

41ST PARLIAMENT



Joint Standing Committee on the
Corruption and Crime Commission

Report 11

WHAT HAPPENS NEXT?
BEYOND A FINDING OF SERIOUS MISCONDUCT

*Examining the responses to a finding of serious misconduct and
building integrity in public agencies*

Presented by
Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC

November 2023

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Joint Standing Committee on the Corruption and Crime Commission

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Laid on the Table of the Legislative Assembly and Legislative Council on
30 November 2023

Chair's foreword

This report, *What Happens Next: Beyond a finding of serious misconduct*, deals with a wide range of matters relevant to what happens *after* a public officer is found to have engaged in serious misconduct.

The Corruption and Crime Commission is the primary agency responsible for dealing with 'serious misconduct', which includes corruption and fraud, by public officers in Western Australia. The then Attorney General, the Hon Jim McGinty MLA, on introducing the Corruption, Crime and Misconduct Bill into Parliament in 2003, said 'Western Australia deserves a police service and public sector that are free from the scourge of corruption.'¹ The Attorney General added that the commission would be one of the most powerful crime and corruption bodies in Australia.

The remit of the commission covers members of parliament and public agencies including departments, the police, local governments, government trading enterprises and universities. While the commission deals with allegations of serious misconduct, and exposes corruption, its purpose is to build these agencies' resilience to resist misconduct.

Twenty years on, this inquiry arose from the singular observation that what happens after a public officer is found to have engaged in serious misconduct – to the public officer and systemically at the relevant agency and sector wide – is largely unknown. The committee wanted to examine if the work of the commission and other agencies was building a more resilient public sector.

Since its inception, the work of the commission has exposed significant corruption and fraud by a few public officers. The most scandalous in recent years includes the conduct of Paul Whyte, the former Assistant Director General at the Department of Communities, who over 11 years stole \$22 million in public money and obtained \$5 million in bribes in order to fund his extravagant lifestyle. The scale and audacity of Mr Whyte's criminal deception shocked the public and tarnished the reputation of the Department of Communities and public sector. Serious misconduct erodes public trust in public administration. Trust and confidence in public institutions is critical.

This inquiry has a broad scope. Many topics covered could be the subject of a stand-alone report. During this inquiry the committee examined the range of public officer outcomes that follow a finding of serious misconduct, whether lessons are being learned from investigations, and what is being done to build integrity and minimise misconduct risks in the sector. We also examined if there is appropriate transparency and agency accountability.

The committee has made 49 findings and 34 recommendations. These, noted below, provide an effective summary of the committee's views. Many recommendations are relevant to the current reform of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) and *Local Government Act 1995* (LG Act).

1 The Hon Jim McGinty MLA, Attorney General, Legislative Assembly, *Hansard*, 15 May 2003, p 7861.

At the centre of this inquiry is the work of the commission and agencies that fall under its remit. While the commission has a few functions, no function is more important than its serious misconduct function. In 2023–24 the State Government will spend \$39.9 billion delivering services to the public.² Corruption and fraud are insidious, and continuous vigilance is required to protect public money and prevent serious misconduct. I must note, however, that most public officers in Western Australia do the right thing.

The commission receives and assesses thousands of allegations of serious misconduct each year (5,895 allegations in 2022–23). It is necessary for the commission to refer most allegations requiring further action to the employing agency to investigate (836 or 14% of allegations were referred to agencies in 2022–23). Agencies report back to the commission after finalising these matters in a closure report. The employing agency is responsible for integrity within the organisation, and for imposing any sanction on an employee. The commission oversees referred matters. This report examines why and how referrals occur, and commission oversight.

The commission only comments on the sanction imposed by the agency if it is ‘so grossly inconsistent with the outcome’. The commission actively oversees some referred matters and continues to rely heavily on overlooking internal police investigations into police misconduct. (Under the CCM Act, all police misconduct is serious misconduct.)

The committee recommends measures to enhance the commission’s oversight of outcomes, including creating a template closure report with minimum requirements. Among other improvements, we recommend that an agency dealing with a referred matter provide a summary to the commission of why it considered the sanction or other outcome an appropriate outcome in all the circumstances. This is particularly important given that a ‘local management/improvement action’ outcome, which includes verbal guidance, is commonly imposed for serious misconduct. For example, in 2021–22 this outcome was 70% of outcomes for police misconduct and 44% of outcomes for serious misconduct in the rest of the public sector, in matters recorded by the commission.

The consequences for public officers who abuse the trust placed in them is quite rightly of concern and interest to the public. The public expects consequences for the wrongdoer to be proportionate in response to the nature and extent of serious misconduct. However, data on what follows a finding, including sanctions and prosecutions, is not available to the public.

This report reveals the sanctions and local management/ improvement actions imposed on public officers after a finding serious misconduct over the last few years, as recorded by the commission (at tables 4.1 and 4.3). In our view, these tables, and a prosecution table similar to the table at appendix 6, must be published and easily accessible to the public.

The committee also recommends that the Government direct agencies to recover financial loss arising from serious misconduct wherever feasible and possible, and that the Public Sector Commissioner clarify and strengthen its advice to agencies about making voluntary severance payments when there is an allegation of serious misconduct. As noted

² Government of Western Australia, *Western Australia State Budget 2023–24, Budget Paper No. 3, Economic and Fiscal Outlook*, p 4.

in chapter 4, voluntary severance payments have been made in these circumstances, and no action was taken to recover any payment, even after officers were imprisoned for their conduct.

There is an understandable public interest in whether and when a prosecution follows a finding of serious misconduct. The commission is an investigative agency, not a prosecution agency. This distinction is not necessarily well understood by the public. While it is positive that in 2022 the DPP reported that there were no significant issues in prosecutions arising from commission investigations, one discontinued case in 2023 highlighted the very real risks and challenges in prosecuting matters arising from commission investigations. Prosecutions arising from commission investigations must be adequately resourced, and we recommend that the police, DPP and commission enter into arrangements to ensure the effective prosecution of matters, thus avoiding cases being discontinued for avoidable reasons.

It is important to underscore that public agencies are responsible for their own integrity and need to be vigilant and proactive in preventing misconduct. Identified instances of serious misconduct should shine a light on action needed at an agency, or sector wide, to prevent serious misconduct and minimise misconduct risks. It is imperative that agencies learn from serious misconduct investigations and change policies and procedures to mitigate against the opportunity of similar serious misconduct reoccurring.

It may surprise readers to learn that the CCM Act does not provide the commission with a clear misconduct prevention and education function for public authorities. This was not always the situation. Since 2015 the commission has only had this function for police. It has a 'capacity development' function and 'supports' the Public Sector Commissioner in undertaking its misconduct and prevention function. The current arrangement is an impediment to the role of the commission.

It plainly is in the public interest for the commission to have a clear misconduct prevention and education function for all agencies within its remit, as is the case in other jurisdictions. This will give the commission the power, flexibility and confidence to respond to integrity priority areas on an as needs basis. It will give the commission a clear power to report and recommend action to minimise misconduct risks at all agencies.

The committee recommends that as a standard practice, and wherever possible, commission reports tabled in Parliament formally recommend agency action to minimise misconduct risks when the commission identifies misconduct risks. The commission often comments on risks rather than formally recommending action. The agency's response noting agency action could then be published, providing transparency and accountability. This happens in other jurisdictions.

Over the last few years, the Public Sector Commission and Office of the Auditor General have published resources and proactively worked with agencies to build integrity at public agencies. Agencies are implementing integrity frameworks, many for the first time, which outline governance systems, mechanisms and controls to minimise misconduct risks. PSC resources and tools, including its *Integrity Framework Maturity Self Assessment Tool*,

are designed to shift focus from the ad-hoc integrity policy and education of the past, to coordinated, context-dependent risk-based approaches that emphasise a culture built on integrity.

The above is consistent with the desire of the Commissioner, the Hon John McKechnie KC, that there be greater recognition in the sector of the risk of corruption, and that this risk be treated like any other risk such as work health and safety. I wholeheartedly agree. Integrity must be embedded into all aspects of the work of public agencies.

The committee recommends measures to enhance integrity. For example, we want the Government to establish a centralised public employment register that records public officers who have been dismissed on the grounds of misconduct or resigned during a misconduct investigation. Commissioner McKechnie supports a register, as does the Department of Local Government, Sport and Cultural Industries. In addition to robust onboarding practices, a register is the best way to inform prospective employers of a prospective employee's misconduct history and avoid a recycling of names that causes the commission to say, in its words, 'we've seen that one before'. As they say, the best defence is a good offence. We believe a centralised public employment register is particularly important in local government.

The committee deals with particular concerns in local government in chapter 8. We recommend laws to stop local governments entering into termination or resignation agreements with confidentiality clauses and/or payments above entitlements, if the CEO or employee is the subject of a serious misconduct allegation or finding. Communities deserve better. The committee also recommends that proposed legislation to establish a Local Government Inspector, and monitors, includes robust powers to intervene and proactively work with local governments to achieve better misconduct outcomes.

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

Finally, since the committee commenced this inquiry on 23 March 2022, we have progressed this inquiry while undertaking our oversight and monitoring role. The committee was very dependent on the experience and expertise of the committee's secretariat for managing and processing the information sought from agencies and submissions from other interested parties. In that regard the committee was very ably and conscientiously supported by Ms Suzanne Veletta (Principal Research Officer) and Ms Jovita Hogan (Research Officer). On behalf of the committee, I wish to record the committee's sincere appreciation for their work.

I also want to sincerely thank my fellow committee members Hon Dr Steve Thomas MLC (Deputy Chair), Hon Klara Andric MLC and Hon Mia Davies MLA for their commitment to this inquiry. The Hon Mia Davies MLA has been a welcome addition since 21 February 2023, and I thank Shane Love MLA for his contribution prior to that date.

The collegiate, bi-partisan and collaborative approach of committee members has enabled us to make a range of recommendations that we believe will contribute to real change and better integrity outcomes.

A handwritten signature in blue ink, appearing to read "Mr. Hughes". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping underline.

**MR M. HUGHES, MLA
CHAIR**

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Ministerial response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Premier and Minister for Public Sector Management, Attorney General, Minister for Police and Minister for Local Government 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.

[The committee requests that the Government provide a Government Response on behalf of all ministers, and incorporates the responses to recommendations from the Corruption and Crime Commission and Public Sector Commissioner into the response tabled in Parliament.]

Findings and recommendations

Chapter 2 – Serious misconduct and commission oversight

Finding 1

Page 9

A central function of the Corruption and Crime Commission is to deal with ‘serious misconduct’ by a ‘public officer’ in an ‘appropriate way’. ‘Serious misconduct’ is corrupt conduct or criminal conduct punishable by 2 or more year’s imprisonment. Serious misconduct covers a broad range of conduct. All police misconduct is serious misconduct.

Finding 2

Page 13

After the Corruption and Crime Commission assesses each serious misconduct allegation, it determines that further action by the commission is required on a minority of allegations (836 allegations or 14% of the 5,895 allegations in 2022–23). The commission refers to agencies, and oversights, a large majority of these allegations (786 or 94% of the 836 allegations requiring further action in 2022–23).

If an allegation is sustained, the agency determines and imposes any disciplinary sanction or other outcome.

Finding 3

Page 18

The Corruption and Crime Commission’s primary role in overseeing allegations is to consider action taken by the agency and form an opinion as to whether the conclusions reached by the agency, such as a finding or not of serious misconduct, were reasonable and open to it.

Finding 4

Page 18

The commission’s focus is on action taken by the agency in investigating an allegation and making the finding, or not, of serious misconduct. The commission will only comment on the sanction imposed by the agency if it is ‘so grossly inconsistent with the outcome’.

Finding 5

Page 20

The Corruption and Crime Commission continues to rely on overseeing internal police investigations into police misconduct. In 2022–23 it referred 464 allegations to the Western Australia Police Force to action and report back to the commission. The commission ‘actively oversighted’ 51 (11%) of these allegations.

Finding 6

Page 20

The Aboriginal Legal Service of Western Australia expressed its concern that:

- the Corruption and Crime Commission takes very little or no action on the very few police misconduct allegations the commission determines meets the reasonable suspicion of police misconduct threshold requiring police investigation
- even if a police misconduct/serious misconduct finding is made, ‘rare as it is, literally nothing comes of it.’

ALSWA lacks confidence in how the commission oversees police misconduct. ALSWA advocates for a new agency to deal with complaints against police. Only New South Wales has established separate agencies to deal with police and public sector misconduct.

Finding 7 **Page 23**

Agencies must provide the Corruption and Crime Commission with a written closure report after finalising an allegation of serious misconduct referred by the commission. The quality of reports varies.

Closure reports are an important integrity tool.

Finding 8 **Page 23**

The Corruption and Crime Commission is reviewing its closure process. The commission asks agencies to detail the actions taken in response to an allegation, and to outline the steps taken, not only the outcomes or conclusions reached.

Recommendation 1 **Page 23**

That the Corruption and Crime Commission create a template closure report and requires all agencies to use this report. This should be structured to require minimum information and allow the agency to add further information or attach documents, such as an investigation report, where appropriate.

If this recommendation is accepted, the template closure report should require the information noted in recommendations 2, 5 and 10, among other things.

Recommendation 2 **Page 23**

That the Corruption and Crime Commission require an agency to advise, in its closure report, a summary of why it considered the sanction or other outcome imposed on the public officer after a finding of serious misconduct an appropriate outcome in all the circumstances.

Finding 9 **Page 24**

Agencies report a positive relationship with the Corruption and Crime Commission and Public Sector Commission, and, in particular, were positive about the Corruption and Crime Commission’s liaison meetings, cooperation, and engagement with agencies.

Finding 10 **Page 26**

It is critical that the Corruption and Crime Commission, a multi-function agency, maintains its focus on its serious misconduct or any future misconduct function, and, in particular, its oversight of allegations referred to agencies.

No other function is more important than the commission’s serious misconduct function.

Chapter 3 – Publishing a report

Finding 11 **Page 29**

The Corruption and Crime Commission’s findings and opinions of serious misconduct must not be taken to mean that the person has committed a criminal or disciplinary offence. This is noted in commission reports.

However, this legal distinction may not be evident to the public, particularly when media attention follows the tabling of a report.

Recommendation 3**Page 29**

That the Corruption and Crime Commission:

- include in relevant media releases a statement that where the commission makes a finding or opinion that serious misconduct has occurred, that this finding or opinion is not to be taken as a finding or opinion that a person is guilty of or has committed a criminal offence
- highlight the above distinction in its educational work.

Finding 12**Page 33**

Some reputational impact is unavoidable if the Corruption and Crime Commission is to be effective in its work to investigate, expose and prevent corruption.

Finding 13**Page 33**

The Corruption and Crime Commission should take a cautious approach to naming a person in a report. The commission's approach generally reflects an appropriate balance between the role of the commission and the rights and potential harm to individuals.

Finding 14**Page 35**

Other jurisdictions in Australia include safeguards and further prescription in legislation on when a commission may hold a public examination.

Recommendation 4**Page 35**

That the Attorney General consider amending the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, safeguards and further prescription on when the Corruption and Crime Commission may hold a public examination.

Chapter 4 – Public officer outcomes**Finding 15****Page 41**

The Western Australia Police Force's *Annual Report 2023* did not include a table of sanctions imposed against its employees for misconduct, as it had in previous years. Following committee inquiries, the Commissioner for Police has undertaken to include this information in future annual reports.

Finding 16**Page 44**

Delay in an agency receiving information and/or advice about an allegation from the Corruption and Crime Commission may affect its ability to efficiently and effectively deal with a disciplinary matter. When appropriate, the commission should share information with an agency as soon as possible in order to assist it to progress disciplinary action.

