within the jurisdiction of the PSC include, for example, doctors, nurses, police officers, local government councillors, local government employees, university employees and transit guards.
- [12] In developing its capacity building task the Corruption Prevention Directorate has established a suite of systems and processes. This includes:
- analysing organisational systems and cultures;
 - dealing with misconduct notifications (3,237 in the 2009-2010 financial year);
 - utilising and learning from the outcomes of Commission serious misconduct investigations;
 - research; and
 - education and training.

The above systems and processes are considered in detail in Chapter Two of this report.

- [13] This report provides details of the work of the Corruption Prevention Directorate in building the capacity of the public sector to prevent, identify and deal with misconduct.
- [14] Despite its relatively small size (28 Full-Time Equivalent positions) and comparatively low cost of service (\$2,982,819 in the 2009-2010 financial year) the Corruption Prevention Directorate has delivered outstanding results. This has directly contributed to measurable, appreciable improvements in the misconduct management mechanism in public authorities such as WA Health,^{xxxiii} the Department of Education, the Department of Transport, WAPOL, the Department of Child Protection and local governments.
- [15] As aforementioned, one of the Commission's two main purposes is: "to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector"^{xxxiv}.
- [16] If the question is asked, in relation to the Commission's prevention and education function,

Is this making a difference?,

the Commission's unequivocal response is:

Yes, it has and is making a real difference, in a cost effective way, yielding benefits to Western Australia in greater

^{xxxiii} WA Health refers to the whole of the Western Australian public health system. The Department of Health situated at Royal Street, East Perth, is the executive or management arm of WA Health.

^{xxxiv} Refer Footnote ii.

accountability in the use of public resources in the public interest.

This report provides considerable detail to support the above contention.

CHAPTER ONE

INTRODUCTION AND OVERVIEW

1.1 Background

- [1] Section 7A of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”) outlines the main purposes of the CCC Act, which are to be achieved primarily by the Corruption and Crime Commission (“the Commission”). These purposes are:
- *to combat and reduce the incidence of organised crime; and*
 - *to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.*
- [2] The Commission achieves the misconduct purpose in two ways. The first is to itself investigate misconduct. It does this in a relatively small number of serious cases.
- [3] More importantly, the second way in which the Commission achieves the misconduct purpose is to assist chief executive officers³⁵ to meet their responsibility to deal with misconduct within their organisations. That they do so is something that the CCC Act anticipates and requires of them.
- [4] The capacity of authorities to prevent misconduct, and identify and appropriately deal with misconduct when it does occur, is the underlying principle upon which the misconduct purpose, as outlined in the CCC Act, is built. The need for the Commission to use its investigation powers only arises when authorities are either unable or unwilling to investigate or the case itself is sufficiently serious to warrant Commission action.
- [5] Moreover, mandatory notification requirements, the Commission’s statutory role in dealing with them, and the Commission’s prevention and education function pursuant to section 17 of the CCC Act are centred on supporting and assisting public authorities³⁶ to develop their capacity to prevent misconduct and identify and appropriately deal with misconduct when it does occur. Each of these, that is, to prevent misconduct, to identify misconduct and to deal with misconduct, are interrelated aspects of the Commission’s work undertaken to achieve the second of its two main purposes as outlined in paragraph [1] above. An elaboration on each aspect is provided below.

³⁵ The term “principal officer of a notifying authority” is defined in Section 3 of the *Corruption and Crime Commission Act 2003* (WA), and includes the chief executive officer or chief employee of a department or organisation, where that department or organisation is defined as such in the *Public Sector Management Act 1994*.

³⁶ The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003* (WA).

- (1) **Prevent Misconduct** — to properly understand the behaviours which can occur within public authorities which amount to misconduct, the related risk factors and circumstances which are likely to give rise to those behaviours, and developing appropriate treatment strategies to minimise the risk of those behaviours occurring.
 - (2) **Identify Misconduct** — to properly understand misconduct and recognise misconduct behaviours when they arise.
 - (3) **Deal with Misconduct** — to officially respond to misconduct behaviours when they arise by:
 - recording the behaviours in official organisational records as having occurred;
 - notifying the Commission in accordance with section 28 of the CCC Act;
 - taking reasonable steps to stop the behaviours from continuing;
 - forming reasonable opinions about the harm caused by the behaviours;
 - rectifying the harm; and
 - if necessary, taking appropriate disciplinary action.
- [6] The mandatory reporting requirement pursuant to section 28 of the CCC Act requires public sector chief executive officers to “notify the Commission in writing of any matter which that person suspects on reasonable grounds concerns or may concern misconduct ... and which ... is of relevance or concern to that person in his or her official capacity”.
- [7] Between 2004-2005, the first full-year of the Commission’s operation,³⁷ and 2009-2010 allegations contained in such notifications increased from 2,410 to 3,237, an increase of 34%. If allegations continue to be received in the second half of 2010-2011 at the rate they were received in the first half of 2010-2011, the Commission will receive approximately 3,550 allegations for this financial year, a further increase of 9.7% when compared with the previous year.
- [8] In the view of the Commission, this continued growth is not attributable to increasing levels of misconduct in the public sector. Rather, the increase is due to greater awareness of what constitutes misconduct and improved mechanisms for identifying misconduct. The Commission anticipates that this trend of increasing notifications will continue for the medium-term.

³⁷ The *Corruption and Crime Commission Act 2003* (WA) was proclaimed in the *Government Gazette* on 30 December 2003, establishing the Corruption and Crime Commission (“the Commission”). The Commission came into existence on 1 January 2004.

- [9] This continuing increase in notifications is placing pressure on the Commission's resources, necessitating change in the systems and processes used to deal with them.
- [10] Parallel with increasing notifications have been changes to the way the Commission seeks to improve its support to public authorities. Over time the Commission has shifted its corruption prevention focus from the conduct of individuals to assisting authorities to meet their legislated responsibilities to deal with misconduct.
- [11] As a consequence, the focus of the Commission's approach is on organisational systems and cultures for preventing misconduct and identifying and dealing with misconduct when it occurs.
- [12] In 2010, to enhance the effectiveness of this changed focus, the Commission undertook a major organisational shift, and made significant adjustments to the way it performs its prevention and education function. It amalgamated the Investigations Review and Complaints Assessment (IRCA) Unit and the Corruption Prevention, Education and Research (CPER) Directorate to form the Corruption Prevention Directorate.
- [13] This amalgamation, which was flagged at paragraph [11] of the Commission *Annual Report 2009-2010*, involved a shift in philosophy, with a consequential change to the underlying business model and work practices. These changes have, in turn, led to significant changes in the Commission's corruption prevention output.
- [14] In forming the Corruption Prevention Directorate the Commission has established a suite of systems and processes focused on assisting public authorities to build their capacity to resist misconduct and identify and deal with misconduct when it occurs, which include: analysing organisational systems and cultures; dealing with misconduct notifications; utilising and learning from the outcomes of Commission serious misconduct investigations; research; and education and training. These systems and processes are considered in detail in Chapter Two of this report.
- [15] As a consequence of the analysis of organisational systems and cultures undertaken by the Corruption Prevention Directorate the Commission has tabled a number of reports in the Parliament of Western Australia. In recent times these include *Misconduct Handling Procedures in the Western Australian Public Sector: WA Health*, 22 April 2010, and *The Use of Taser Weapons by Western Australia Police*, 4 October 2010. The tabling of such reports further supports the prevention and education function of the Commission by:
- providing information and making recommendations to public authorities;
 - providing information relevant to its prevention and education function to the general community;

- generally increasing the capacity of public authorities to prevent misconduct through the provision of advice; and
 - reporting on ways to prevent misconduct.
- [16] Subsequent to tabling reports in the Parliament of Western Australia the Commission continues to consult with the relevant public authorities, provides training, and monitors the action taken to address identified issues and to implement recommendations. This occurs within the context of an ongoing relationship between the Commission and the relevant public authorities.
- [17] The purpose of this report is to describe these adjustments and the resulting benefits. This report addresses the following:
- Legislation;
 - Jurisdiction;
 - Drivers for Change;
 - Corruption Prevention — A Business Model; and
 - Corruption Prevention Outputs.

1.2 Legislation

- [18] Section 7A of the CCC Act describes one of the Commission’s purposes as being to: “improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”. Sections 17 and 18 prescribe that this purpose is to be achieved through a prevention and education function and a misconduct function (refer Appendix 1 to this report).
- [19] Although the Commission can itself investigate misconduct, Part 3 (refer Appendix 1 to this report) makes it clear that the CCC Act anticipates and requires authorities to deal with the overwhelming majority of their own misconduct allegations. This makes sense because misconduct involves public officers pursuing their private interests at the expense of the public interest. Misconduct, therefore, has the potential to seriously undermine the efficiency and effectiveness of public authorities. Dealing with misconduct should be at the core of the business of public authorities.
- [20] It follows from this that the Commission’s misconduct, and prevention and education functions are not ends in themselves. The CCC Act intends that they both work towards a misconduct resistant public sector comprised of authorities with some reasonable capacity to both limit the occurrence of misconduct and to competently identify and deal with it when it does occur.

- [21] Consistent with the overriding capacity building purpose outlined in section 7A of the CCC Act and the effect of Part 3 of the CCC Act, one of the primary roles of the Commission is to assist public authorities to develop and maintain a reasonable capacity to both limit the occurrence of misconduct and to competently identify and deal with it when it does occur.

1.3 Jurisdiction

- [22] The Commission has jurisdiction over approximately 142,000 public officers in the State Government and local government sectors. Of those, for the purpose of discipline, the Public Sector Commission (PSC) also has jurisdiction over approximately 67,000 public service officers and teachers who are subject to the disciplinary provisions of the *Public Sector Management Act 1994* (“the PSM Act”).
- [23] The approximately 75,000 public officers who are not within the jurisdiction of the PSC include, for example, doctors, nurses, police officers, local government councillors, local government employees, university employees and transit guards.
- [24] The Department of Local Government has a limited role in dealing with conduct issues in local government. Aside from that limited role, in the absence of the Commission there would be no independent oversight of the way public authorities deal with conduct issues for these approximately 75,000 public officers.
- [25] In the experience of the Commission very large public authorities such as WA Health,³⁸ and large employers of public officers such as local government, have limited capacity to deal with both misconduct, as it is defined by the CCC Act, and improper conduct more generally. In the absence of independent external oversight until 2004 there was no momentum for these authorities to deal with misconduct specifically, and improper conduct more generally, as part of their core business.
- [26] As discussed above, misconduct particularly, and improper conduct more generally, diverts resources away from the public interest goals of public authorities to the private interest goals of individuals; thereby undermining the efficiency and effectiveness of the public sector.
- [27] It is, therefore, important to the Western Australian community that all authorities have reasonable capacity to resist misconduct, and identify and deal with it when it does occur. The Commission alone has the legislative mandate to work with authorities to achieve this.
- [28] The importance of this capacity building role is a key issue for the Commission. It is important for all employers of the 142,000 public officers

³⁸ WA Health refers to the whole of the Western Australian public health system. The Department of Health situated at Royal Street, East Perth, is the executive or management arm of WA Health.

over which it has jurisdiction, but of added importance for the employers of the approximately 75,000 public officers for which it is effectively the only independent oversight body.

- [29] The importance of this role has driven the Commission to continuously refine its approach to corruption prevention and, ultimately, to amalgamate the IRCA Unit and the CPER Directorate to form the Corruption Prevention Directorate, as previously mentioned.

1.4 Drivers for Change

1.4.1 Ongoing Growth in Allegations Received

- [30] In 2004-2005, the first full-year of the Commission's operation, the Commission received 2,410 allegations. In the subsequent five years steady and sustained growth in allegations occurred, with the result that in 2009-2010 the Commission received 3,237 allegations, a 34% increase on 2004-2005.
- [31] In the first half of 2010-2011 the Commission received 1,778 allegations. If allegations continue to be received at this rate for the second half of the financial year, it will receive approximately 3,550 allegations, a 9.7% increase on the previous year.
- [32] Notably, this growth in allegations is entirely attributable to the non-police part of the public sector. Western Australia Police (WAPOL) is the largest notifier of allegations to the Commission and the only public authority with a long history of independent external oversight — external oversight of the conduct of police officers coming within the Ombudsman's jurisdiction in 1985.
- [33] In the same period 2004-2005 to 2009-2010 WAPOL allegations declined by 23% from 1,580 to 1,221. This means that non-police allegations increased by 141% from 832 to 2016.
- [34] It is unlikely that this growth in allegations is attributable to increasing levels of misconduct in the public sector. More likely is that as awareness within authorities of their responsibility to resist and respond to misconduct grows, so too does their capacity to identify, and therefore also notify the Commission of, misconduct. It, therefore, seems likely that allegations will continue to grow steadily for some time.
- [35] The Commission must deal with the allegations it receives in ways that take account of its finite resources and which ensure that the level of attention they receive is commensurate with their significance. In particular, it is important that resources are available to deal with more serious cases.
- [36] Nor is this growth related to minor issues, for example, significant is the growth in use of force allegations from the education sector, allegations in the health sector relating to unaccounted for, or missing, scheduled drugs and allegations of fraud in the local government sector.