Finding 17**Page 48**

The most common outcome following a finding of serious misconduct is a 'local management/improvement action'. This includes verbal guidance and retraining such as retraining on critical skills, and accountable and ethical decision-making. For 2021–22 allegations, a local management/improvement action was 205 of 292 (70%) of police outcomes and 105 of 237 (44%) of outcomes for the rest of the public sector. While the committee was surprised at the prevalence of this outcome, it is not possible to assess if the outcome is usually being imposed in appropriate circumstances.

Recommendation 5**Page 48**

That the Corruption and Crime Commission enhance its oversight of 'local management/improvement action' for a trial period. This could be done by asking the agency to advise in its closure report:

- details of what the local management/improvement action involves
- if this outcome is accompanied by a disciplinary sanction
- if this outcome is imposed in the first instance of serious misconduct by the officer
- why it considered the outcome to be most appropriate in all the circumstances.

The above should be done for a trial period of 2 years. The commission should report its findings to the committee of the next Parliament.

Finding 18**Page 50**

The Corruption and Crime Commission's recording of information and data on serious misconduct, including outcomes such as disciplinary actions and improvement actions, has improved in recent years, but there is room for further refinement.

Agencies' case management systems and recording of serious misconduct information and data, as a distinct subset of disciplinary matters, varies from good to very poor.

Recommendation 6**Page 50**

That the Corruption and Crime Commission:

- refine its recording of serious misconduct outcomes such as disciplinary actions and improvement actions
- partner with agencies to standardise how information and data on serious misconduct outcomes (including disciplinary actions and improvement actions) are categorised, reported to and recorded by the commission.

Finding 19**Page 51**

Robust and sophisticated information and data on serious misconduct is important. It enables agencies to take a proactive, intelligence and risk-based approach to integrity.

Recommendation 7**Page 51**

That the Government ensure that agencies implement case management systems that improve their capacity to record information and data on serious misconduct in a standardised way.

Finding 20**Page 53**

The Corruption and Crime Commission does not publish information or data on sanctions and other outcomes imposed on public officers found to have engaged in serious misconduct.

Recommendation 8**Page 53**

That the Corruption and Crime Commission publish information and data on outcomes imposed on public officers found to have engaged in serious misconduct on its website. At a minimum, information similar to that contained in tables 4.1 and 4.3 should be published.

Finding 21**Page 55**

It is not clear how often serious misconduct by a public officer results in a financial loss to the State, and how often agencies take action to recover, and successfully recover, the financial loss to the State.

Recommendation 9**Page 55**

That the Government direct agencies within the remit of the Corruption and Crime Commission to recover financial loss arising from serious misconduct wherever feasible and possible.

Recommendation 10**Page 55**

That the Corruption and Crime Commission enhance its oversight of what follows after a finding of serious misconduct involving a financial loss to the State. This could be done by asking the agency to advise in its closure report if:

- the serious misconduct involved a financial loss to the State
- the agency took steps to recover the financial loss and, if not, why not
- the agency recovered any financial loss.

The above should be done for a trial period of 2 years. The commission should report its findings to the committee of the next Parliament.

Finding 22**Page 59**

While it may be unusual for a public officer the subject of a serious misconduct allegation to be given a voluntary severance payment, in or around 2016 the North Metropolitan Health Service paid 3 officers voluntary severance payments totalling \$603,902 when they were being investigated for serious misconduct. Two officers were later imprisoned for corruption offences.

The State decided not to commence proceedings to recover any part of the payments.

Recommendation 11**Page 59**

That the Public Sector Commissioner clarify and strengthen advice provided to agencies about voluntary severance payments to public officers the subject of an allegation of serious misconduct. This should include the matters noted above in this report.

Recommendation 12**Page 59**

That the Government, to the extent necessary, amend laws to enable it to recover voluntary severance payments against public officers and former public officers found to have engaged in serious misconduct or convicted of a serious offence.

Chapter 5 – Criminal prosecutions**Finding 23****Page 64**

By design, the roles of the Corruption and Crime Commission and prosecution agencies differ. The commission investigates and exposes serious misconduct by public officers, assessing whether, on the balance of probabilities, the evidence supports a finding. Prosecution agencies charge and prosecute criminal offences, which must be proven beyond reasonable doubt.

Finding 24**Page 66**

On 24 May 2022 the Corruption and Crime Commission, State Solicitor’s Office and Director of Public Prosecutions signed a Memorandum of Understanding to formally establish a process for the referral of matters from the commission to the SSO and DPP. Parties are positive about the MOU.

Recommendation 13**Page 67**

That the Corruption and Crime Commission:

- notify the Western Australia Police Force as soon as possible of investigations that may require police resources
- continue its practice of cooperative investigations with the Western Australia Police Force and collaborate with police as early as possible.

Finding 25**Page 69**

Some prosecutions arising from Corruption and Crime Commission investigations involve the assessment of volumes of documents and electronic evidence obtained by the commission over many years. Prosecution challenges include disclosure and evidentiary challenges.

Despite these challenges, in 2022 the Director of Public Prosecutions said that there were ‘no significant issues’ in its prosecution of matters arising from commission investigations.

Finding 26**Page 72**

It is unacceptable for a prosecution arising from a Corruption and Crime Commission investigation to be discontinued close to trial because of prosecution error.

Recommendation 14**Page 72**

That the Western Australia Police Force ensure that it adequately resources the investigation and prosecution of matters arising from Corruption and Crime Commission investigations.

Recommendation 15**Page 73**

That the Corruption and Crime Commission and Western Australia Police Force enter into an MOU that sets out expectations and standards on timeliness, resourcing, disclosure and other matters to ensure the effective prosecution of matters arising from a commission investigation.

Recommendation 16**Page 73**

That the Western Australia Police Force and Director of Public Prosecutions enter into an MOU, or a similar arrangement, that sets out interagency protocols and shared standards on timeliness, resources, disclosure and other matters to ensure the effective prosecution of matters.

Finding 27**Page 74**

Agencies raised concerns about when to refer a serious misconduct matter to the Western Australia Police Force for consideration of criminal charges. The Corruption and Crime Commission should provide advice to agencies on whether it is appropriate to refer a matter to the police when asked.

Recommendation 17**Page 76**

That the Corruption and Crime Commission publish information on prosecutions arising from serious misconduct investigations on its website. At a minimum, information similar to that contained in appendix 6 of this report should be published.

Chapter 6 – Public agency outcomes**Finding 28****Page 78**

The central role of integrity commissions is to prevent misconduct. Serious misconduct investigations provide invaluable insight on how to prevent misconduct and minimise misconduct risks.

Finding 29**Page 82**

The Department of Communities' response to the fraud of Paul Whyte and others, to date, appears to be appropriate. The Corruption and Crime Commission has acknowledged significant improvements by the department to reduce misconduct risks.

Finding 30**Page 90**

Most Corruption and Crime Commission reports tabled in Parliament do not include recommendations for the agency to take systemic action to minimise misconduct risks.

Many reports make observations, suggestions, or comment on action to minimise risks, but do not recommend action.

The commission only makes formal recommendations when it sees something 'seriously wrong'. The commission follows up and reports on these recommendations.

Finding 31**Page 90**

It is not publicly known how public agencies respond to most Corruption and Crime Commission reports tabled in Parliament.

Finding 32**Page 90**

The law and practice in Western Australia differs from some other states, particularly New South Wales. In that state:

- tabled ICAC reports almost always include recommendations to agencies directed at preventing misconduct (and the law provides ICAC with a clear statutory function to prevent misconduct)
- the agency is required to respond in writing to ICAC's recommendations
- agency response/s are published on ICAC's website, with its report.

This ensures public sector accountability and transparency, as to what action the agency has taken to reduce the likelihood of misconduct reoccurring.

Recommendation 18**Page 90**

That Corruption and Crime Commission reports tabled in Parliament should, as standard practice and wherever possible, formally recommend agency action to minimise misconduct risks (prevent misconduct) when the commission identifies misconduct risks. The commission should replace its practice of making observations, suggestions, or comments on misconduct risks with formal recommendations requiring agency response.

Recommendation 19**Page 91**

That the Attorney General amend the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, a law similar to section 111E of the *Independent Commission Against Corruption Act 1988* (NSW).

Finding 33**Page 94**

Integrity commissions in other jurisdictions in Australia have a prevention of misconduct and education function for public agencies. In December 2022 integrity chiefs in Australia agreed that a corruption prevention function was fundamental to the functions and powers of anti-corruption commissions.

Finding 34**Page 95**

The Corruption and Crime Commission does not have a clear misconduct prevention and education function for agencies under its remit (other than police). It 'supports' the Public Sector Commissioner in this role, and has a public agency 'capacity development' function.

Finding 35**Page 95**

The Corruption and Crime Commission not having a clear misconduct prevention and education function curtails the commission's opportunities to assist agencies to recognise and manage misconduct risks. The commission wants this power and greater flexibility to take action to prevent misconduct.

Recommendation 20**Page 95**

That the Attorney General amend the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, the Corruption and Crime Commission with a clear, rather than subordinate, misconduct prevention and education function for all agencies within the remit of the commission. This function may be shared with the Public Sector Commissioner.

Chapter 7 – Building integrity**Finding 36****Page 103**

Since 2020, the Public Sector Commission and Office of the Auditor General have published a range of important resources and tools to assist agencies to build integrity. These resources appear to be of high quality and useful.

PSC tools include its *Integrity Strategy for WA Public Authorities 2020–2023*, *Integrity Framework Template* and guide, and *Integrity Framework Maturity Self Assessment tool*.

The maturity assessment tool helps an agency identify its strengths and weaknesses, develop a plan to reach its desired level of maturity, and continually improve its integrity to the level appropriate to its operational context and risk profile.

Recommendation 21**Page 103**

That the Public Sector Commissioner require public sector agencies, after implementing their Integrity Frameworks, to complete the PSC's *Integrity Framework Maturity Self Assessment Tool* on an annual basis, or seek permission from the Commissioner to not complete this tool.

The committee also strongly recommends that public authorities within the remit of the Corruption and Crime Commission, that are not part of the 'public sector', including local governments, GTEs and universities, implement an integrity framework and complete the *Integrity Framework Maturity Self Assessment Tool* on an annual basis.

Finding 37**Page 105**

It is concerning that a 2021 review by the Office of the Auditor General found that many agencies 'fell well short' of better practice on fraud risk management.

Finding 38**Page 105**

OAG has published a *Fraud Risk Management – Better Practice Guide* and other tools to raise the standard of fraud and corruption control across public agencies.

In March 2020, in an Australian first, OAG established its Forensic Audit Unit in response to the fraud of Mr Whyte at the Department of Communities. It has identified and reported to Parliament on a number of misconduct findings and trends. (See also recommendation 34, which relates to the local government sector.)

Finding 39**Page 108**

While it is difficult to measure the effectiveness of integrity strategies and initiatives, the committee is encouraged by agency actions to build integrity in recent years. As building integrity involves continuous vigilance and improvement, this work should continue.

Finding 40**Page 112**

Other jurisdictions including South Australia and the United Kingdom have established a centralised employment register which records former public sector officers and public officers who have been dismissed on the grounds of misconduct or resigned during a misconduct investigation (and other matters).

A register ensures that prospective employers are aware of an employee's history and matters going to their integrity and trustworthiness, before deciding whether or not to employ the person.

Recommendation 22**Page 112**

That the Public Sector Commissioner, working with the Government, establish a centralised public employment register with appropriate safeguards that records public officers who have:

- been dismissed on the grounds of misconduct
- resigned during a misconduct investigation.

The register should cover all employees employed by agencies within the remit of the Corruption and Crime Commission including local government. (See recommendation 31.)

Recommendation 23**Page 112**

That the Government, to the extent necessary, amend laws to enable the Public Sector Commissioner to establish the above public employment register.

Chapter 8 – Local government**Finding 41****Page 122**

The Corruption and Crime Commission has repeatedly raised concerns about the lack of understanding and confusion around the division of responsibilities between the council and administration of local government. This is a misconduct risk. The committee also heard that elected members are not being provided with requested information.

Recommendation 24**Page 122**

That the Minister for Local Government advise the Parliament what action it has taken, and proposes to take, to address the issues identified in finding 41.

Recommendation 25**Page 122**

That the Minister for Local Government investigate and report to Parliament on the need for laws to resolve the tension around the division of the responsibilities of council and the chief executive officer.

Recommendation 26**Page 122**

That the Minister for Local Government enact legislation that requires chief executive officers of local governments to act in good faith.

Finding 42**Page 125**

The council and/or administration of local government are not routinely advised by the Corruption and Crime Commission and Department of Local Government, Sport and Cultural Industries about allegations and outcomes of allegations of serious misconduct at their local government. This impedes their ability to take action to minimise misconduct risks.

Confidentiality provisions in the *Corruption, Crime and Misconduct Act 2003* and *Local Government Act 1995* may apply. The commission advises the person under investigation of the outcome.

Recommendation 27**Page 125**

That the Attorney General amend the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, Corruption and Crime Commission officers with the power to disclose information relating to an allegation and outcome of a serious misconduct allegation to local government councils and administration, without the need for the commission to certify disclosure.

Recommendation 28**Page 125**

That the Minister for Local Government amend the *Local Government Act 1995*, or appropriate legislation, to provide Department of Local Government, Sport and Cultural Industries officers with the power noted in recommendation 27.

Finding 43**Page 130**

Local governments are entering into confidential agreements with chief executive officers and employees the subject of a serious misconduct allegation or finding, which include payments above entitlements on resigning or terminating employment.

Finding 44**Page 130**

A local government is not required to advise the Department of Local Government, Sport and Cultural Industries of the above proposed or signed agreements. The department, if aware of an agreement, says it advises prospective local government employers of the agreement, if asked.

Finding 45**Page 130**

It is clearly unacceptable to financially reward a chief executive officer or employee of a local government who is the subject of an allegation or finding of serious misconduct, and potentially move that risk to another local government. This is a serious misconduct risk that negatively impacts on the integrity of the sector.

Recommendation 29**Page 130**

That the Minister for Local Government enact laws to provide that a local government cannot enter into a termination or resignation agreement with confidentiality clauses and/or payment above entitlements, if the chief executive officer or employee is the subject of a serious misconduct allegation or finding.

Recommendation 30**Page 130**

If the above recommendation is not accepted, that the Minister for Local Government:

- require local governments to inform the department when it proposes to enter into a termination or resignation agreement with a chief executive officer or employee the subject of a serious misconduct allegation or finding, whether the agreement includes confidentiality clauses, payment above entitlements or otherwise
- provide the department with the power to veto agreements on the basis that it is not in the public interest to enter into the agreement.

That legislation be amended to provide for the above.

Finding 46**Page 132**

It is particularly important that the employment register recommended at recommendation 22 includes the local government sector given employment risks in this sector. Otherwise, in the committee's view, there must be a separate local government employment register.

Recommendation 31**Page 132**

If the Government does not accept recommendation 22, the committee recommends that the Department of Local Government, Sport and Cultural Industries establish a local government employment register recording the information noted in recommendation 22 for chief executive officers and employees in the local government sector.

Finding 47**Page 138**

In 2021, the Office of the Auditor General found that the Department of Local Government, Sport and Cultural Industries was 'not providing efficient and effective regulation and support to the LG [local government] sector and lacks fundamental aspects of a good regulatory framework.' The department has responded with a new regulatory approach with a mission to 'support and regulate WA local governments using a capability building and risk-based approach'. It says it also embraces early intervention.