[37] The challenge of dealing with this growth in allegations is a key factor that drove the need for the Commission to change its systems, processes and structures.

1.4.2 Importance of Organisational Systems and Cultures

[38] From its inception in 2004 the CPER Directorate initially focused on particular misconduct matters. In November 2008, based on its experience dealing with the public sector, it developed a framework for dealing with misconduct called *Misconduct Resistance: An Integrated Governance Approach to Protecting Agency Integrity*. This framework was well received by the public sector.

[39] The experience gained from its major misconduct investigations combined with developing and launching the Misconduct Resistance framework reinforced the link between misconduct by individual public officers, the organisational systems and cultures in which public officers work, and the capacity of authorities to prevent misconduct and identify and deal with it appropriately and effectively when it does arise.

1.4.3 Overlap Between the Corruption Prevention, Education and Research (CPER) Directorate and the Investigations Review and Complaints Assessment (IRCA) Unit

[40] It was also relevant that an overlap between the CPER Directorate and the IRCA Unit had arisen, for example, the volume of allegations received about police led to the IRCA Unit developing a systems-based approach to dealing with WAPOL cases, which straddled both the misconduct and prevention and education functions.³⁹

[41] On the basis of these antecedents and in the context of the Commission continuously refining its approach to corruption prevention, it decided to amalgamate the CPER Directorate and the IRCA Unit, as previously mentioned, to form the Corruption Prevention Directorate. The Corruption Prevention Directorate retained responsibility for delivering the functions previously delivered by the CPER Directorate and the IRCA Unit, but via a new business model.

³⁹ This approach evaluates the way Western Australia Police (WAPOL) deals with misconduct by examining the capacity of WAPOL systems and organisational cultures to handle misconduct, including reviewing a percentage of completed WAPOL investigations.

CHAPTER TWO

Corruption Prevention — A Business Model

2.1 Background

- [42] The Corruption Prevention Directorate business model emerged from the Commission's legislative base and the aforementioned drivers for change.
- [43] It is built on the proposition that the Commission should seek to assist public authorities to develop and maintain effective misconduct management systems and cultures, thereby enabling them to both reasonably limit the occurrence of misconduct and to competently identify and deal with misconduct when it does occur.
- [44] This proposition takes account of the fact that the CCC Act anticipates that authorities should themselves deal with the majority of misconduct allegations. Further, that dealing with misconduct is at the core of authority business.

2.2 Strategies

- [45] The business model employs the following four main strategies.

- **Analysing Organisational Systems and Cultures**

The Commission pursues a range of activities which involve its staff visiting public authorities, analysing systems and cultures, and reporting the outcome of this work, with recommendations for change if necessary. The Commission does this in two main ways. It follows either a top-down or bottom-up approach.

Top-Down

The top-down approach, or organisational review, involves analysis of systems and cultures across an entire organisation, for example, WA Health and individual local governments.

Bottom-Up

The bottom-up approach, or systems-based evaluation, involves analysis of systems and cultures on a workplace-by-workplace basis, for example, prisons, police districts and education districts.

- **Dealing with Misconduct Notifications**

Assessment/monitoring/review work supports analysis of organisational systems and cultures, as well as ensuring the identification of cases which the Commission should investigate.

- **Utilising and Learning from the Outcomes of Commission Serious Misconduct Investigations**

The Commission utilises and learns from these investigations by examining the organisational systems and cultural contexts in which the investigated misconduct occurred and/or by examining wider systemic influences that affect the public sector or particular groups of authorities. Activity in this area is largely research-based. For example, research projects:

- on improper influence on vehicle examiners, motor drivers licence assessors and regional transport officers employed by the Department of Transport;⁴⁰
- on the effectiveness of gifts and benefits registers and policies in State Government and local government authorities;
- to analyse Commission investigation outcomes to identify common misconduct themes and issues; and
- to develop a statistical instrument to measure organisational cultural response to various misconduct scenarios.

- **Research**

The Commission conducts research into particular organisational systems and cultures. For example, the use of Taser weapons by WAPOL.

- **Education and Training**

The Commission undertakes a range of activities in this area, such as quarterly misconduct practitioner forums, publication of *On the Level*, the Commission's bi-monthly electronic newsletter, and monthly *Understanding Misconduct* and *Misconduct Tips for Managers* education seminars.

2.3 New Structure

- [46] To give effect to these strategies the Corruption Prevention Directorate is essentially structured into six small teams. Five have responsibility for a portfolio of public authorities, while the sixth team is responsible for research and education.

⁴⁰ On 1 July 2009 the Department for Planning and Infrastructure was restructured to become the Department of Planning and the Department of Transport.

1. Justice Team

The Justice Team deals with a portfolio of public authorities comprised of the following:

- WAPOL;
- the Public Transport Authority;
- the Department of Corrective Services;
- the Department of Justice; and
- the Department of the Attorney General.

Police officers, prison officers and public transport officers are **not** public service officers. They are not covered by the disciplinary provisions of the PSM Act. Therefore, the PSC disciplinary provisions do not cover the majority of public officers in this portfolio. The only independent review and/or oversight of the conduct of these officers is via the Commission.

WAPOL accounted for 38% of allegations received by the Commission in 2009-2010.

2. Health and Infrastructure Team

The Health and Infrastructure Team deals with a portfolio of public authorities comprised of the following:

- WA Health (including the Department of Health);
- the Department of Planning;
- the Department of Transport;
- the Department of Housing;
- Main Roads WA; and
- Landgate.

The overwhelming majority of employees of WA Health are **not** public service officers. Health care professionals, for example, are not covered by the disciplinary provisions of the PSM Act. Therefore, the PSC disciplinary provisions do not cover them. The only independent review and/or oversight of the conduct of these officers is via the Commission.

WA Health is a strategically significant authority, because of both its size and budget and because of its impact on the lives of Western Australian citizens. The Commission's role in assisting WA Health to build its capacity to resist misconduct, and identify and respond to it when it does occur is, therefore, of critical importance.

3. Local Government and Regions Team

The Local Government and Regions Team deals with a portfolio of public authorities comprised of the following:

- all local government authorities;
- regional development commissions;
- the Department of Local Government; and
- the Department of Regional Development and Lands.

As with the portfolios discussed above, public service officers are in the minority of employees in this portfolio. Local government employees and councillors are **not** public service officers. They are not covered by the disciplinary provisions of the PSM Act. Therefore, the PSC disciplinary provisions do not cover them.

There is limited independent review and/or oversight of some types of conduct by these public officers via the Department of Local Government and the Local Government Standards Panel. Independent review and oversight rests with the Commission for misconduct cases.

This portfolio of authorities is significant because of the direct impact of actions by local governments and regional development commissions on the lives of Western Australian citizens, the relative size of the portfolio in terms of public officers involved, expenditure and the number of organisations.