Finding 48**Page 138**

The department says the *Local Government Act 1995* provides 'limited mechanisms' to regulate local government. The Government intends to table legislation that establishes a Local Government Inspector and monitors, which will provide more tools to proactively work with local governments to achieve better outcomes the sector.

Recommendation 32**Page 138**

That that Minister for Local Government ensure that proposed legislation to establish a Local Government Inspector and monitors includes robust powers to intervene and proactively work with local governments to achieve better misconduct outcomes and build integrity. Tools available should include mediation and conciliation options.

Finding 49**Page 138**

There is opportunity for the Department of Local Government, Sport and Cultural Industries and the Corruption and Crime Commission to enhance cross sector training, education and awareness raising.

Recommendation 33**Page 138**

The that Department of Local Government, Sport and Cultural Industries, working with the Corruption and Crime Commission, Office of the Auditor General, WALGA and other entities, enhance the cross sector training and education provided to the local government sector.

Recommendation 34**Page 139**

That the Government fund the Office of the Auditor General to expand the remit of its Forensic Audit Unit to include the local government sector. (See finding 38.)

Chapter 1

Introduction

The inquiry

The Corruption and Crime Commission (commission) is a multi-function agency responsible for dealing with allegations of ‘serious misconduct’ by ‘public officers’ in an ‘appropriate way’.³ No function is more important than the commission’s serious misconduct function.

What happens after a public officer is found to have engaged in serious misconduct – to the public officer, at the relevant employing agency and sector wide – is largely unknown to the public.⁴

Public agencies investigate most allegations of serious misconduct against public officers, and, if the allegation is sustained, impose disciplinary actions (sanctions), improvement actions and other outcomes. What happens next in these cases is not publicly known.

Only a small percentage of serious misconduct (corruption) allegations are the subject of a report tabled in Parliament and published on the commission’s website. What happens next to the few public officers who are the subject of a published report may become public. The media may report on prosecutions arising from those investigations.

After the commission publishes a report on an investigation, the media tends to focus on the conduct of an individual officer and the particulars of an investigation and events at a particular agency.⁵ The focus is not on whether that matter led to systemic changes at the agency or sector wide. This happened in the case of Paul Whyte, the former Assistant Director General at the Department of Communities, who committed the largest public sector fraud in Australian history. Unfortunately, Mr Whyte’s egregious fraud is one of a number of notable acts of public sector corruption in Western Australia in recent years.

With the above in mind, on 23 March 2022 the Joint Standing Committee on the Corruption and Crime Commission (committee) commenced an inquiry titled ‘What Happens Next: Beyond a finding of serious misconduct’. The committee’s functions are at appendix 1; the inquiry’s terms of reference at appendix 2.

The purpose of the inquiry was to inquire into what happens after a finding of serious misconduct – to the public officer and systemically to prevent misconduct and minimise

3 These terms are explained in this report. See appendix 5 and chapter 2 for the legal definitions of ‘serious misconduct’, ‘minor misconduct’ and ‘police misconduct’.

4 This report refers to a ‘finding’ of serious misconduct but the Corruption and Crime Commission may form an ‘opinion’ as to whether serious misconduct occurred: *Corruption, Crime and Misconduct Act 2003*, s 22.

5 This report uses the term ‘agency’ to describe any agency who employs a ‘public officer’ whose conduct falls within the jurisdiction of the Corruption and Crime Commission. This includes agencies in the public sector governed by the *Public Sector Management Act 1994* (such as departments), government entities outside the sector (such as Government Trading Enterprises), and the WA Police.

misconduct risks in the future – and to inform ourselves on whether serious misconduct investigations were resulting in long-term improvements to the integrity of the public sector. This inquiry canvassed a few issues raised by the previous committee in its report *Red flags ... red faces: Corruption risk in public procurement in Western Australia*.⁶

During the inquiry the committee asked:

- What outcomes are imposed on public officers found to have engaged in serious misconduct, and are they appropriate? Are public officers being effectively prosecuted?
- What agency or sector wide outcomes follow a finding of serious misconduct? Are public agencies minimising misconduct risks and building resilience from lessons learned from serious misconduct cases?
- To what extent is the commission overseeing outcomes of serious misconduct?
- What outcome information is reported? Is there appropriate accountability and transparency?
- What measures could improve the effectiveness, transparency and/or oversight of what happens next?
- What measures could improve integrity in the public sector, including local government?
- Are integrity agencies including the commission, Public Sector Commission (PSC) and Office of the Auditor General (OAG) building integrity and providing appropriate support to agencies to respond to serious misconduct and prevent misconduct?

This inquiry has a broad scope. The committee's approach was to follow the evidence and inquire into matters relevant to what happens next. Many topics covered in this report could be the subject of a stand-alone report.

To inform itself of matters relevant to the inquiry the committee:

- called for submissions and received the submissions noted at appendix 3
- held the public hearings noted at appendix 4
- requested information and asked questions on notice from many agencies and stakeholders
- received evidence from corruption and integrity commissions throughout Australia.

Member/s of the committee also met with:

- Members of the Parliament of New South Wales Joint Standing Committee on the Independent Commission Against Corruption
- The Hon John Hatzistergos AM, Chief Commissioner, Independent Commission Against Corruption (NSW) (ICAC)
- Stephen Farrow, Acting Commissioner, Independent Broad-based Anti-corruption Commission (Victoria) (IBAC).

⁶ Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020.

During the inquiry members of the committee also attended integrity conferences which informed views on relevant matters.

The committee received closed evidence and held closed hearings during this inquiry. The committee resolved that it is not in the public interest to name entities and persons who provided closed evidence, or publish evidence in this report that may reveal the witness. Some uncited closed evidence is noted in this report. Public evidence is posted on our website at www.parliament.wa.gov.au/jscccc.

The committee extends its sincere thanks to all who provided evidence.

Reform of the *Corruption, Crime and Misconduct Act 2003* and *Local Government Act 1995*, and commission review of processes

This inquiry was undertaken at a time when important legislation and commission practices are being reviewed.

The Department of Justice is undertaking a project to modernise the *Corruption, Crime and Misconduct Act 2003* (CCM Act). The committee does not know what the Government intends to propose in the new legislation, but we understand that this reform will involve a new Act.⁷ This and previous committees, and other stakeholders, have identified many issues with the CCM Act. This includes (now) the Hon Justice Gail Archer SC in her 2008 *Review of the Corruption and Crime Commission Act 2003*, and current and former commissioners of the commission and Parliamentary Inspectors of the Corruption and Crime Commission.⁸

The Corruption, Crime and Misconduct Amendment Bill 2023, tabled in the Legislative Assembly on 18 May 2023, represents the first tranche of this reform.⁹ This Bill is limited to reforming the process for the appointment of the Commissioner and establishing a new position of Deputy Commissioner of the commission.

The Government is also reforming the *Local Government Act 1995*. This wide ranging and, we could argue, long overdue reform is likely to further amend laws relevant to integrity in the local government sector.

This report refers to the jurisdiction of the commission and Public Sector Commissioner, and powers provided in the current CCM Act. In the future, findings and recommendations in this report may need to be read in the context of new legislation.

The commission is also reviewing its processes and implementing new practices (as discussed in chapters 2 and 4). The committee reports on information known at the time of adopting this report.

7 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 23 February 2022, p 11.

8 For example, the previous Joint Standing Committee on the Corruption and Crime Commission's report *Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003*, 19 November 2020.

9 The Hon David Templeman MLA on behalf of the Hon John Quigley MLA, Attorney General, Legislative Assembly, *Hansard*, 18 May 2023, p 2532.

Chapter 2

Serious misconduct and commission oversight

The role of the commission and other agencies

A central function of the commission is to deal with an allegation of 'serious misconduct' by a 'public officer' in an 'appropriate way'.¹⁰

The commission is a creature of statute, established under the CCM Act. It is important to note that a purpose of the Act is to 'improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector'.¹¹

The commission exposes and disrupts corruption, serious misconduct, while building partnerships and strengthening the resilience of the public sector to resist misconduct.

Corruption and Crime Commission

The commission is the principal integrity agency dealing with serious misconduct, and one of a number of agencies in the misconduct space in Western Australia. Integrity agencies perform different roles in building integrity, trust and confidence in public administration.

The Public Sector Commissioner is responsible for:

- ensuring that an allegation of 'minor misconduct' is dealt with in an 'appropriate way'¹²
- administering disciplinary processes that apply to public sector employees under the *Public Sector Management Act 1994* which enable employers to address misconduct
- helping to prevent misconduct in the public sector (it is to be 'supported' by the commission in undertaking its prevention and education role – see chapter 6).¹³

The Office of the Auditor General (OAG) also works at the preventative end of the misconduct spectrum by promoting robust systems of control to help public agencies minimise the risk of misconduct. Of note, its relatively new Forensic Audit team develops risk-driven, targeted program of audits to identify vulnerabilities to, and indicators of, significant fraud risk.¹⁴ (This is discussed in chapters 7 and 8).

Each public agency is responsible for managing its misconduct risks, investigating alleged misconduct by its employees and imposing sanctions or other outcomes on employees.

Agencies deal with any 'breach of discipline' by an employee, which includes an 'act of misconduct'.¹⁵ Within this broad category, the employer reports 'serious misconduct' to the commission and 'minor misconduct' to the Public Sector Commissioner.

10 *Corruption, Crime and Misconduct Act 2003*, s 18(1).

11 *ibid*, s 7A(b).

12 *ibid*, s 45B(1).

13 *ibid*, s 45A(4).

14 Submission 9, Office of the Auditor General, p 1.

15 *Public Sector Management Act 1994*, s 80(c).

What is ‘serious misconduct’?

To assess what happens after a finding of serious misconduct, it is important to understand what ‘serious misconduct’ is, and the remit of the commission under the CCM Act.

‘Serious misconduct’ is:

- corrupt conduct by a public officer
- criminal conduct by a public officer punishable by 2 or more year’s imprisonment.¹⁶

A public officer acts corruptly if the officer:

- corruptly acts, or fails to act, in the performance of the functions of their office or employment (section 4(a) of the CCM Act)
- corruptly takes advantage of their office or employment to obtain a benefit for themselves or another, or cause a detriment to any person (section 4(b) of the CCM Act).

The public officer must commit the criminal conduct punishable by 2 or more year’s imprisonment while acting or purporting to act in their official capacity. That is, the conduct must be connected with their employment to fall within the remit of the commission.¹⁷

The CCM Act definitions of ‘serious misconduct’, ‘minor misconduct’ and ‘police misconduct’ (discussed below) are attached at appendix 5.

Also, the commission’s jurisdiction extends only to a ‘public officer’ who commit serious misconduct. This extends beyond public sector employees. It includes:

- public sector employees such as employees of a department
- local government elected members and employees
- employees of public utilities, such as employees of Government Trading Enterprises (GTEs)
- members of Parliament.¹⁸

But the commission’s jurisdiction does not cover persons appointed under a contract to carry out services or other functions of agencies. Given the large number of agencies engaging contractors, this is an area that needs attention (see below).

It is important to note that serious misconduct covers a wide range of corrupt and illegal conduct. It may range from a public officer (in theory) stealing a pen, to stealing hundreds of thousands or millions of dollars of public money. The Hon John McKechnie KC, the Commissioner of the Corruption and Crime Commission (Commissioner McKechnie) wants to keep the commission focused on serious corruption and serious crime, adding that ‘a lot of the stuff that we see is not serious’.¹⁹

16 The scope of ‘serious misconduct’ and ‘minor misconduct’ are set out in sections 3 and 4 of the *Corruption, Crime and Misconduct Act 2003* – see appendix 5.

17 *Corruption, Crime and Misconduct Act 2003*, s 4(a) to (c).

18 Section 3 of the *Corruption, Crime and Misconduct Act 2003* picks up the definition of ‘public officer’ in section 1 of the *Criminal Code*.

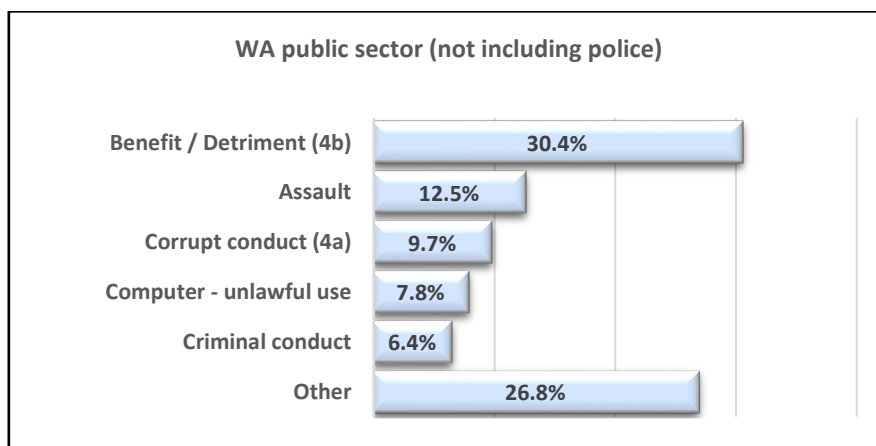
19 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 9.

Serious misconduct includes:

- corruption, fraud including procurement fraud, bribery and stealing – which may involve a small financial loss to the State or a loss of millions of dollars
- falsifying records including time sheets
- unlawful use of a computer, and unlawful use of a computer for a benefit
- assault
- a range of police misconduct (see below).

Public sector (not police) allegations by category, in 2022–23 follow:²⁰

Figure 2.1: Serious misconduct in the public sector – allegations by category in 2022–23



Agencies have different misconduct profiles and risks. Some conduct is serious misconduct, and falls within the remit of the commission, because of particular provisions in the *Criminal Code*. For example, the Department of Education noted that it reports a high number of serious misconduct allegations to the commission because physical contact with a student in the presence of a minor is ‘serious misconduct’. This is because the presence of a minor is a circumstance of aggravation and the maximum penalty for a common assault in circumstances of aggravation is 3 years.²¹

Police misconduct

In Western Australia *all* police misconduct is serious misconduct. That is, police misconduct includes conduct that for other public officers would be minor misconduct overlooked by the Public Sector Commissioner.²² Police misconduct also includes a ‘reviewable police action’ (see appendix 5 for definitions). Therefore, only the commission oversees misconduct by police officers.

20 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 2.

21 Susie Baker, Acting Director, Standards and Integrity, Department of Education, *transcript of evidence*, 27 March 2023, p 12. See also *Criminal Code*, s 313(1)(a).

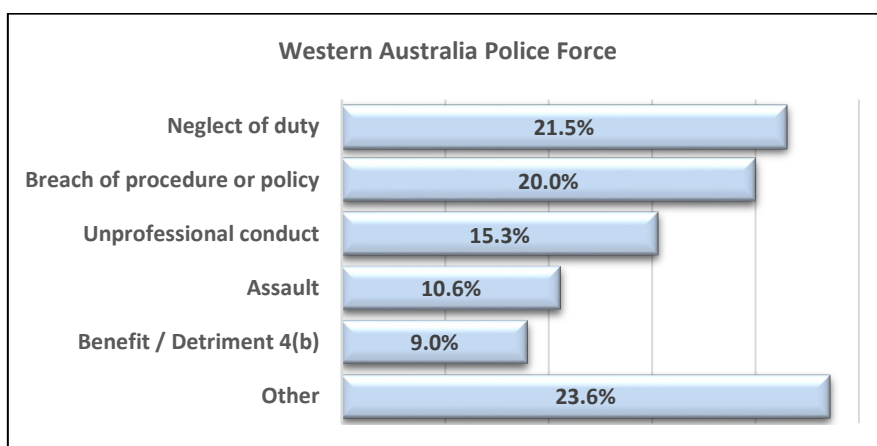
22 The same applies to elected members of Parliament and local government.