4. Education/Child Protection Team

The Education/Child Protection Team deals with a portfolio of public authorities comprised of the following:

- Department of Education;
- Department of Training and Workforce Development;
- five universities in Western Australia;
- Department of Child Protection;
- Department of Communities; and
- Disability Services Commission.

As with the portfolios discussed above, public service officers are the minority of employees in this portfolio. However, by regulation, teaching staff in the Department of Education, which constitute a clear majority of public officers in this portfolio, are covered by the disciplinary provisions of the PSM Act.

The employees of the five universities are **not** public service officers. They are not covered by the disciplinary provisions of the PSM Act. Therefore, the PSC disciplinary provisions do not cover them. The only independent review and/or oversight of the conduct of these officers is via the Commission.

5. General Team

The General Team deals with those public authorities not included in the portfolios of the previous four teams. These public authorities tend to be smaller organisations.

The majority of employees in these public authorities are public service officers. Therefore, the PSC disciplinary provisions cover most of them. Activities undertaken by the General Team are largely confined to dealing with a relatively small number of misconduct notifications. Outputs from this team are, therefore, not discussed in detail in the following chapters.

6. Research and Education Team.

The Research and Education Team pursues more general education and training strategies. These involve the delivery of education and training in support of the Commission's work in helping authorities strengthen their organisational systems and cultures.

The Research and Education Team also seeks to conduct research into misconduct issues that have public sector-wide significance, for example, misconduct risks associated with the receipt of gifts and benefits in the public sector.

CHAPTER THREE JUSTICE TEAM OUTPUTS

3.1 Western Australia Police (WAPOL)

3.1.1 Analysing Organisational Systems and Cultures

- [47] The Justice Team has completed a programme of systems-based evaluations of all police districts, the Specialist Crime Division, the Specialist Operations Portfolio and the Internal Affairs Unit. The results of this work were provided to WAPOL in a series of working papers and a draft report. Feedback has been received from WAPOL.
- [48] A report on the outcome of this programme of evaluations is in the process of being prepared. It will address the state-of-play of misconduct management by WAPOL. It will incorporate the results of the systems-based evaluation programme and the outcome of several Commission investigations. The report will make a range of recommendations for change.
- [49] The report will also assesses the effectiveness of the Police Management Intervention Model, including management action plans, the quality assurance role of the Police Complaints Administration Centre, investigation quality assurance in the Internal Affairs Unit, and the relationship between district superintendents and their assistants.
- [50] A second round of systems-based evaluations of police districts is currently underway.

3.1.2 Utilising and Learning from the Outcome of Commission Serious Misconduct Investigations

- [51] The report addressing the state-of-play of misconduct management by WAPOL will examine three Commission serious misconduct investigations in the context of WAPOL misconduct management systems and organisational cultures.

3.1.3 Research

- [52] A research project into the use of Taser weapons by WAPOL culminated in a report which was tabled in the Parliament of Western Australia on 4 October 2010. This project identified and highlighted a number of critical issues related to Taser weapon use by WAPOL, making 10 recommendations for change. The Commissioner of Police recently agreed to implement a majority of these recommendations.
- [53] This project involved:
- a review of the available literature on Taser weapon use;

- analysis of Taser weapon use policies in Australia and overseas;
- analysis of 17 particular Taser weapon use cases;
- analysis of WAPOL use of force reports between 2007 and 2009; and
- additional analysis of WAPOL use of force reports for the periods 1 December to 31 December 2007, 1 July to 31 July 2008, and 1 July to 30 September 2009.

[54] At the current time the Commission is in the early stages of conducting a research project into the use of force, generally, by police officers.

[55] The Commission has also completed a literature review on the factors which influence misconduct in policing environments, with a view to using the results of the review to refine its future strategies relating to WAPOL.

3.1.4 Education and Training

[56] The provision of education and training programmes to WAPOL by the Commission has, to date, been limited. This reflects the relative maturity of the approach by WAPOL to preventing and dealing with misconduct, and existing training programmes used by WAPOL.

[57] However, the Commission has recently reviewed its activities in this area and embarked on an education programme involving the following strategies:

- delivering education seminars to recruits as part of their recruit training;
- delivering education seminars at officer development courses;
- delivering education seminars at officer-in-charge and regional superintendent meetings; and
- providing briefings to newly appointed WAPOL executives.

3.1.5 Dealing with Misconduct Notifications

[58] WAPOL continues to be the largest notifier of misconduct allegations to the Commission, although it is noteworthy that its overall share of notifications received declined from 67% in 2004-2005 to 38% in 2009-2010. This partly reflects a decline in the actual number of allegations received about WAPOL, but more significant is the growth in allegations related to other public sector authorities.

[59] In the first half of 2010-2011 the WAPOL share of notifications declined a further 2% to 36% (640 allegations). If notifications are received at the same rate in the second half of 2010-2011 as in the first half, the actual number of WAPOL notifications will be slightly less than in 2009-2010.

- [60] Because of the number of notifications the Commission received relating to WAPOL and the significance of WAPOL to the Commission, the importance of ensuring that the Commission's assessment/monitoring/review work in this area is efficient and effective cannot be overstated. The Commission has, therefore, invested heavily to become more efficient and effective in this area.
- [61] At a practical level this means ensuring that the Commission's existing focus on more serious cases in its assessment/monitoring/review work is retained and enhanced.
- [62] There are two aspects to retaining and enhancing this focus. The first involves notification assessment committees. These committees involve the collaboration of Corruption Prevention Directorate and investigation staff to finalise the assessment of allegations received in order to ensure that cases that ought to be investigated by the Commission are not overlooked. The Justice Team established a notification assessment committee for WAPOL notifications in 2008. It has been operating successfully since and has been replicated in the other Corruption Prevention Directorate teams with responsibilities for portfolios of authorities.
- [63] The second aspect involves finding efficiencies in the assessment/monitoring/review process which take account of the fact that managing misconduct is the primary responsibility of the authority in which the allegations arise, without overlooking that a key aspect of the Commission's role is to ensure that authorities deal with such allegations in accountable and transparent ways.
- [64] On this basis in 2008 the Justice Team moved away from previous business practices in which the progress of all allegations referred to WAPOL were monitored and the adequacy of all completed WAPOL investigations were reviewed. A smaller percentage of cases are now reviewed, based on strategic considerations such as seriousness and the relevance of particular cases to planned systems-based evaluations. The success of this approach has resulted in it subsequently being replicated in the other Corruption Prevention Directorate teams with responsibilities for portfolios of authorities.
- [65] As a result of this approach only 9% of WAPOL cases were reviewed in the first half of 2010-2011.
- [66] How to achieve further efficiencies in dealing with WAPOL notifications is currently being explored.

3.2 Department of Corrective Services (DCS)

3.2.1 Analysing Organisational Systems and Cultures

- [67] A programme of systems-based evaluations of all prisons is underway. Evaluations have so far been conducted at Casuarina Prison, Karnet Prison Farm, Acacia Prison, Rangeview Remand Centre, Bandyup Prison, Bunbury Prison, Hakea Prison, Roebourne Prison and Albany Regional Prison.
- [68] Further evaluations will be conducted at Boronia Pre-Release Centre, Wooroloo Prison Farm, Broome Prison, Eastern Goldfields Prison, Banksia Hill Detention Centre and Greenough Prison over the course of the next five months.
- [69] Upon the completion of this programme a draft report, with recommendations for change if necessary, will be provided to the Department of Corrective Services (DCS) for comment.

3.2.2 Utilising and Learning from the Outcome of Commission Serious Misconduct Investigations/Research

- [70] The Commission's research and report into Taser weapon use by WAPOL highlighted multiple Taser weapon deployments against a man at the Perth Watch House, initially by police officers and in the following days by prison officers. The Commission is currently investigating this matter.
- [71] As a means of utilising and learning from the Commission's investigation into the Taser use incidents discussed above in an organisational systems and cultural context, research into Taser weapon use in Western Australian prisons, including examining the effectiveness of DCS policies and procedures, is currently being undertaken. The results of this work will be included in a report on the Commission's investigation.
- [72] This project has already involved conducting:
- a review of the available literature on Taser weapon use in prisons;
 - analysis of Taser weapon use policies in Australia and overseas;
 - analysis of Taser weapon use cases in Western Australian prisons; and
 - analysis of DCS policies and procedures relating to Taser weapon use.

3.2.3 Education and Training

- [73] The provision of education and training programmes to DCS by the Commission has, to date, been limited. The Commission does, however, deliver education seminars to "new to rank" Principal Prison Officers.

3.2.4 Dealing with Misconduct Notifications

- [74] The DCS share of notifications increased from 8% in 2004-2005 to 9% in 2009-2010. In the first half of 2010-2011 its share of notifications increased to 16% (284 allegations). This increase in notification level does not reflect increased levels of misconduct within DCS. Rather, it reflects the outcome of dialogue between the Commission and DCS about which matters DCS is required to notify to the Commission, pursuant to its obligation under section 28 of the CCC Act.
- [75] As with WAPOL, the Justice Team has implemented a notification assessment committee for DCS and has radically reduced the percentage of DCS cases which are monitored and reviewed.

3.3 Public Transport Authority

- [76] A systems-based evaluation of the Public Transport Authority has been completed.

CHAPTER FOUR

Health and Infrastructure Team Outputs

4.1 WA Health

4.1.1 Analysing Organisational Systems and Cultures

- [77] On 22 April 2010 the Commission tabled a report in the Parliament of Western Australia about the results of an organisational review of WA Health.⁴¹ This review examined organisational systems and cultures at 14 WA Health sites, including Princess Margaret Hospital for Children, Royal Perth Hospital, and WA Country Health Service-Kimberley. A thematic review of the management and handling of Schedule 4 and Schedule 8 drugs and drug-related misconduct risk was conducted. Three hundred and four (304) people were interviewed. The responses of 920 WA Health employees to a survey were analysed.
- [78] The review broadly found that serious, identifiable misconduct risks exist which pose a risk to patient safety and have financial impacts. There is limited practical capacity within WA Health to deal with misconduct, and no real improvement occurred over the period of the review. Four broad recommendations to overcome the problem were made.
- [79] Since conducting that review the Commission has embarked on undertaking a programme of systems-based evaluations of hospitals. To date, evaluations of two metropolitan hospitals have been conducted. Working papers have been provided to the executive of those hospitals outlining the outcome of the reviews.

4.1.2 Utilising and Learning from Commission Serious Misconduct Investigations/Research

- [80] Since the organisational review two Commission serious misconduct investigations have been undertaken into public officers employed by WA Health. One investigated serious misconduct involving alleged theft by an employee resulting in criminal charges of stealing as a servant for an alleged amount of \$186,812. The other investigated alleged financial misconduct in procurement and construction. These investigations highlighted the types of financial impacts noted in the report on the organisational review.
- [81] As a means of both utilising and learning from those investigations in the context of WA Health organisational systems and cultures, and to continue to assist WA Health to build its capacity to effectively manage misconduct, the following strategies have been implemented.

- Consultation

⁴¹ Refer Footnote 4.

Monthly meetings occur with representatives of the WA Health Corporate Governance Directorate to discuss misconduct management issues. Quarterly meetings occur with representatives of the Corporate Governance Directorate, and metropolitan and country area health service senior staff as a mechanism to assist implementation of the response by WA Health to the organisational review report.

- **Systems-Based Evaluations**

Systems-based evaluations at two metropolitan hospitals have been completed and will continue in both metropolitan and rural settings.

- **Research**

An external research company has been engaged to develop a survey instrument to measure organisational cultural responses to misconduct in WA Health. This instrument will be used in conjunction with systems-based evaluations to form an overall picture of WA Health and as a means of comparison between worksites. Once this instrument is finalised it is intended to adjust it and utilise it in other authorities.

- **Fraud and Corruption Controls**

Analysis of fraud and corruption control plans for WA Health worksites to assess their exposure to misconduct risks highlighted by the Commission investigations will occur in 2011.

- **Report**

Working papers have been, and will continue to be, provided to WA Health on the outcome of these strategies.

4.1.3 Education and Training

[82] In response to requests the Commission has delivered education seminars to various WA health worksites, for example, to the Child and Adolescent Health Service. As part of the systems-based evaluations of the two metropolitan hospitals a series of workshops were delivered to staff.

[83] From a regional perspective, the Commission targets health services as part of its regional outreach programme. Unlike education seminars delivered to participants from other authorities, tailored seminars are delivered “in-house” to health services, for example, most recently to staff at Geraldton Regional Hospital.

4.1.4 Dealing with Misconduct Notifications

[84] The WA Health share of notifications increased from 2% in 2004-2005 to 12% in 2009-2010. In the first half of 2010-2011 its share of notifications declined to 5% (89 allegations).

- [85] As with the Justice Team, the Health and Infrastructure Team has implemented a notification assessment committee for WA Health and has radically reduced the percentage of WA Health cases which are monitored and reviewed.