Police misconduct covers a wide range of conduct. The lower end of police misconduct could include police using unprofessional language;²³ the higher end, using excessive force.

Police misconduct allegations account for more than half of all serious misconduct allegations received by the commission. Again, it is important to note that because all police misconduct is serious misconduct, conduct such as using unprofessional language is considered serious misconduct for police but not the rest of the public sector. The nature of police officers interaction with the public may lead to complaints.

Police misconduct allegations by category, in 2022–23 follow:²⁴

Figure 2.2: Serious misconduct by WA Police – allegations by category in 2022–23



The CCM Act

Many stakeholders, including previous committees, the commission, the Public Sector Commissioner, and submitters to this inquiry, have raised issues with the terminology and definition of police misconduct, serious misconduct and/or minor misconduct.²⁵ The reform of the CCM Act may amend these terms and therefore the remit of the commission.

The committee notes that the Commonwealth National Anti-Corruption Commission established on 1 July 2023 has a broad jurisdiction that covers both serious *and* systemic corrupt conduct by public officials.²⁶

23 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 2.

24 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 2.

25 For example, Commissioner McKechnie and Public Sector Commissioner Sharyn O’Neill agree that the term ‘minor misconduct’ is a misnomer as conduct must be so significant that, if proved, could reasonably lead to the termination of a public officer’s employment. The Public Sector Commissioner says this term should change: *transcript of evidence*, 21 September 2022, p 6.

26 The *Revised Explanatory Memorandum to the National Anti-Corruption Commission Bill 2022* (Cth) adds that ‘[t]he term systemic is intended to take its ordinary meaning. An instance of corrupt conduct would be systemic where, on its ordinary meaning, it occurs as part of a pattern of corrupt conduct, for example, in one or more Commonwealth agencies. The pattern need not be coordinated in any way.’: *Revised Explanatory Memorandum to the NACCC Bill* (Cth), p 126. The Independent Commission Against Corruption (ICAC, NSW) is also responsible for serious corrupt conduct and systemic corrupt conduct: *Independent Commission Against Corruption Act 1988* (NSW), s 12A.

The committee, Parliamentary Inspector and commission have suggested or recommended legislative amendment to include contractors within the remit of the commission.²⁷ The commission recommended that the 'CCM Act should be amended to give the Commission clear jurisdiction in respect of people who work within the public sector as contractors but perform work ordinarily performed by employees.'²⁸ The committee agrees. An amended or new Act should include contractors.

Finding 1

A central function of the Corruption and Crime Commission is to deal with 'serious misconduct' by a 'public officer' in an 'appropriate way'. 'Serious misconduct' is corrupt conduct or criminal conduct punishable by 2 or more year's imprisonment. Serious misconduct covers a broad range of conduct. All police misconduct is serious misconduct.

From allegation to outcome

To understand the commission's oversight of sanctions and other outcomes following a finding of serious misconduct, it is relevant to consider how the commission deals with serious misconduct allegations.

It is important to note that the commission is implementing changes to improve operating efficiencies in its Assessment and Strategy Development Directorate (ASD), which assesses allegations and oversights referred allegations. The commission's new assessment model aims to increase efficiencies while maintaining appropriate assessment of allegations.

These changes follow an independent external review of ASD and an Ernst & Young (EY) review to value stream map each stage of the assessment process and identify opportunities to streamline the process.²⁹ Competing issues were affecting the commission's ability to meet its Key Performance Indicators (KPIs).

In 2021–22 the commission did not meet the assessment of allegations of serious misconduct KPIs – 46% of assessments of allegations of serious misconduct were completed in 28 days, on average taking 46 days, when the target is 80% completion in 28 days.³⁰ It hopes new practices will improve this outcome.³¹ Some changes to practices will be more relevant than others to what happens *after* a finding of serious misconduct.

27 See Joint Standing Committee on the Corruption and Crime Commission, *The definition of 'public officer' in the Corruption, Crime and Misconduct Act 2003: Parliamentary Inspector's report*, March 2022, and Corruption and Crime Commission, *A report on corrupt procurement practices and conduct in the Department of Communities*, 20 September 2022, p 54.

28 Corruption and Crime Commission, *A report on corrupt procurement practices and conduct in the Department of Communities*, 20 September 2022, p 54.

29 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 14.

30 Corruption and Crime Commission, *Annual Report 2021–22*, p 21. This is the most recent data available. Down from 81% of assessments being completed in 28 days in 2020–21.

31 Emma Johnson, Chief Executive, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 6.

Allegations

The commission may receive an allegation from anyone including a member of the public, the Public Sector Commissioner and agencies.³²

The CCM Act requires the commission to assess every allegation of serious misconduct.³³

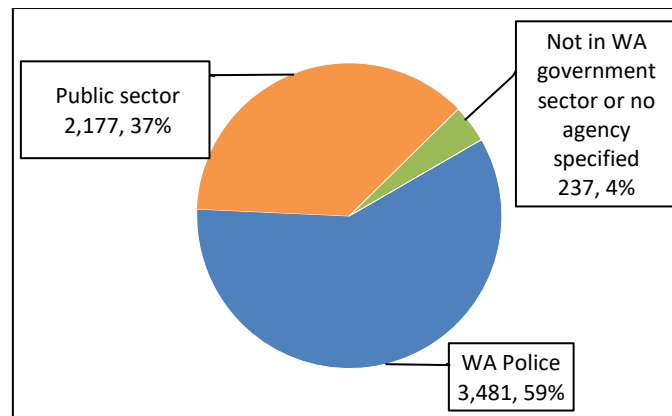
The agency may continue to treat the matter as a disciplinary investigation after referring it to the commission. In some cases, the agency has finalised action when the matter is referred to the commission. In these cases, the commission records the outcome and usually takes no further action.³⁴

In 2022–23, the commission received 5,895 allegations of serious misconduct.

- 3,481 allegations, or 59% of allegations, related to police misconduct³⁵
- 2,177 allegations, or 37% of allegations, related to misconduct in the rest of the public sector
- 237 allegations, or 4% of allegations, did not relate to the government sector or no agency was specified.

The above is depicted in the following figure:

Figure 2.3: Allegations by type of agency in 2022–23



32 *Corruption, Crime and Misconduct Act 2003*, ss 25, 45M(d), 28. The principal officer of a government agency has a duty to notify the commission, as soon as practicable after becoming aware of a complaint, if they suspect on reasonable grounds that the matter concerns or may concern serious misconduct: *Corruption, Crime and Misconduct Act 2003*, s 28. The commission may also make own 'propositions' of serious misconduct: *Corruption, Crime and Misconduct Act 2003*, s 26.

33 *Corruption, Crime and Misconduct Act 2003*, s 32(1).

34 The commission is routinely notified of allegations where action has already been taken: Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 4.

35 The data in this paragraph is source from the attachment to letter from the Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, 23 October 2023, p 1. However, on 9 November 2023 the commission advised that there were 3,487 complaints about police in 2022–23. To ensure consistency in data, and given this small difference, we report on the data advised on 23 October 2023.

A new triage model

On 1 July 2023 the commission implemented a new assessment prioritisation model, a triage model, as recommended by the external review. On receipt of an allegation, a senior manager reviews each allegation and classifies the allegation into one of 4 categories:

- expedited
- low risk
- standard assessment
- further assessment.³⁶

The categorisation determines the level of assessment the matter receives, and provides guidance on the level of further enquiries and/or value-add activities to be undertaken as part of the assessment. It assists in identifying high-priority matters.³⁷ The commission will also introduce a new online reporting form.³⁸

The committee has previously raised the importance of triaging allegations. We commend the commission on its initiative to triage allegations.

Referrals to agencies

When assessing each allegation, the commissions asks 'Is there a reasonable suspicion of serious misconduct?' If an allegation meets the 'reasonable suspicion of serious misconduct' threshold, the commission may:

- investigate or take action itself
- investigate or take action in cooperation with an agency
- refer an allegation to an agency for action, or
- take no action (see below).³⁹

The commission has a great deal of discretion on whether to 'refer' a matter to the agency, who must report back to the commission. That is, a discretion on which matters it chooses to oversight, as the commission oversights matters it refers to an agency.

It is important to note that the commission may take no further action on an allegation for a number of reasons including when it determines that:

- the allegation does not meet the reasonable suspicion of serious misconduct threshold
- further action is not 'warranted' or in the public interest (see below)
- the agency has dealt with, or is adequately dealing with, the allegation.⁴⁰

36 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, pp 4–5.

37 *ibid*, p 4.

38 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 12.

39 *Corruption, Crime and Misconduct Act 2003*, s 33(1).

40 Corruption and Crime Commission, *Annual Report 2021–22*, p 22.

In considering whether taking further action on an allegation, including referral, is warranted, the commission may take into account the seriousness of the conduct alleged, if the allegation is ‘frivolous or vexatious or is made in good faith’, or if it is in the public interest to take further action.⁴¹ Taking no further action may apply to less serious ‘serious misconduct’ allegations. In these cases, the agency will continue any disciplinary process but is not required to report the outcome to the commission. In the committee’s view, this is a sensible approach.

Like other integrity commissions in Australia, the commission is not funded to investigate all or most allegations of serious misconduct by public officers. Most allegations are dealt with by the agency. This ensures that agencies deal with their misconduct risks.

In 2022–23, after assessing 5,895 allegations, the commission effectively did not take further action on 85% of allegations. That is, the commission decided:

- to take no further action on 4,325 allegations (73%)
- that 734 allegations were outside the jurisdiction of the commission (12%).⁴²

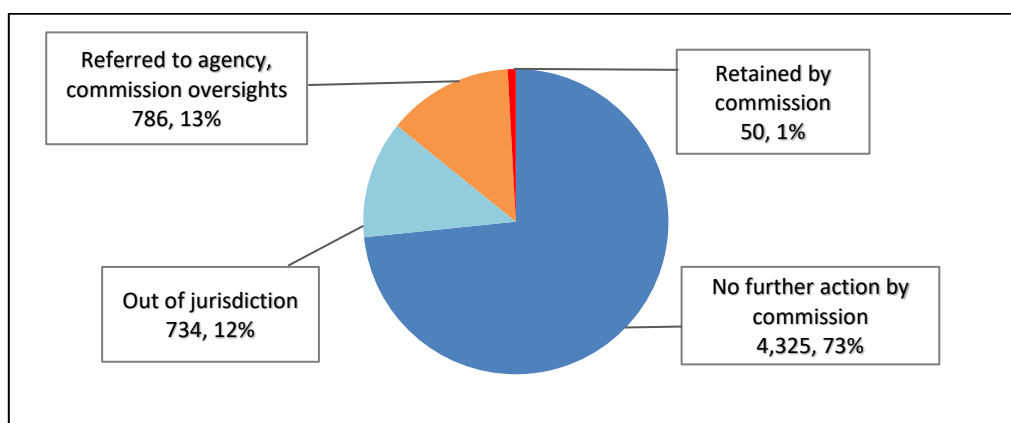
Of the remaining 836 allegations, the commission referred 786 allegations to agencies and retained 50 matters. That is, it referred 94% of allegations it took further action on, being 13% of all allegations received, and will oversight these allegations.⁴³

Of the 50 allegations requiring further action retained by the commission:

- the commission was to investigate 12 allegations, independently or cooperatively
- 23 allegations were pending a preliminary investigation by the commission
- 15 allegations were pending a decision by its Operational Committee.⁴⁴

The above is depicted in the following figure:

Figure 2.4: Commission decisions after assessing 5,895 allegations in 2022–23



41 *Corruption, Crime and Misconduct Act 2003*, s 18(3).

42 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 1.

43 *ibid.*

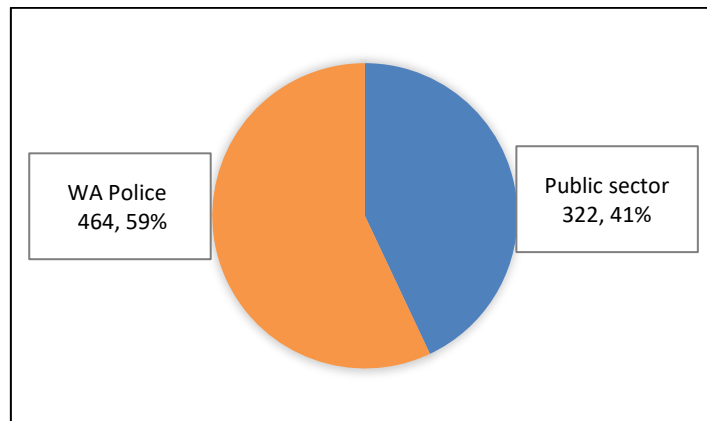
44 *ibid.*

Of the 786 allegations the commission referred to agencies in 2022–23, and therefore to be overseight by the commission:

- 464 (59%) were referred to WA Police
- 322 (41%) were referred to the rest of the public sector.⁴⁵

This is depicted in the following figure:

Figure 2.5: Commission referrals to agencies by agency type in 2022–23 (a total of 786)



After an allegation is referred to an agency:

- The agency investigates the allegation and determines if it is proven on the balance of probabilities. That is, the agency must be satisfied that serious misconduct more likely occurred than it did not. This is lower than the criminal standard of proof of beyond a reasonable doubt.
- The agency imposes any sanction or other outcome on the employee. (Outcomes are noted in chapter 4.)
- On finalising action on an allegation, the agency provides the commission with a written closure report.⁴⁶ (Closure reports are discussed below.)

Finding 2

After the Corruption and Crime Commission assesses each serious misconduct allegation, it determines that further action by the commission is required on a minority of allegations (836 allegations or 14% of the 5,895 allegations in 2022–23). The commission refers to agencies, and oversights, a large majority of these allegations (786 or 94% of the 836 allegations requiring further action in 2022–23).

If an allegation is sustained, the agency determines and imposes any disciplinary sanction or other outcome.

⁴⁵ Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 1.

⁴⁶ Section 40 of the *Corruption, Crime and Misconduct Act 2003* requires a ‘detailed report’ of action taken.

Commission investigations

The commission focuses its investigative resources on allegations it considers the ‘more serious and significant matters’ (see pull quote).⁴⁷

Many of its investigations continue to relate to procurement fraud, a strategic focus of the commission since 2014. In 2021–22, the commission conducted 57 investigations (35 being preliminary investigations), and 30 investigations related to procurement and financial management.

Thirteen investigations were cooperative or joint investigations, with the agency and/or WA Police, and 9 were independent investigations.⁴⁸

The commission has the power to form an ‘opinion’ that serious misconduct has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur.⁴⁹

However, the commission is of the view that the CCM Act does *not* require it to form an opinion of serious misconduct even if the definition of serious misconduct in the CCM Act is met. This means that an opinion of serious misconduct may not follow even if evidence proves that serious misconduct has occurred. Matthew Zilko SC, the Parliamentary Inspector of the Corruption and Crime Commission, disagrees with the commission on this legal point.⁵⁰ The Hon John Quigley MLA, Attorney General, supported the committee’s recommendation to direct the Department of Justice to examine this issue as part of its project to modernise the CCM Act.⁵¹

Oversight of allegations referred to agencies

The commission’s primary role in overseeing allegations is to consider action taken by the agency and form an opinion as to whether the conclusions reached were reasonable and open to it. In undertaking this role, the commission considers whether the decision maker:

- acted wrong in principle
- took into account irrelevant considerations
- acted on a mistaken view of the facts
- failed to take into account a material consideration.⁵²

47 Corruption and Crime Commission, *Annual Report 2021-22*, p 26. The commission has also said that a decision to investigate is ‘usually made for more serious or complex matters’: *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, p 4.

48 Corruption and Crime Commission, *Annual Report 2021-22*, pp 26, 30.

49 *Corruption, Crime and Misconduct Act 2003*, s 22.

50 This disagreement is discussed in the committee’s Report 9, *A need for clarity: Parliamentary Inspector’s report: Can the Corruption and Crime Commission decline to form an opinion that serious misconduct has occurred despite the definition being met?*, tabled on 30 March 2023.

51 Government Response to Report 9, Legislative Assembly, tabled paper 2070.

52 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, letter, 20 December 2021, p 1.

The decision to hold an investigation is usually made for more serious and significant matters which have the greatest impact on improving integrity within the public sector.

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The commission does not conduct a merits review of the conclusions reached by the agency. It does not substitute its view as to how a discretion should be exercised by the agency.⁵³

The commission’s focus is on action taken by the agency in investigating an allegation and making the finding, or not, of serious misconduct. It does not focus on outcomes following a finding, that is, on sanctions (this is discussed below). The commission told the committee:

[The] decision to impose disciplinary action and/or the appropriateness of the type of disciplinary action imposed by the appropriate authority, is not an area of primary focus.

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Upon receipt of an authority’s outcome, the Commission’s oversight function considers that action taken by an appropriate authority, but more specifically it considers the lines of enquiry undertaken and the information relied upon by the authority in reaching its conclusion (i.e. sustained, not sustained, exonerated or unfounded).⁵⁴

The commission’s relatively small Oversight Team within ASD oversees how an agency deals with a serious misconduct allegation it referred to the agency.⁵⁵ The commission oversees a substantial number of allegations per year. For example, it will oversight, to different degrees, the 786 allegations it referred to agencies in 2022–23. The commission’s recent independent external review of ASD’s practices considered the commission’s oversight function ‘strong’ despite having the smallest team when compared to like agencies.⁵⁶ As at 30 August 2023, ASD’s oversight team comprised 6 FTEs (full-time equivalents).⁵⁷

The independent review recommended continued expansion of ASD’s oversight function, and specifically, its thematic review function.⁵⁸

In 2023–24 the commission intends to review its oversight processes to ‘ensure they remain contemporary and identify any emerging trends early for consideration of thematic review’.⁵⁹

53 Corruption and Crime Commission, *The Commission’s oversight function with reference to a specific matter: a report to the JSCCCC*, 14 March 2023, pp 3, 5.

54 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 16.

55 *Corruption, Crime and Misconduct Act 2003*, s 41. The commission’s Assessment and Strategy Development Directorate exercises the 2 oversight functions of the commission – monitor and review.

56 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 12.

57 One level 7 Oversight Manager, 3 level 6 Senior Oversight Officers and 2 level 4 Oversight Officers, which includes the position resulting from the ASD review: Corruption and Crime Commission, document, 30 August 2023, p 1. On 18 August 2023 the commission advised that the level 4 position was yet to be filled and the team also had one short term level 6 officer for 2 years: Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 13.

58 This involves the commission deciding to undertake a thematic review on a misconduct risk based on allegations and information received.

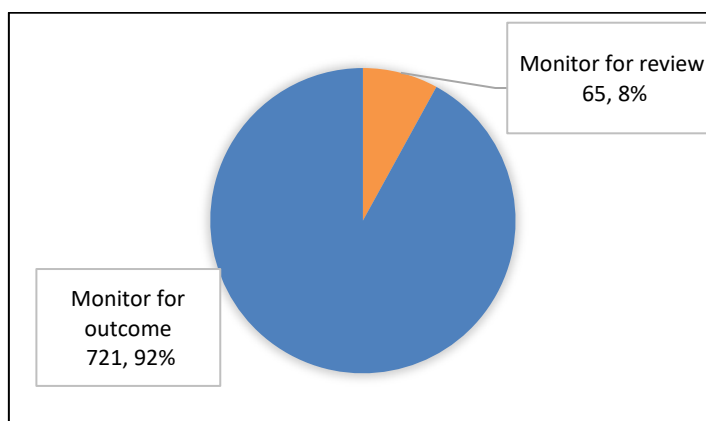
59 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 13.

‘Monitor for outcome’ and ‘monitor for review’ (active monitoring)

The commission refers the majority of allegations to an agency on a ‘monitor for outcome’ basis. As depicted in the following figure, in 2022–23 it referred:

- 721 allegations on a ‘monitor for outcome’ basis (92%)
- 65 allegations on a ‘monitor for review’ basis (8%) – a more active level of oversight.⁶⁰

Figure 2.6: Basis on which commission referred allegations to agencies in 2022–23



For the ‘monitor for review’ matters, the commission assesses agency conclusions and information contained in its closure report. (Although the commission and agencies often have liaison meetings which may raise matters – this is discussed later.)

The minority of matters referred on a ‘monitor for review’ or ‘active oversight’ basis are subject to a more intensive and structured monitor phase, and greater levels of commission engagement with the agency.⁶¹ This enables the commission to more closely oversight selected serious matters or matters where it has concerns regarding the capacity of an agency to take appropriate action.⁶²

The majority of allegations referred on a monitor for review basis, 51 of the 65 allegations in 2022–23 (78%), involved allegations of police misconduct.

The commission’s greater level of engagement in matters referred on a monitor for review basis creates opportunities to discuss actions with agencies, including sanctions (see pull quote).

While we do not have the legislative power to take disciplinary action or overturn an authority’s decision, the Commission can influence and effect change.

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60 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 1.
 61 Corruption and Crime Commission, *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, pp 10–11. The Oversight Team meets with representatives from the authority on referral to explain the basis for commission’s interest in the matter, discuss any identified concerns and detail the activities and schedule associated with the active oversight process, and request monthly updates on the progress of the matter.
 62 Submission 7, Corruption and Crime Commission, pp 2–3.

Oversight of sanctions and other outcomes

The threshold for the commission to question the disciplinary sanction or ‘improvement action’ (explained in chapter 4) imposed on the public officer is quite high.

Only if a disciplinary sanction is so grossly inconsistent with the outcome, will the Commission make a comment.

The commission does not ‘as a matter of course’ question agencies on the outcomes imposed on the public officer because, it says, the agency is responsible for issuing and determining a sanction or other outcome.⁶³ The commission told the committee that:

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[While the commission’s role] does extend to noting and recording any outcomes imposed on the public officer (where applicable), unless it is viewed as grossly disproportional to the conduct, any concerns raised by the Commission with an agency usually relate to the investigative process and/or finding.⁶⁴ ...

the decision to impose disciplinary action and/or the appropriateness of the type of disciplinary action imposed by the appropriate authority, is not an area of primary focus.

Ultimately, the Commission is not empowered to overturn a disciplinary sanction. Only if a disciplinary sanction is so grossly inconsistent with the outcome, will the Commission make a comment.⁶⁵

PSC, who deal with minor misconduct, estimates that in approximately 10% of cases where it questions an agency about action it has taken on an allegation, it questions the agency about the sanction or outcome imposed after a finding of misconduct.⁶⁶

While the commission does not impose and cannot overturn the disciplinary sanction or improvement action imposed, if it has concerns with actions taken it may raise these with the agency, which may reconsider the sanction or outcome.⁶⁷ When meeting with agencies it has soft power. The commission’s potential to influence is enhanced when it ‘actively oversights’ a referred allegation, and could discuss a matter with the agency when it is considering the sanction.

In the committee’s view, the commission should discuss sanctions with agencies when it considers the sanction unreasonable and not open to it, which may be a lower bar than a ‘grossly inappropriate’ sanction.

63 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 16.

64 *ibid.*

65 *ibid.*, p 5.

66 Dan Volaric, Executive Director, Integrity and Risk, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 13.

67 Submission 7, Corruption and Crime Commission, pp 1–2.

Finding 3

The Corruption and Crime Commission's primary role in overseeing allegations is to consider action taken by the agency and form an opinion as to whether the conclusions reached by the agency, such as a finding or not of serious misconduct, were reasonable and open to it.

Finding 4

The commission's focus is on action taken by the agency in investigating an allegation and making the finding, or not, of serious misconduct. The commission will only comment on the sanction imposed by the agency if it is 'so grossly inconsistent with the outcome'.

Oversight of police misconduct

The previous committee inquired into the commission's oversight of excessive use of force during its inquiry into the commission's oversight of excessive use of force allegations against members of the WA Police Force.

[W]hy do we bother? Even if a serious misconduct finding is made, rare as it is, literally nothing comes of it.

*Peter Collins, Director
Aboriginal Legal Service of Western Australia*

The previous committee recommended that the commission 'refocus its efforts and current resources on police oversight'.⁶⁸ The commission did not support this recommendation, noting that the CCM Act does not articulate this intent.⁶⁹

In 2018, the Hon Michael Murray AM QC, the then Parliamentary Inspector of the Corruption and Crime Commission, opined that the commission has 'continued to demonstrate flawed assessments of complaints of serious misconduct by police involving the excessive use of force'.⁷⁰ The commission advised that 'it does not have the resources to undertake ... reinvestigations [of police matters] ... and must rely on its oversight power to ensure that police internal investigation is conducted properly'. The Parliamentary Inspector considered this response 'no answer' to the consequences in the matters identified.⁷¹

The commission continues to rely on overseeing internal police investigations into police misconduct but it does actively oversight a few police matters. In 2022–23, while most allegations the commission referred on an active oversight (monitor for review) basis related to police misconduct (51 of 65 allegations), these 51 allegations represent 11% of the 464 police misconduct allegations referred to WA Police that year. In 2021–22, when the commission conducted 57 investigations, most being preliminary investigations, 13 related

68 Joint Standing Committee on the Corruption and Crime Commission, *If not the CCC ... the where? An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against members of the WA Police Force*, Report 15, 24 September 2020, recommendation 2.

69 Government Response to Report 15, 9 September 2021, p 1.

70 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2017–18*, p 6. The Inspector provided an example of a referred allegation where the commission endorsed a 'patently incorrect determination by the police that no misconduct occurred'.

71 *ibid*, p 6.

to police misconduct.⁷² (This is the latest investigation data available.)⁷³

The Aboriginal Legal Service of Western Australia (ALSWA) told our committee that the commission takes ‘very little or no action’ on the very few matters the commission determines meets the reasonable suspicion of police misconduct threshold, that is, in matters requiring further action/investigation. Its Director, Peter Collins, said not much ‘happens next’:

It is hard not to have a wry smile in response to the title of the committee’s inquiry, “What happens next? Beyond a finding of serious misconduct”, because when it comes to Aboriginal people and complaints lodged by the Aboriginal Legal Service of Western Australia on their behalf with the CCC, most of which involve complaints against police and, to a lesser extent, the Department of Corrective Services, the number of serious misconduct findings made over many years are so few and so far between that at times you just shrug your shoulders and ask: why do we bother? Even if a serious misconduct finding is made, rare as it is, literally nothing comes of it.⁷⁴

ALSWA expressed their continued lack of confidence in how the commission oversees police misconduct and advocates for a new agency to deal with complaints against police:

The very limited numbers of cases where an outcome favourable to an ALSWA client is made brings into sharp relief the issue of the independence and impartiality of WA Police officers investigating other officers.⁷⁵

[As] the only ostensibly independent police investigative body it is incumbent on the CCC to take a stronger role in condemning police misconduct and overseeing the investigations run by the WA Police. ...

ALSWA has repeatedly raised concerns about the issues of police investigating police and will continue to advocate for an independent and impartial police complaints system. As it stands, it is crucial that the CCC, as an independent body, exercises a strong oversight and investigative function when it comes to the conduct of WA Police officers.⁷⁶

72 Corruption and Crime Commission, *Annual Report 2021–22*, pp 26, 30. The 57 investigations were comprised of 35 preliminary investigations, 13 cooperative investigations with an agency, and 9 independent investigations and includes finalised investigations. An investigation can relate to more than one theme. Procurement is the process by which goods and services are purchased.

73 At the time of adopting this report the Corruption and Crime Commission had not tabled its Annual Report 2022–23 in Parliament, therefore this report refers to some data sourced from its *Annual Report 2021–22*. The commission provided requested information for 2022–23.

74 Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia, *transcript of evidence*, 15 August 2022, p 1. Civil Liberties Australia (WA) says there ‘are no disciplinary measures taken and no sanctions’ by police: Submission 3, Civil Liberties Australia (WA), p 3.

75 Submission 20, Aboriginal Legal Service of Western Australia, p 19.

76 *ibid*, p 6. ALSWA also noted that investigations by the WA Police’s Police Conduct Investigation Unit (PCIU) and Internal Affairs Unit (IAU) are undertaken by police officers, and PCIU investigations are ordinarily carried out in the same geographical regions where the incident occurred: *ibid*. Civil Liberties Australia (WA) also submitted that Western Australia needs a civilian oversight body independent of WA Police and the commission, and independent, external investigation of major police complaints: Submission 3, Civil Liberties Australia (WA), p 2.

[A solution] is to create a new agency for dealing with complaints against police. ... Perhaps there should be a mechanism by which in these instances where there is possible criminal behaviour by a police officer that the referral be to the DPP.⁷⁷

Police sanctions and ALSWA's concerns about 'verbal guidance' outcomes are canvassed in chapter 4.

The commission makes no comment on creating a new agency other than to note that only New South Wales, with its far greater population, separates the oversight function for the police and rest of the public sector.⁷⁸ The commission points out that its jurisdiction is only enlivened when a reasonable suspicion of misconduct is established. It acknowledges that some decisions involve an evaluative judgement, but the vast majority of allegations involving excessive use of force, one category of police misconduct, are assessed by reference to body worn camera footage and CCTV footage which is almost always available.⁷⁹

Finding 5

The Corruption and Crime Commission continues to rely on overlooking internal police investigations into police misconduct. In 2022–23 it referred 464 allegations to the Western Australia Police Force to action and report back to the commission. The commission 'actively oversighted' 51 (11%) of these allegations.

Finding 6

The Aboriginal Legal Service of Western Australia expressed its concern that:

- the Corruption and Crime Commission takes very little or no action on the very few police misconduct allegations the commission determines meets the reasonable suspicion of police misconduct threshold requiring police investigation
- even if a police misconduct/serious misconduct finding is made, 'rare as it is, literally nothing comes of it.'

ALSWA lacks confidence in how the commission overlooks police misconduct. ALSWA advocates for a new agency to deal with complaints against police. Only New South Wales has established separate agencies to deal with police and public sector misconduct.

Closure reports and the commission's assessment of closure reports

As previously noted, an agency must provide a written closure report to the commission after finalising action on a referred matter.⁸⁰

The ASD Oversight Team has commenced a preliminary review of its closure process. It advised that key improvements include 'improved report structure to assist with

77 Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia, *transcript of evidence*, 15 August 2022, p 6. As many ALSWA matters may be dealt with by police in Magistrates Court, that is not indicted in a superior court, they would not ordinarily involve a DPP assessment of the evidence.

78 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, letter, 9 November 2023, p 1. New South Wales has established the Independent Commission Against Corruption (ICAC) and the Law Enforcement Conduct Commission (LECC).

79 *ibid*, pp 1–2.

80 Section 40 of the *Corruption, Crime and Misconduct Act 2003* requires a 'detailed report' of action.

consistency of recorded data’,⁸¹ and further consideration will be given to ‘the current concern categories and whether they can be streamlined to assist in identifying emerging issues or trends, both in respect to authorities and/or sector wide.’⁸² The commission is considering how to better use and analyse information and data.⁸³ This raises the issue of the current limitations of its prevention of misconduct and education function (discussed in chapter 6). The closure process noted below was advised prior to adopting this report.