4.2 Department of Transport (DoT)

4.2.1 Utilising and Learning from Commission Serious Misconduct Investigations/Research

- [86] In September 2010 the Commission tabled a report in the Parliament of Western Australia on the investigation of alleged bribery and corruption of public officers employed as vehicle examiners by the Department of Transport (DoT). Further to that investigation the Commission undertook two projects to gain a better understanding of DoT systems and cultures. The first was a research project into the way DoT manages the type of misconduct risk highlighted by the investigation. The second was an organisational review of DoT. These projects were documented in chapters three and four of the tabled report.
- [87] The organisational review of DoT involved evaluating systems and cultures at 10 metropolitan and two regional workplaces, conducting interviews of 90 staff members and conducting a perceptions survey to which 538 staff responded. It broadly found that DoT was exposed to high levels of misconduct risk. Despite a clear commitment by the executive to build the organisation's capacity to manage misconduct this had not been effectively communicated throughout the organisation.
- [88] Recommendations were made to overcome these problems in the above mentioned 2010 Commission report.
- [89] The research project involved interviewing 90 staff, including vehicle examiners, licence assessors, regional transport officers, team leaders and senior licensing managers at 13 metropolitan and regional workplaces. It broadly found that this type of misconduct risk was significant across the workplaces visited, and that the approach by DoT to managing the assessor and vehicle examiner business functions heightened its exposure to this risk.

4.2.2 Education and Training

- [90] Since tabling the September 2010 report a briefing has been provided to DoT executive and a number of education seminars have been delivered. Regular communication with DoT to monitor implementation of the Commission's recommendations has occurred. Subsequently, DoT advised that structural and management changes have been made to address recommendations made in the report.

4.3 Landgate

- [91] On 18 June 2009 the Commission tabled a report in the Parliament of Western Australia on the investigation of alleged bribery of Landgate staff. The Commission followed up the investigation by providing a comprehensive briefing to the Landgate executive and by providing education seminars for Landgate staff.
- [92] Subsequent interaction with Landgate included monitoring the implementation of the Commission recommendations outlined in the report, one of which was not accepted by Landgate. All other recommendations have been implemented.

CHAPTER FIVE

Local Government AND REGIONS Team Outputs

5.1 Local Government

- [93] This is a large and complex portfolio. Local government is currently an area of active interest for the Commission and will continue to be so for some time.

5.1.1 Analysing Organisational Systems and Cultures

- [94] Organisational reviews of the Port Hedland and Roebourne Councils have been completed, with working papers being provided to both. The Commission has followed up with these local governments as to how recommendations from the working papers might be implemented.

- [95] Reviews of the Shires of Ashburton and East Pilbara are planned for the second half of 2011. Completion of these reviews will enable the Commission to formulate an overall view of the capacity of local government in the Pilbara to prevent, identify and deal with misconduct.

5.1.2 Utilising and Learning from Commission Serious Misconduct Investigations/Research

- [96] Late in 2010 the Commission conducted public examinations as part of an investigation into alleged misconduct by any public officer employed by the City of Stirling in relation to the procurement of goods and services on behalf of the City of Stirling.

- [97] As a means of both utilising and learning from that investigation in the context of organisational systems and cultures at both the City of Stirling and the local government sector generally, and to continue to assist local governments to build their capacity to effectively manage misconduct, a plan, based on the following strategies, is currently being developed.

- Engagement

The Commission is supporting the City of Stirling to deal with the investigation, including the repercussions of public examinations. This support will continue and will include a comprehensive briefing to Council.

Regular liaison with the Department of Local Government will also continue. It will include developing, in partnership with the Department of Local Government, a panel of independent investigators to assist local governments to conduct disciplinary investigations.

Engagement with the local government sector more generally will continue, including:

- presenting papers at the forthcoming Western Australian Local Government Convention and Trade Exhibition, and the Western Australian Local Government Managers Association Conference;
- exhibiting at the Western Australian Local Government Convention and Trade Exhibition;
- *ad hoc* education seminars to staff and councillors; and
- education seminars to newly elected councillors.

In the 2011-2012 financial year the Commission proposes to conduct a local government conference to raise awareness of, and discuss, misconduct risk issues in the local government sector.

- **Organisational Reviews**

Organisational reviews will continue in both Pilbara and other rural settings, and in the metropolitan area. This will include an organisational review of the City of Stirling.

- **Research**

The survey instrument being developed for WA Health may have application in local government. This, or another instrument to measure organisational cultural responses to misconduct, will be used in the local government sector.

- **Exposure to Misconduct Risk**

Analysis of exposure in the local government sector to the types of misconduct issues highlighted by the Commission investigation is currently under consideration.

- **Report(s)**

In 2011 the Commission plans to report the outcome of its work in the Pilbara. In 2012 the Commission plans to report the outcome of its research work and work in measuring the exposure of the local government sector to the misconduct issues highlighted in its investigation into procurement of goods and services by public officers on behalf of the City of Stirling. Working papers will be provided to the local government sector during this process.

5.1.3 Education and Training

- [98] Education seminars were delivered by the Commission to newly elected councillors following local government elections and a presentation was made to the Mayors and Presidents Forum.

- [99] Interaction with the Department of Local Government, Western Australian Local Government Association, and Western Australian Local Government Managers Association about misconduct and misconduct risk issues in local government occurred.

5.1.4 Dealing with Misconduct Notifications

- [100] The Local government share of notifications increased from 7% in 2004-2005 to 8% in 2009-2010. In the first half of 2010-2011 its share of notifications increased to 9% (160 allegations).
- [101] By comparison with WA Health or the Department of Education, the Commission is at a relatively early stage of interaction with the local government sector. It is, therefore, difficult to make informed observations about this sector's share of misconduct notifications.
- [102] As with other teams, the Local Government Team has implemented a notification assessment committee for this sector.
- [103] Different efficiency issues arise in this sector. Trying to reduce the percentage of local government cases which are monitored and reviewed is not a significant efficiency issue. More important is that approximately half of allegations received do not involve misconduct issues but are nevertheless complex. These allegations often involve much paperwork and are time consuming to assess.
- [104] At the current time the Local Government Team is exploring how to deal with these cases more effectively and efficiently.

5.2 Regional Development Commissions

- [105] Education seminars have been delivered to all regional development commissions, except one. Importantly these seminars included all chief executive officers and commissioners. Interaction with the Department of Regional Development and Lands and the PSC about misconduct risks associated with the Royalties for Regions State Government initiative, with respect to regional development commissions, occurred.

CHAPTER SIX

Education/Child Protection Team Outputs

6.1 Department of Education

6.1.1 Analysing Organisational Systems and Cultures

- [106] Implementation of systems-based evaluations in the Department of Education is well underway. Systems-based evaluations have been conducted at the Mid-West, Pilbara, West Coast and Fremantle-Peel District Offices.
- [107] Working papers about these evaluations are currently being compiled so that they can be provided to the Department of Education.