The Oversight Team assess hundreds of closure reports each year. Its officers also attend agency liaison meetings with other officers from ASD. An Oversight Officer considers an agency’s closure report to assess whether the agency dealt with an allegation in an ‘appropriate way’. The commission considers closure reports an assurance by an agency that an allegation has been properly addressed.⁸⁴

The Director of ASD told the committee that some closure reports could be 5 or 10 pages and others 100 pages long.⁸⁵ The committee is aware of a case where 4 bullet points were provided and apparently accepted by the commission. The commission changed its processes after Matthew Zilko SC, the Parliamentary Inspector, raised concerns about this case in 2021.⁸⁶

The commission does not provide a template closure report to be completed by agencies, or a list of matters to be included in the closure report. Agencies may use their own template or attach an external investigator’s report.⁸⁷ The commission acknowledges that a template would be easier for ASD, but it would be difficult, but not impossible, to dictate a template to agencies.⁸⁸

The commission may provide an agency with its *Fact sheet: Allegations of serious misconduct referred to an appropriate authority for action* dated July 2022.⁸⁹ This fact sheet, which is under review, provides the following guidance to agencies:⁹⁰

-
- 81 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 15.
- 82 *ibid.*
- 83 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 10.
- 84 Corruption and Crime Commission, *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, p 5.
- 85 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 6.
- 86 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–21*, p 8, *Annual Report 2021–22*, p 6. The Parliamentary Inspector commended the commission’s constructive response to the above incident. The commission completed a thorough section 41 review of the matter.
- 87 James August, Acting Executive Director, People Culture and Standards, Department of Justice, *transcript of evidence*, 27 March 2023, p 8.
- 88 Emma Johnson, Chief Executive, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 8.
- 89 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, letter, 26 August 2022, p 1.
- 90 Corruption and Crime Commission, *Allegations of serious misconduct referred to an appropriate authority for action*, July 2022.

The report should **detail the actions taken by the appropriate authority in response to the allegations(s) of serious misconduct**, including any investigative and/or disciplinary action taken.

The report should **outline the steps taken and not just the outcome(s) or conclusions reached**. The report should include the commencement and finalisation date for the action taken'. [Committee emphasis.]

The commission says it is 'likely future revisions [of the fact sheet] will seek to inform appropriate authorities that the Commission conducts an appraisal of the outcome report and actions (s) taken, and clarify what, if any action can be taken if concerns are identified'.⁹¹

If the closure report does not provide sufficient detail for the commission to understand the actions taken, the Oversight Team will email the agency and request further information. If the commission is satisfied with the closure report, an email is sent to the agency confirming that no further action is required.⁹² The commission records the outcome.

If the Oversight Manager is concerned about a how the agency has dealt with a matter they may:

- recommend to the commission's Operations Committee that the Oversight Team conduct a full review of action taken by the agency⁹³
- record the concerns to monitor any trends or continued concerns with the agency
- provide the agency with informal feedback, usually in the form of a liaison meeting
- provide formal feedback in a closure report addressed to the head of the agency or in a closure report tabled in Parliament.⁹⁴

The commission reports to agencies or the Parliament on its reviews of agency actions.⁹⁵

In summary, agency closure reports are an important tool in ensuring agency accountability and appropriate commission oversight.

The committee considers that there is merit in the commission creating a template closure report that agencies must use, which requires agencies to provide minimum detail.

A template closure report will ensure that agencies provide consistent and sufficient information to explain action taken and outcomes. For example, it could ask the agency to

91 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 15.

92 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, letter, 26 August 2022, p 1.

93 Corruption and Crime Commission, *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, p 7.

94 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, letter, 20 December 2021, pp 2-3. Other options include making recommendations pursuant to section 43 that consideration be given to prosecuting or taking disciplinary action against a particular person, and disclosing the concerns to other agencies so they are aware and can consider and use the information.

95 *Corruption, Crime and Misconduct Act 2003*, s 41. Discussed at *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, p 4.

advise why it considers the sanction or other outcome appropriate in all the circumstances (see recommendation 2 below). The template need not be long.

The template closure report could request particular information to clarify or identify emerging issues. The template closure report could request information that enhances the commission’s oversight of particular outcomes, for example, when:

- an agency imposes a ‘local management/improvement action’ (see recommendation 5)
- a matter involves a financial loss to the State (see recommendation 10).

Finding 7

Agencies must provide the Corruption and Crime Commission with a written closure report after finalising an allegation of serious misconduct referred by the commission. The quality of reports varies. Closure reports are an important integrity tool.

Finding 8

The Corruption and Crime Commission is reviewing its closure process. The commission asks agencies to detail the actions taken in response to an allegation, and to outline the steps taken, not only the outcomes or conclusions reached.

Recommendation 1

That the Corruption and Crime Commission create a template closure report and requires all agencies to use this report. This should be structured to require minimum information and allow the agency to add further information or attach documents, such as an investigation report, where appropriate. If this recommendation is accepted, the template closure report should require the information noted in recommendations 2, 5 and 10, among other things.

Recommendation 2

That the Corruption and Crime Commission require an agency to advise, in its closure report, a summary of why it considered the sanction or other outcome imposed on the public officer after a finding of serious misconduct an appropriate outcome in all the circumstances.

Commission liaison with agencies and cross sector collaboration

The commission regularly collaborates and exchanges information, expertise and best practice approaches with integrity agencies and employing agencies.⁹⁶

The commission’s Oversight Team, with others from ASD, regularly meet with agencies including meeting monthly with WA Police, quarterly with other large agencies such as the Department of Justice, and ad hoc meetings as required.⁹⁷ ASD meet with most agencies,

⁹⁶ Corruption and Crime Commission, *Annual Report 2021–22*, p 37.

⁹⁷ Corruption and Crime Commission, *Monitoring of agencies investigations*, 8 October 2023, p 3, attachment to submission 7, Corruption and Crime Commission.

with the exception of remote and smaller local governments.⁹⁸ Liaison meetings may cover a range of topics including particular serious misconduct matters, notification and oversight processes, agency capacity to prevent misconduct and emerging trends and risks.⁹⁹

During the inquiry, agencies commented on their positive relationship with the commission. Many were positive about their liaison meetings and level of collaboration with the commission and PSC. To give a few examples:

- WA Police has a ‘very good relationship’ with the commission. At regular meetings they discuss opportunities to work more closely and undertake cooperative investigations.¹⁰⁰
- The Department of Communities has a ‘very positive working relationship’ with the commission, PSC and WA Police. It worked cooperatively with these agencies in matters associated with the conduct of Paul Whyte, continues to do so, and these relationships are more collegiate and supportive than in the past.¹⁰¹
- The Transport portfolio (Department of Transport, Main Roads Western Australia and Public Transport Authority) has a ‘close working relationship’ with the commission which includes regular feedback on ongoing performance and expectations.¹⁰²

It is positive that there is also regular cross sector collaboration and sharing of information and expertise. While the commission has its own expertise, agencies possess distinctive advantages in combating serious misconduct and are familiar with their risks. In particular:

- PSC has established an Integrity Practitioners’ Group to collaborate and consult with agency representatives on strategic approaches to integrity and preventing misconduct. It is comprised of 17 integrity practitioners from a range of agencies, including a member from the regions.¹⁰³
- The Department of Communities meets quarterly with PSC, the commission, Department of Education, Department of Justice, Department of Fire and Emergency Services, North Metropolitan Health Service, WA Police and others to share information and learnings.¹⁰⁴

A high level of engagement with, and between, agencies should continue. (The need for further engagement with local government is discussed in chapter 8.)

Finding 9

Agencies report a positive relationship with the Corruption and Crime Commission and Public Sector Commission, and, in particular, were positive about the Corruption and Crime Commission’s liaison meetings, cooperation, and engagement with agencies.

98 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 12.

99 Corruption and Crime Commission, *Annual Report 2021–22*, p 39.

100 Col Blanch, Commissioner, Western Australia Police Force, *transcript of evidence*, 19 October 2022, p 6.

101 Submission 17, Department of Communities, p 1. Mike Rowe, Director General, added that its meetings with the commission have been reduced to twice a year rather than the quarterly: *transcript of evidence*, 29 March 2023, p 3. The more collegiate comment is by Andrew Salter, Executive Director, Professional Standards, Department of Communities, *transcript of evidence*, 29 March 2023, p 11.

102 Submission 26, Transport portfolio, p 1.

103 Submission 8, Public Sector Commission, p 6.

104 Department of Communities, attachment to email, 26 May 2023.

Maintaining focus on serious misconduct and oversight

The commission is a multi-function agency. The commission's serious misconduct function is one of its many roles. This includes its organised crime powers, oversight of WA Police and other authorities use of covert powers in the *Criminal Investigation (Covert Powers) Act 2012*, and its unexplained wealth and criminal benefits function under the *Criminal Property Confiscation Act 2000*.

Also, in June 2023 the commission was given another compliance function under the *Misuse of Drugs Act 1981* when this Act was amended to establish permanent border search areas at designated points into and out of Western Australia.¹⁰⁵

In 2018 the Hon Michael Murray AM QC, the then Parliamentary Inspector of the Corruption and Crime Commission, expressed concern about the commission assuming other statutory functions. He said:

I have an ongoing concern not only with the fact of instances of excessive use of force by police, and the (at times) ineffective investigation of them, but that this situation will only worsen should the Commission assume further statutory functions as are currently proposed.¹⁰⁶

Since 2018 the commission has had the power to investigate, initiate and conduct confiscation proceedings relating to unexplained wealth and criminal benefits. When the commission was given this function it decided to cut back on resources allocated to its serious misconduct function.¹⁰⁷ This is because prior to 2022, the commission used existing resources to undertake this new function.

The committee is pleased that in 2023 the government approved an additional \$12.1 million in funding for the commission over 4 years.¹⁰⁸ While the majority will support its expanding unexplained wealth function, 'some resources' will return to the serious misconduct area.¹⁰⁹

The committee is concerned that resourcing may affect the commission's ability to undertake aspects of its serious misconduct function. As at August 2023 the commission was operating with approximately a 13% staff vacancy rate, but ASD, which assesses and oversees allegations, had a 20% vacancy rate.¹¹⁰

105 The *Misuse of Drugs Amendment Act 2023* was given royal assent on 26 June 2023 and became law the next day. The commission must assess reports from the Commissioner of Police every 6 months, table an Annual Report on compliance with the law, and at least once every 12 months inspect records of the Commissioner of Police to determine the extent of compliance with the Act: Part 4B 'Border Search Areas', Division 5, ss 20X, 20Y and 20Z, *Misuse of Drugs Act 1981*.

106 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2017–18*, p 6.

107 David Robinson, Acting Chief Executive, Corruption and Crime Commission, *transcript of evidence*, 15 March 2023, p 4.

108 Government of Western Australia, *Western Australia State Budget 2023–24: Budget Paper No 2, volume 2*, 11 May 2023, p 468. \$12.115 million is allocated to this function over the 4 years between 2023–24 and 2026–27: *ibid*.

109 David Robinson, Acting Chief Executive, Corruption and Crime Commission, *transcript of evidence*, 15 March 2023, p 4; the Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 March 2023, p 4.

110 The 13% vacancy rate was an improvement on what was advised as at 29 May 2023, when 28 of 145

The commission has the difficult task of determining how to allocate its limited resources. However, it is critical that it maintains a high level of focus on serious misconduct.

No other function is more important than the commission's serious misconduct function. Commissioner McKechnie agrees with this statement.¹¹¹

Finding 10

It is critical that the Corruption and Crime Commission, a multi-function agency, maintains its focus on its serious misconduct or any future misconduct function, and, in particular, its oversight of allegations referred to agencies.

No other function is more important than the commission's serious misconduct function.

positions (19.3%) were vacant: August resourcing is sourced from Emma Johnson, Chief Executive, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 2. May 2023 resourcing is sourced from Legislative Assembly, *Budget Estimates 2023*, Answer to Question on Notice. ASD's vacancy rate had not changed since March 2023: Tracey Polmear, Director, ASD, *transcript of evidence*, 15 March 2023, p 6, and *transcript of evidence*, 30 August 2023, p 3.

111 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 10. The Commissioner added 'That is why, with great respect, we do not want to spend half our life on police officers who swear at somebody. It is unprofessional; it is technically reviewable police action, but that is something they should be managing.'

Chapter 3

Publishing a report

The commission naming a person in a tabled report

What happens after a finding of serious misconduct may include the commission tabling a report in Parliament publishing its findings and opinions of serious misconduct. When tabled, reports are available through Parliament's website and published on the commission's website.

We produce reports and make recommendations that expose corruption and assist public authorities to address and reduce the risk of serious misconduct ...

For some matters, the public interest is such that the report is tabled in Parliament.

Corruption and Crime Commission

It is important to note that:

- Commission reports tabled in Parliament (and published) do not only relate to its investigations of an allegation of serious misconduct. The commission may report on a review of an agency's investigation, a thematic review, an evaluation of an agency's response to recommendation/s made in previous reports and other matters.
- Most commission reports are not tabled in Parliament. In 2022–23, 6 of the commission's 34 reports were tabled in Parliament. The remaining 28 were provided to employing agency directors-general, commissioners or chief executive officers.¹¹²

When to name a person in a tabled report is a 'vexed area', as noted by the Hon Michael Murray AM QC, the former Parliamentary Inspector of the Corruption and Crime Commission.¹¹³ In deciding when and what to publish, the commission must balance the role of the commission in exposing corruption and the rights and potential harm to individuals.

As Matthew Zilko SC, the Parliamentary Inspector, observed, there will always be differences of opinion as to the appropriateness of exposing individuals to reputational damage, and their families and associates to collateral damage following a finding of serious misconduct.¹¹⁴ Robust debate during the establishment of the federal National Anti-Corruption Commission (NACC) reflected these divergent views.

The law and practice in Western Australia

In Western Australia, Part 5 of the CCM Act provides when the commission may report to Parliament on a matter. In relation to investigations, section 84(1) provides the commission with a broad discretion when it provides that 'The Commission may at any time prepare a

112 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 2.

113 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2018–19*, p 11.

114 Submission 2, Parliamentary Inspector of the Corruption and Crime Commission, p 3.

report on any matter that has been the subject of an investigation or other action in respect of serious misconduct’.

It is important that the commission publishes reports only when it is in the public interest to do so. That is, in more serious and significant matters that will have the greatest impact on improving integrity in the public sector.

Many jurisdictions in Australia have a public interest test, with some variation. For example, the *National Anti-Corruption Commission Act 2022* (Cth) provides that its Commissioner may publish an inquiry report if they are ‘satisfied that it is in the public interest’ to do so,¹¹⁵ and the Minister must table a report from the Commissioner if public submissions were invited or public hearings held during the course of an inquiry.¹¹⁶

The law in Western Australia also provides a degree of procedural fairness to affected persons. The commission must, before reporting any matters adverse to a person or body in a report to Parliament, give the person or body a reasonable opportunity to make representations to the commission on those matters.¹¹⁷

Commission reports note whether it made a finding or opinion of serious misconduct against a person or not. The CCM Act provides that:

- The commission may make a finding or opinion that misconduct has occurred, but this is not to be taken as a finding or opinion that a person is guilty of or has committed a criminal or disciplinary offence.¹¹⁸
- The commission may recommend if *consideration* should or should not be given to prosecuting or taking disciplinary action against a person, but these recommendations are ‘not to be taken as a finding, that a person has committed or is guilty of a criminal offence or has engaged in conduct that provides grounds on which that person’s tenure of office, contract of employment, or agreement for the provision of services, is, or may be, terminated’.¹¹⁹

That is, the commission’s findings or opinions of serious misconduct have no *legal* effect on what happens next. The commission has noted in reports that it ‘is not a court. Its opinions do not have legal consequences’.¹²⁰ Commission reports containing an opinion of misconduct include a statement reflecting the law when they say, for example:

An opinion by the Commission that misconduct has occurred is not to be taken as a finding or opinion that [the person] is guilty of, or has committed a criminal offence or a disciplinary offence.¹²¹

115 *National Anti-Corruption Commission Act 2022* (Cth), s 169(1)(b).