6.1.2 Dealing with Misconduct Notifications

- [108] The Department of Education share of notifications received increased from 9% in 2004-2005 to 18% in 2009-2010. In the first half of 2010-2011 its share of notifications increased to 19% (338 allegations).
- [109] Rather than indicating an increase in misconduct in the Department of Education, the growth in notifications received reflects the significant effort made by the Department of Education over the last several years to develop its capacity to prevent, identify and deal with misconduct.

6.2 Tertiary Institutions

- [110] The former Commissioner of the Commission and vice-chancellors of the five universities in Western Australia met on two occasions during 2011 to discuss approaches taken by the universities to prevent, identify and respond to misconduct. These meetings led to the establishment of a reference group, comprised of representatives of the Commission and the five universities, to assist the universities to build their misconduct management capacity.
- [111] The reference group is in the process of developing a series of misconduct “hypotheticals” which are intended to be delivered in seminars to the universities in 2011. It is also working towards establishing a research project to measure organisational cultural responses to misconduct.

6.2.1 Utilising and Learning from the Outcomes of Commission Serious Misconduct Investigations

- [112] In September 2010 the Commission tabled a report in the Parliament of Western Australia on the investigation of alleged misconduct by a sessional academic employed by Curtin University of Technology (“Curtin University”). In addition to dealing with allegations of misconduct by the sessional academic the report examined shortcomings in the processes

and procedures used by Curtin University to identify and deal with misconduct.

- [113] As a means of assisting Curtin University to overcome these shortcomings and to build its misconduct management capacity, there has been significant interaction between Curtin University and the Commission since the completion of the Commission investigation. This included a comprehensive briefing of the Curtin University executive and the provision of advice about proposed structural and procedural changes within Curtin University to prevent, identify and respond to misconduct.

CHAPTER SEVEN

Research and Education Team Outputs

7.1 Research

7.1.1 Gifts and Benefits

- [114] In late 2009 the Commission conducted public examinations into misconduct issues arising from the activities of a group of companies known as the The Consumables Management Group Pty Ltd. Through a range of sales and marketing strategies this organisation targeted junior public officers in order to convince them to buy photocopier toner outside the Western Australian Government Common Use Arrangements and other procurement policies.
- [115] As a means of utilising and learning from the outcomes of that investigation in an organisational systems and cultural context across both the State Government and local government sectors, a research project seeking responses to questions from all State and local government authorities about their buying patterns, approaches to gifts and benefits, and the effectiveness/existence of gift registers was conducted.
- [116] Analysis of this material is almost complete and will be included in a report with recommendations for change.

7.1.2 Common Misconduct Themes and Issues

- [117] Over the course of its existence the Commission has conducted a number of investigations into a variety of misconduct issues. In 2010 the Commission engaged an academic from Murdoch University to analyse a number of those investigations with a view to identifying common themes and issues. This research project is continuing in 2011.

7.1.3 External Research Panel

- [118] In 2010 the Commission sought requests for quotation from research companies to participate in a Commission research panel, or a group of organisations with the expertise to carry out research projects on behalf of the Commission.
- [119] Currently one of these organisations has been engaged by the Commission to develop a statistical research instrument to measure organisational cultural response to various misconduct scenarios.
- [120] This instrument will initially be trialled during systems-based evaluations in WA Health, after which it is intended to use it across the State Government and local government sectors.

- [121] Over time, data gathered using this instrument will enable meaningful comparisons of organisational cultural response to misconduct between authorities and between organisational units within authorities.
- [122] The establishment of the research panel and development of the statistical research instrument is part of an overall strategy of seeking to ascertain misconduct trends and issues in the public sector and utilising that information to assist authorities to increase their capacity to resist and manage misconduct.

7.2 Education

- [123] More general education and training strategies involve the delivery of education and training in support of Commission work to help authorities to strengthen their organisational systems and cultures.
- [124] Regular free education seminars, as well as *ad hoc* conference speeches and seminars are delivered. In the first half of 2010-2011 this included delivering 42 presentations, a 14% increase on the previous half.

Thirty-five of these presentations were delivered to 1,712 public sector participants, an 86% increase on the previous half.

Seven of these presentations were delivered to 687 community participants, a 40% increase on the previous half.

7.2.1 Misconduct Practitioner Forums

- [125] Quarterly misconduct practitioner forums are delivered. Targeted at managers and senior staff with responsibility for dealing with misconduct issues, these forums involve invited speakers to share their own misconduct management experiences. Two forums in the first half of 2010-2011 attracted 529 participants, a 63% increase from 396 on the previous half.

7.2.2 Regional Outreach

- [126] Two regional outreach visits to country centres are conducted each year. These typically involve the Commissioner and a team of Corruption Prevention Directorate and investigation staff meeting local leaders, delivering a variety of education programmes and visiting local State Government facilities such as schools, police stations, hospitals and prisons.
- [127] The regional outreach programme in Geraldton and Carnarvon in the second half of 2010 attracted 348 participants, a 92% increase on the 181 participants attracted to the regional outreach programme in the Pilbara in the first half of 2010.

7.2.3 Publications

- [128] One of the key education strategies pursued by the Commission is its newsletter, *On the Level*. This newsletter is sent to subscribers electronically. Anybody can subscribe to the newsletter by visiting the Commission Website. Three editions of *On the Level* were published in the second half of 2010. At the time of writing this report *On the Level* had 2,044 subscribers.
- [129] Another key education strategy is the accessibility of the Commission Website as an information resource. Early in 2010 the Commission Website was upgraded to make it more accessible. Since then the Website has been progressively enhanced. Some important enhancements are the inclusion of all speeches/conference presentations given by the Commissioner and Commission staff, all papers given at Misconduct Resistance Practitioner Forums and *On the Level*.
- [130] The Commission is currently engaged in publishing a suite of case studies on the Commission Website.

7.2.4 Australian Public Sector Anti-Corruption Conference 2011

- [131] Every two years the Commission, the Independent Commission Against Corruption of New South Wales and the Crime and Misconduct Commission of Queensland host the Australian Public Sector Anti-Corruption Conference (APSACC), which has typically involved over 500 delegates from across Australia and the world.
- [132] The Commission is Chair of the organising committee for APSACC 2011, which will be held at the Esplanade Hotel between 15 and 17 November 2011.
- [133] Planning for APSACC 2011 is well advanced. A number of key sponsors have been secured, the conference programme is effectively finalised and it is anticipated that about 500 delegates will attend. Registration for APSACC 2011 opened in April 2011.