116 *ibid*, s 168.

117 *Corruption, Crime and Misconduct Act 2003*, s 86.

118 *ibid*, s 217A.

119 *ibid*, ss 43(1)(a) and 43(6).

120 Corruption and Crime Commission, *Serious Misconduct by the CEO of the Shire of Ravensthorpe*, September 2021, p 2.

121 *ibid*, p 9. Commission reports between 1 January 2021 and 30 June 2023, where a finding or opinion of misconduct is made, includes a sentence reflecting section 217A(3).

However, it may not be evident to the public that the commission’s findings or opinions must not be taken to mean that the person has committed a criminal offence, particularly when media attention follows the tabling of a report. This distinction is perhaps unclear to the public because serious misconduct includes, by definition, corruption and other conduct that is generally considered by the public to be criminal conduct.

The public is largely made aware of the commission’s work through reporting by the media. While commission reports note the above distinction, its media releases do not – with the exception of one media release in the last 2 years.¹²²

In the committee’s view, the commission should highlight this distinction in its media releases, and in its education material including podcasts, media interviews and written materials. The media should also report commission matters with this proviso.

Finding 11

The Corruption and Crime Commission’s findings and opinions of serious misconduct must not be taken to mean that the person has committed a criminal or disciplinary offence. This is noted in commission reports.

However, this legal distinction may not be evident to the public, particularly when media attention follows the tabling of a report.

Recommendation 3

That the Corruption and Crime Commission:

- include in relevant media releases a statement that where the commission makes a finding or opinion that serious misconduct has occurred, that this finding or opinion is not to be taken as a finding or opinion that a person is guilty of or has committed a criminal offence
- highlight the above distinction in its educational work.

As to how the commission forms an opinion of serious misconduct, the commission says it ‘approaches its fact finding task cautiously.’¹²³ A person ‘often’ admits serious misconduct. In these cases the commission can be more confident about its opinion of serious misconduct.¹²⁴

Where possible, the commission strives not to form an opinion when the evidence is ‘solely oath against oath’, that is, when there is only contradictory testimony.¹²⁵

122 Corruption and Crime Commission, *Abuse of trust in local government under the spotlight again*, media release, 22 September 2021, p 1, stated ‘The Commission has formed an opinion of serious misconduct and recommended that criminal charges be considered. It notes this opinion is not to be taken as an opinion or finding [the person] is guilty of a criminal or disciplinary offence’.

123 For example, Corruption and Crime Commission, *Serious Misconduct by the CEO of the Shire of Ravensthorpe*, September 2021, p 2.

124 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 10.

125 For example, Corruption and Crime Commission, *Serious Misconduct by the CEO of the Shire of Ravensthorpe*, September 2021, p 2.

The commission is clearly alert to the fact that an opinion of misconduct is likely to have serious reputational and other damage to a person.¹²⁶ The commission says it gives careful thought to whether individuals should be named. Commissioner McKechnie said that:

[It] is a constant issue. All I can say to the committee is we take it very seriously and we do think about it on every occasion ... the acting commissioner and I, we have often agonised about that question—whether a person should be named. We seek advice from the legal section and from investigations.¹²⁷

If a person tells the commission they do not want to be named, the commission says it does not name the person unless there is a reason to do so. Acting Commissioner Scott Ellis said '[we] do not seek to embarrass or hold people up to ridicule unnecessarily. There are good reasons, we think, to name public officers who have been corrupt—and we do.'¹²⁸

Unless there is a public interest in naming a person, the commission will either not name or anonymise the person.¹²⁹ As a 'very broad rule of thumb' the commission:

- will name a person the subject of an opinion of serious misconduct
- will generally not name a person, and will use an alias, if it considers that a person's conduct falls short of serious misconduct but maybe was not particularly good conduct
- is 'more likely' not to name a person who is not the subject of an investigation or not a public officer.¹³⁰

Why name a person and reputational impact

In the committee's view, the public expects instances of serious misconduct to be exposed. The commission should exercise its functions and powers robustly and without fear.

The commission publicly exposing serious misconduct in the public sector, and naming people when it is confident that they have engaged in serious misconduct, is consistent with the purpose of the CCM Act to 'improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector'.¹³¹ Reporting on findings is how the commission informs and educates agencies and the public about its work.

Publishing reports:

- exposes serious misconduct (such as corruption) – a critical role of the commission
- raises awareness, educates the public and promotes public debate

126 *ibid*, p 2.

127 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 9.

128 Scott Ellis, Acting Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 10.

129 Submission 20, Corruption and Crime Commission, p 2, provided to the Parliament of New South Wales Joint Standing Committee on the Independent Commission Against Corruption (ICAC) during its inquiry into the reputational impact on an individual being adversely named in the ICAC's investigations.

130 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, pp 9–10.

131 *Corruption, Crime and Misconduct Act 2003*, s 7A(b).

- increases public confidence in the commission and public agencies
- holds the public officer and agency accountable for the conduct and breach of trust
- demonstrates that there are consequences to actions, and may deter other public officers from engaging in serious misconduct¹³²
- may lead to executive action and provide learnings for the entire sector.

As the Community and Public Sector Union/Civil Service Association of WA (CPSU/CSA) submitted, publicly reporting the outcome of serious misconduct investigations is ‘a necessary component of mitigating misconduct risk, which is in the public interest and in the interests of employees’. The CPSU/CSA recommended that the committee consider whether the CCM Act should be amended to:

- require the commission to report the outcomes of serious misconduct investigation, and to make reports public, when an investigation reveals organisational issues that create misconduct risk, or, alternatively
- provide mandatory considerations that the commission should take into account when deciding whether to make a report and publish it publicly. Such considerations could include the public interest and if the report could be used by other agencies to minimise misconduct risk.¹³³

However, the reputational and other impacts of being adversely named in a commission report can be very significant. The Parliament of New South Wales Joint Committee on the Independent Commission Against Corruption (ICAC Committee), in its report *Reputational impact on an individual being adversely named in the ICAC’s investigation* observed that:

The reputational impact experienced by people named in investigations ... can be serious. The Committee found that the nature of reputational impact is varied and includes economic, business, social and psychological effects. The impact can have negative and ongoing effects well after an investigation is finalised. This is heightened through media reports, which are readily available online and through social media.¹³⁴

Employment consequences to those the subject of an adverse finding may include terminating employment and difficulties in securing employment after being named in a tabled report. Matthew Zilko SC, the Parliamentary Inspector, advised of one person who resigned from their position, and then was dismissed from 2 public sector positions and unsuccessful at attaining other positions after being named in a report.¹³⁵

132 Consequences to others do not affect some people. For example, officers at the Department of Communities continued to engage in serious misconduct after Paul Whyte’s corruption was exposed.

133 Submission 19, Community and Public Sector Union/Civil Service Association of WA, p 6. It added that reports should be private only when publishing the report ‘could jeopardise covert operations or otherwise unduly harm state interests’.

134 The Parliament of New South Wales Joint Committee on the Independent Commission Against Corruption, *Reputational impact on an individual being adversely named in the ICAC’s investigation*, Report 4/57, November 2021, p iv.

135 Submission 2, Parliamentary Inspector for the Corruption and Crime Commission, p 3.

The committee agrees with the following findings of the ICAC Committee:

The nature of reputational impact is varied and includes economic, business, social and psychological effects. ...

Media reports today are readily available, online and through social media, which heightens and prolongs the reputational impact on individuals who are involved in a [commission] proceeding.¹³⁶

The committee also agrees with the following findings of the ICAC Committee:

Some reputational impact is unavoidable if the [commission] is to be effective in its work to investigate, expose and prevent corruption. ...

The Committee is concerned with unwarranted reputational damage on individuals named in investigations where adverse findings are not made.¹³⁷

The committee considers that the approach of the Western Australian commission (noted above) generally reflects an appropriate balance between the role of the commission and the rights and potential harm to individuals.

In the committee's view, the commission must continue to consider whether or not to name a person found to have engaged in serious misconduct in each case. It must consider all the circumstances of the matter. This includes, most importantly, the objective seriousness of the serious misconduct, and also personal circumstances such as the known consequences of the conduct and the likely consequences of naming the person, which includes considering if the person is vulnerable. To name a person, the commission must be confident of its opinion of serious misconduct.

On the naming of a person against whom *no* adverse opinion is made, the commission said that it is 'more likely' not to name a person not the subject of an investigation.

In Victoria, the *Independent Broad-based Anti-Corruption Commission Act 2011* (IBAC Act) provides protections against unreasonable reputational damage by restricting who can be identified in a public report and the information that can be published about them.

In particular:

- IBAC is prohibited from identifying a person about whom no adverse comment or opinion is made, unless it is satisfied that:
 - it is 'necessary or desirable to do so in the public interest' and
 - it will not cause 'unreasonable damage to the person's reputation, safety or wellbeing'.¹³⁸
- In such cases, the report must contain a statement that the person is not the subject of an adverse comment or opinion.¹³⁹

136 Parliament of New South Wales Joint Committee on the Independent Commission Against Corruption, *Reputational impact on an individual being adversely named in the ICAC's investigation*, Report 4/57, November 2021, findings 1 and 3.

137 *ibid*, findings 6 and 7.

138 *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic), s 162(7)(a), (b).

139 *ibid*, s 162(7)(c).

In the committee's view, the commission should not publicly name, or publish details that are likely to reveal the identity of, a person who is not the subject of an adverse comment, finding or opinion, unless:

- it is in the public interest to do so, and
- releasing their name, or sufficient detail that could lead to their identification, will not cause unreasonable damage to the person's reputation, safety or wellbeing.

Finding 12

Some reputational impact is unavoidable if the Corruption and Crime Commission is to be effective in its work to investigate, expose and prevent corruption.

Finding 13

The Corruption and Crime Commission should take a cautious approach to naming a person in a report. The commission's approach generally reflects an appropriate balance between the role of the commission and the rights and potential harm to individuals.

Potential prejudice at trial

The commission naming a person and publishing details of their conduct in a report, and the media reporting this, may potentially cause prejudice at a criminal trial.¹⁴⁰ Every accused facing a criminal charge has a right to a fair trial. This includes having their guilt decided only on the evidence before the judge or jury at trial.

To minimise prejudice the commission may, and does, choose to not table a report, delay tabling a report, censor a report, or remove a tabled report from its website.

The commission has prepared several reports it did not present because of criminal proceedings.¹⁴¹ The commission did not table a report on the fraud at the Department of Communities until Paul Whyte pleaded guilty, and in its report did not cover the alleged activities involving Mr Whyte and others to avoid prejudice to associates before the courts.¹⁴²

The DPP, Robert Owen, is not concerned about the commission's practice of reporting serious misconduct, and could not identify a case where a report or media attention affected the ability of the jury to be impartial. Mr Owen told the committee:

I do not see it [tabling a report], personally, to be any different than the type of media sensationalists that follow an initial accused when charged, because the time to trial, from the time that media have interest in it to the time that there might be a tabling in Parliament by the CCC, is still 12 to 18 months away before a jury might determine it. There is always a risk in that regard, but there are

¹⁴⁰ Legislative Assembly Standing Order 91 outlines the *sub judice* convention in the House. Under this, subject to the discretion of the Speaker, criminal matters from the time of charge to sentence may not be referred to if 'it appears to the Speaker that there is a real and substantial danger of prejudice to the trial of the case'.

¹⁴¹ The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 9.

¹⁴² Corruption and Crime Commission, *Exposing corruption in the Department of Communities*, 16 November 2021, p 1.

competing interests as well in regard to open justice and accountability. But, from my perspective, Chair, I cannot point to a specific example where it has resulted in a jury being discharged or resulted in, ultimately, a permanent stay application by the accused to say that: “I can never get a fair trial because of this adverse publicity that is available or adverse information in the public arena”.¹⁴³

Public examinations

The committee also considered a related topic during its inquiry – when the commission holds a public examination. Public examinations are widely reported in the media. They may cause reputational harm before a report is tabled.

There has been significant debate in Australia, and a wide range of views expressed, on whether and when integrity agencies should hold public examinations. This was evident during the debate on establishing the NACC.¹⁴⁴

In Western Australia, a ‘public interest’ test must be met to hold a public examination. Section 140(2) of the CCM Act provides that the commission:

may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.¹⁴⁵

The commission is cautious in how it exercises its discretion to hold a public examination. It holds fewer public hearings than it used to. For example, in 2021–22 it held:

- public examinations with 2 witnesses over 2 days relating to its inquiry into governance arrangements during Paul Whyte’s employment at the Department of Communities
- private examinations with 68 witnesses over 52 days in relation to 14 operations.¹⁴⁶

A public examination may be used to examine a person associated with the person of interest, such as a manager, or to examine systemic issues. Commissioner McKechnie said his decision to hold a public examination with the former Director General of the Department of Communities was not because he was thought to be corrupt, but because it was a ‘legitimate question for the public to know how did this [governance failures at the department] happen.’¹⁴⁷ The committee agrees.

Most integrity commissions in Australia have the ability to hold public examinations but legislative thresholds differ. For example, NACC and IBAC (Victoria) may hold a public

143 Robert Owen, (then) Acting Director of Public Prosecutions, Director of Public Prosecutions, *transcript of evidence*, 15 August 2022, p 9.

144 For example, an article in *The Australian*, *Demand for public hearings at odds with genuine justice*, 1 October 2022 by Janet Albrechtsen, notes previous public identification of witnesses who have been exonerated, and supports an opinion piece in the same paper by a group of South Australian lawyers calling for NACC to mirror the ICAC (SA) and conduct private examinations.

145 The legislation reflects a recommendation by a former committee: Joint Standing Committee on the Corruption and Crime Commission, *The use of public examinations by the CCC*, Report 25, March 2012, recommendation 1.

146 Corruption and Crime Commission, *Annual Report 2021–22*, p 37.

147 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 11. The other public examination was with the former Chief Finance Officer.

examination if there are ‘exceptional circumstances’ and it is in the ‘public interest’ to do so.¹⁴⁸

Other jurisdictions also include further safeguards and prescription on when the commission may hold a public examination. For example, in Victoria, IBAC:

- must assess whether ‘a public examination can be held without causing unreasonable damage to a person’s reputation, safety or well-being’
- must inform the Victorian Inspectorate (similar to our Parliamentary Inspector) that it intends to hold the public examination and provide a written report disclosing the reasons for its decision at least 10 days before the public examination is held.¹⁴⁹

Although jurisdictions operate under different legislation, the number of public examinations may depend on how the commission exercises its discretion.¹⁵⁰

The committee is satisfied with the commission’s cautious approach to holding public examinations. This should continue. However, consideration should be given to including further safeguards in the revision of the CCM Act.

Finding 14

Other jurisdictions in Australia include safeguards and further prescription in legislation on when a commission may hold a public examination.

Recommendation 4

That the Attorney General consider amending the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, safeguards and further prescription on when the Corruption and Crime Commission may hold a public examination.