7.3 Dealing with Misconduct Notifications

- [134] As discussed above, all of the Corruption Prevention Directorate teams with responsibility for a portfolio of authorities are responsible for dealing with misconduct notifications relevant to their portfolios. It is nevertheless worthwhile articulating some overall information about this topic.
- [135] In the first half of 2010-2011 the Commission received 1,778 allegations. As previously mentioned, if the Commission continues to receive allegations at this rate in the first half of 2011, it will receive approximately 3,550 allegations for the 2010-2011 annual year, an increase of 9.7% on the 3,237 allegations received in 2009-2010.

[136] By comparison with the second half of 2009-2010, during the first half of 2010-2011 the:

number of notifications and reports assessed increased by 16%, with the average time taken to complete an assessment declining from 16 days to 13 days;

number of Appropriate Authority Investigations monitored by the Commission declined by 48%, with the average time taken by authorities to complete these investigations increasing from 169 days to 246 days; and

number of Appropriate Authority Investigations reviewed by the Commission declined by 52%, with the average time taken to complete a review increasing from 60 days to 61 days.

7.3.1 Efficiency

[137] As discussed above, the Commission has moved away from previous business practices in which the progress of all allegations referred to authorities was monitored and the adequacy of all completed authority investigations was reviewed. A smaller percentage of cases are reviewed, based on strategic considerations such as seriousness and the relevance of particular cases to planned systems-based evaluations.

[138] Evidence of efficiency gains is seen in the 48% decline in Appropriate Authority Investigations monitored, 52% decline in Appropriate Authority Investigations reviewed and 16% increase in assessments conducted.

CHAPTER EIGHT

Summary and Conclusion

[139] The purpose of this report is to inform the Joint Standing Committee on the Corruption and Crime Commission and the Attorney General about developments associated with the ways in which the Commission performs its prevention and education function.

[140] As articulated in this report, a substantial amount of work has occurred, is occurring and is planned to occur: “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”.⁴²

Is this making a difference?

[141] Based on the both the changes that are being made to misconduct management practices in public authorities such as WA Health, the Department of Education, DoT, WAPOL and local governments, the Commission’s unequivocal response is:

Yes, it has and is making a real difference, in a cost effective way, yielding benefits to Western Australia in greater accountability in the use of public resources in the public interest.

[142] Moreover, such changes are occurring in areas of the public sector that are important to the Western Australian community and in which there is no other effective, independent external oversight of how public officer conduct issues are handled.

⁴² Section 7A of the *Corruption and Crime Commission Act 2003* (WA).

**APPENDICES
TO THE
CORRUPTION AND CRIME COMMISSION REPORT TO
THE JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION AND TO THE
HON CHRISTIAN PORTER MLA, ATTORNEY GENERAL**

**“REPORT ON THE CORRUPTION PREVENTION
AND EDUCATION FUNCTION OF THE
CORRUPTION AND CRIME COMMISSION”**

**APPENDIX ONE TO THE
CORRUPTION AND CRIME COMMISSION REPORT TO
THE JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION AND TO THE
HON CHRISTIAN PORTER MLA, ATTORNEY GENERAL**

**“REPORT ON THE CORRUPTION PREVENTION
AND EDUCATION FUNCTION OF THE
CORRUPTION AND CRIME COMMISSION”**

**Section 17, Section 18 and Part 3 of the
Corruption and Crime Commission Act 2003 (WA) (“the CCC Act”)**

1. Section 17 of the CCC Act

[143] Section 17 addresses the Commission's prevention and education function, in short a function to assist public authorities⁴³ to prevent misconduct. It directs that this function is broadly performed by:

- analysing the intelligence gathered in support of its investigations, and the results of its investigations;
- analysing misconduct prevention systems within public authorities;
- using information from any source;
- consulting with and making recommendations to public authorities;
- providing information to the general community;
- the Commission having regard to its prevention and education function in performing all its functions;
- advising and training public authorities to assist them to increase their capacity to prevent misconduct; and
- reporting on ways to prevent misconduct.

2. Section 18 of the CCC Act

[144] Section 18 of the CCC Act addresses the misconduct function of the Commission. The various powers of the Commission are primarily exercised in connection with the misconduct function. Section 18 directs that this function is broadly performed by:

- dealing with and making decisions about misconduct allegations;
- investigating misconduct allegations and matters related to misconduct;
- monitoring the action taken by independent agencies and appropriate authorities in relation to misconduct allegations;
- reporting the outcome of investigations, including making recommendations;
- consulting with a range of law enforcement bodies; and
- assembling briefs of evidence obtained during investigations for the purpose of prosecutions.

⁴³ Refer Footnote 2.

3. Part 3 of the CCC Act

[145] Relevant to the misconduct function is Part 3 of the CCC Act, which details the way the Commission is required to make decisions about misconduct allegations. Significant sections of Part 3 include those listed below.

- Section 22

This section enables the Commission to make assessments and form opinions as to whether misconduct has or may have, is or may be, is or may be about to, or is likely to occur.

- Section 25

This section enables any person to report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern misconduct.

- Section 26

This section enables the Commission to make a proposition that misconduct has or may have, is or may be, is or may be about to, or is likely to occur.

- Section 28

This section requires certain officers (including the principal officer of a notifying authority⁴⁴) to notify the Commission in writing of any matter they suspect on reasonable grounds concerns or may concern misconduct, and which is of relevance or concern to that person in his or her official capacity.

- Section 29

This section requires certain officers (including the principal officer of a notifying authority) to comply with section 28 regardless of any other obligation, legislated or otherwise.

- Section 32

This section requires the Commission to assess allegations received to determine whether misconduct has or may have, is or may be, is or may be about to, or is likely to occur. Having done so it must make a decision under section 33.

- Section 33

⁴⁴ Refer Footnote 1.

Having made an assessment under section 32 the Commission must decide whether to conduct its own investigation into the allegation, conduct an investigation in co-operation with an independent agency or appropriate authority, refer the allegation to an independent agency or appropriate authority for action, or take no action.

- Section 40

This section empowers the Commission to monitor the action taken by appropriate authorities in response to referrals made to them under section 33.

- Section 41

This section empowers the Commission to review how an appropriate authority has dealt with misconduct, in relation to either a particular allegation, complaint, information or matter involving misconduct.

**APPENDIX TWO TO THE
CORRUPTION AND CRIME COMMISSION REPORT TO
THE JOINT STANDING COMMITTEE ON THE
CORRUPTION AND CRIME COMMISSION AND TO THE
HON CHRISTIAN PORTER MLA, ATTORNEY GENERAL**

**“REPORT ON THE CORRUPTION PREVENTION
AND EDUCATION FUNCTION OF THE
CORRUPTION AND CRIME COMMISSION”**

Organisational Chart: Corruption Prevention Directorate

CORRUPTION PREVENTION DIRECTORATE
(28 Full-Time Equivalent (FTE) Positions)