148 *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic), s 117(1)(a) and (b); *National Anti-Corruption Commission Act 2022* (Cth), s 73.

149 *Independent Broad-based Anti-Corruption Commission Act 2011* (Vic), s 117(1)(c), 117(5).

150 Despite a different threshold test in Victoria, in 2021–22 IBAC held 24 days of public examinations and 115 days of private examinations: Independent Broad-based Anti-Corruption Commission, *Annual Report 2021–22*, p 9.

Chapter 4

Public officer outcomes

It is a fundamental principle of accountability that employing agencies are responsible for determining and imposing disciplinary sanctions or other outcomes on an employee.

For a system of public integrity to deter misconduct, integrity rules and standards must be enforced.

It is important that agencies impose appropriate consequences on public officers who commit serious misconduct and fall short of expected standards. Consequences confirm and enforce standards of behaviour at the agency, may deter others from similar misconduct, and, when publicly known, may build public confidence and trust in the integrity of the public sector.

*Parliament of Victoria
Integrity and Oversight Committee:
Inquiry into the education and prevention
functions of Victoria's integrity agencies*

This chapter canvasses the public officer outcomes of serious misconduct, that is, disciplinary actions (sanctions) and improvement actions, and other outcomes that may follow a finding of serious misconduct.

The wide range of possible outcomes

Agencies under the remit of the commission may impose a range of outcomes under disciplinary frameworks applying to its public officers.

Disciplinary frameworks applying to public officers may be set out in the *Public Sector Management Act 1994* (PSM Act), *Police Act 1892*, *Health Services Act 2016* or *Local Government Act 1995* (LG Act).¹⁵¹ Common law and industrial disciplinary powers and protections may also apply to public officers not covered by the PSM Act or other frameworks.¹⁵² Some public officers are subject to other disciplinary regimes including professional disciplinary regimes.¹⁵³

Public sector employees – disciplinary actions (sanctions) and improvement actions

Part 5 of the PSM Act sets out the framework for disciplinary processes applying to *public sector* employees including department employees.¹⁵⁴

If a public sector employee is found to have committed serious misconduct, the employing agency may impose a disciplinary action, improvement action, *or both*, or no outcome. Subject to some exceptions, the PSM Act covers the 'public sector' including public service

151 This is not an exhaustive list.

152 Submission 9, Public Sector Commission, p 2.

153 For example, doctors and nurses are subject to regulation by health boards administered by the Australian Health Practitioner Regulation Agency (AHPRA). Department of Health policies also apply to health service providers.

154 Part 5 of the *Public Sector Management Act 1994* deals with a broad range of misconduct and serious offences, which includes serious misconduct under the *Corruption, Crime and Misconduct Act 2003*.

officers, ministerial officers and other prescribed employees.¹⁵⁵ (The PSM Act provisions do *not* cover all public officers under the remit of the commission including employees of Government Trading Enterprises (GTEs), local governments and universities.)

Agencies may impose the following disciplinary actions (also known as sanctions) on public sector employees for any ‘breach of discipline’, which includes serious misconduct:

- a reprimand
- a fine not exceeding 5 days’ remuneration
- transfer the employee to another public sector body with the consent of that body
- transfer the employee to another office, post or position in the public sector body
- reduce the employee’s monetary remuneration
- reduce the employee’s level of classification
- dismiss the employee.¹⁵⁶

The agency may also impose an ‘improvement action’ on the employee, either with a disciplinary action or not. An improvement action is technically not a disciplinary action (sanction).¹⁵⁷ Improvement action means:

any one or more of the following actions by an employing authority in respect of an employee for the purpose of improving the performance or conduct of the employee –

(a) counselling;

(b) training and development;

(c) issuing a warning to the employee that certain conduct is unacceptable or that the employee’s performance is not satisfactory;

(d) any other action of a similar nature.¹⁵⁸

PSC publishes a range of guides and instructions to assist agencies to discipline employees.

An employee under investigation for serious misconduct may resign or retire during the investigation, effectively putting themselves beyond the reach of a sanction under the PSM Act (and other disciplinary regimes), and most likely a finding of serious misconduct.

Under Commissioner’s Instruction 4, *Discipline - Former Employees*, an employing agency may commence or continue a disciplinary process in relation to a former employee if it is in the public interest to do so. PSC says it is intended that investigations continue only in exceptional circumstances. Directors general will generally take the view that there is no public interest in pursuing the matter after a resignation.¹⁵⁹

155 *Public Sector Management Act 1994*, s 76.

156 *ibid*, s 80A. These disciplinary actions may be imposed in relation to any breach of discipline which includes contravening any public sector standard or code of ethics, and any act of misconduct: *Public Sector Management Act 1994*, s 80.

157 Submission 8, Public Sector Commission, p 2.

158 *Public Sector Management Act 1994*, s 3.

159 Public Sector Commission, *Commissioner’s Instruction 4: Discipline – Former Employees*, 27 September 2022. Dan Volaric, Executive Director, Integrity and Risk, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 14.

Police officers and employees

The disciplinary actions in the PSM Act noted above apply to WA Police staff employees.

For other officers, WA Police may impose the following disciplinary actions for any breach of discipline, including police misconduct/serious misconduct:

- a reprimand
- a fine of not more than 3% of the annual base rate of pay of the member, police auxiliary officer (PAO), cadet or liaison officer
- demotion
- reduction in salary to a specified rate within the limits of salary fixed in relation to the office they hold
- suspension from duty
- discharge or dismissal from WA Police or, in the case of a PAO or Aboriginal Police Liaison Officer (APLO), cancellation of their appointment.¹⁶⁰

The Commissioner of Police may also remove commissioned and non-commissioned officers, constables, APLOs and PAOs if the commissioner has 'lost confidence' in the member having regard to one or more grounds of integrity, honesty, competence, performance or conduct.¹⁶¹

WA Police also uses a managerial intervention model (MIM) designed to align behaviours with WA Police values and its code of conduct through managerial interventions. They may accompany a disciplinary charge or loss of confidence process. Managerial interventions include:

- alternative or restrictive duties
- fitness for duty assessment
- increased supervision
- counselling
- change of shifts
- immediate retraining
- managerial initiated training or discretionary transfers
- a stand down notice
- a stand aside notice.¹⁶²

Outcomes following a finding of serious misconduct

It is important that employing agencies impose appropriate and just outcomes. That is, proportionate and consistent outcomes that reflect the nature and gravity of the conduct, deter others from similar conduct, and take into account personal circumstances.

¹⁶⁰ *Police Act 1892*, s 23. This section includes a range of options.

¹⁶¹ *ibid*, ss 8, 33L, 38B(4), 38G(4).

¹⁶² Submission 10, Western Australia Police Force, pp 3–4.

The commission records outcomes advised by agencies. Data for the financial years 2017–18 to 2022–23 follows.

Table 4.1: Recorded serious misconduct outcomes for all agencies for allegations in 2017–18 to 2022–23

	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22	FY 2022-23
RECORDED DISCIPLINARY ACTION	WA Police Force					
Discretion Exercised	0	0	7	13	5	10
Dismissal	0	2	11	7	0	3
Financial Sanction	1	1	7	15	1	0
Formal Warning Letter	1	1	26	66	51	52
Local Management / Improvement Action	3	12	88	327	205	502
Other Sanction	0	10	17	37	29	53
Suspension	0	0	3	0	1	2
	5	26	159	465	292	622
	Government Sector					
	0	0	5	5	12	9
	1	1	4	33	25	37
	0	0	2	12	7	1
	1	1	8	72	70	73
	5	5	19	58	105	50
	1	1	7	9	18	12
	0	0	0	0	0	0
	8	8	45	189	237	182

It is important to note that the commission started comprehensively recording data in 2020–21, and therefore data prior to this year is incomplete.¹⁶³ The financial year in the above table reflects the date the commission identified the allegation. For example, if an agency referred an allegation to the commission in 2021–22, but advised the commission of the outcome in 2022–23, the outcome is recorded in the 2020–21 column.¹⁶⁴ The data is current as at 18 August 2023.¹⁶⁵

It is also important to note that the commission records outcomes when an agency advises of the outcome on referring a matter to the commission, and for allegations the commission decided to refer to the agency and oversight (as explained in chapter 2). Again, when the commission decides that referring an allegation to the agency is not in the public interest, perhaps because the allegation is relatively trivial, the agency may continue its disciplinary process but does not report the outcome to the commission.

In short, while table 4.1 clearly does not record all serious misconduct outcomes, it is the only outcome table available and a very useful indicator of outcomes imposed in serious misconduct matters.

The number of available disciplinary actions, improvements actions and outcomes for the broad range of public officers within the remit of the commission presents challenges on how to record and standardise outcomes.

¹⁶³ Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, email, 20 October 2023, p 1.

¹⁶⁴ *ibid.*

¹⁶⁵ At that date the commission had not yet received outcomes on 154 allegations from WA Police and 321 allegations from the government sector for 2020–21 and 2022–23: Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 5.

The commission explained the above categories as follows:¹⁶⁶ (Committee views on ways to improve how data is recorded are noted further below.)

- Discretion exercised – although an allegation is sustained, the employing agency may exercise discretion and take no action. (Table 4.3 describes this category as ‘no further action’.) For police, Commissioner McKechnie also appeared to suggest that this category means WA Police decided not to prosecute an officer, but will pursue managerial options.¹⁶⁷
- Dismissal – the public officer’s contract of employment is terminated.
- Financial sanction – the public officer incurs a financial penalty.
- Formal warning letter – any written guidance such as a letter, formal reprimand and Police Managerial Notice.
- Local management/improvement action – this includes verbal guidance and retraining such as retraining on critical skills and accountable and ethical decision-making.
- Other sanction – anything not included in the above categories.
- Suspension – the public officer is suspended from work for a specified period.¹⁶⁸

In relation to police outcomes, WA Police’s *Annual Report 2023* noted that in 2022–23 its Standards and Legal Portfolio dealt with 2,734 matters, investigated 976, and 315 were sustained.¹⁶⁹ However, it was disappointing that its *Annual Report 2023* did not include a table of sanctions imposed on police employees, as it had in previous years.

Following committee inquiries, Commissioner Col Blanch recognised that information on sanctions imposed on employees should be included in its annual report, and has undertaken to ensure its inclusion in future annual reports.¹⁷⁰ This is a positive outcome. This information must be made public.

Finding 15

The Western Australia Police Force’s *Annual Report 2023* did not include a table of sanctions imposed against its employees for misconduct, as it had in previous years. Following committee inquiries, the Commissioner for Police has undertaken to include this information in future annual reports.

WA Police advised the committee that in 2022–23 it imposed the following sanctions on its employees on sustained matters dealt with by its Standards and Legal Portfolio.¹⁷¹

¹⁶⁶ Information sourced from attachment to letter from the Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, letter, 9 August 2022, unless otherwise advised.

¹⁶⁷ The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 11.

¹⁶⁸ Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 9 August 2022.

¹⁶⁹ Western Australia Police Force, *Annual Report 2023*, p 35.

¹⁷⁰ Col Blanch, Commissioner for Police, Western Australia Police Force, letter, 25 October 2023, p 1.

¹⁷¹ *ibid*, p 2. WA Police data relates to all matters/complaints dealt with by its Standards and Legal Portfolio which includes, *but is not limited to*, police misconduct/serious misconduct dealt with by the commission. Commissioner Blanch advised that due to the low threshold of ‘police misconduct’ in the CCM Act ‘almost everything’ goes to the commission: Col Blanch, Commissioner for Police, Western Australia Police Force, *transcript of evidence*, 19 October 2022, p 9.

Table 4.2: Sanctions imposed on WA Police employees in 2022–23 (a total of 362)

Sanction imposed	Employees
Managerial notices	79
Assistant Commissioner’s warning notice	8
Deputy Commissioner’s warning notice	0
Section 23 proceedings	54
Loss of confidence	19
Criminal charges (sworn officers)	13
Criminal charges (police staff and police auxiliary officers)	8
Verbal guidance	181*

*Verbal guidance statistics reflect count of outcomes rather than employees.

The commission also records serious misconduct outcomes by agency. This data for 2022–23 allegations, current as at 5 October 2023, follows.

Table 4.3: Serious misconduct outcomes on 2022–23 allegations by agency

FY 2022-23 ALLEGATION DATA	Discretion Exercised - No Further Action	Dismissal	Financial Sanction	Formal Warning Letter	Local Management / Improvement Action	Other Sanction	Suspension	Grand Total
Child and Adolescent Health Service				2	2			4
Department of Biodiversity, Conservation and Attractions		1						1
Department of Communities				6	6			12
Department of Education	3	3		2	16			24
Department of Fire and Emergency Services				1				1
Department of Health		2						2
Department of Justice		4	1	5	4	1		15
Department of Mines, Industry Regulation and Safety		1						1
Department of Primary Industries and Regional Development		2						2
Department of Training and Workforce Development				1				1
Department of Transport		1		3	6			10
East Metro Health Service		1		3	1			5
Edith Cowan University					1			1
Health Support Services				4				4
Local Government Authorities	3	11		10	4	2		30
Main Roads WA	1	1						2
North Metro Health Service				8	2	2		12
PathWest		2		1				3
Pilbara Ports Authority	1							1
South Metro Health Service		3		14	6	1		24
Synergy		1						1
WA Country Health Service				3	1	1		5
WA Police Force	10	3		57	504	54	2	630
Water Corporation				1	2			3
Western Power	1	8		10		5		24
Total	19 (18)	44 (32)	1 (1)	131 (92)	556 (487)	66 (46)	2 (2)	818* (678)

() Figures in parentheses are the number of cases. NB a case can contain more than one allegation.

* Pending Agency Outcome = 293 allegations

It is important to note that a higher number of sustained allegations may *not* indicate that the agency has a higher rate of serious misconduct. A high or low number of allegations or sustained allegations, and an increase or decrease in these numbers, could mean a number of things. A high number of allegations may mean that the agency has a good reporting culture. Misconduct education and awareness campaigns typically result in an increase in allegations.¹⁷²

We would like to see a lift in the numbers of reports to us because that means that the ‘speak out’ culture is taking hold.

Sharyn O’Neill
Public Sector Commissioner

On the other hand, no allegations could raise concerns about misconduct not being reported. While fewer allegations may raise concerns, it could be positive and reflect better awareness at the agency resulting in less misconduct. For example, the number of allegations at the Department of Transport decreased following initiatives by the department, working with the commission, to educate and raise awareness about the unauthorised use of TRELIS.¹⁷³

Imposing outcomes on public officers

The committee inquired into how agencies ensure that they impose appropriate, proportional and consistent outcomes on public officers. Agency practices vary but may include:

- outcome decisions being made centrally, by an appropriately qualified person¹⁷⁴
- seeking advice from the State Solicitor’s Office (SSO) before making a decision to dismiss an employee or dealing with more serious allegations, to ensure an appropriate sanction is consistent with precedents set by the Western Australian Industrial Relations Commission¹⁷⁵

Experience suggests that well-executed disciplinary processes by skilled practitioners make it more likely integrity breaches get addressed appropriately.

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¹⁷² For example, in 2021–22 there was a significant increase in the number of serious misconduct allegations at the Department of Education, from 99 to 378 allegations. Other than COVID, the department attributed this increase to its new Code of Conduct and enhanced education and training to promote its standards and values: Jay Peckitt, Acting Director General, Department of Education, letter, 11 May 2023, p 3. The Department of Communities also said that it typically sees an increase in notifications after awareness campaigns: Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 27 March 2023, p 4.

¹⁷³ Iain Cameron, Managing Director, Department of Transport, *transcript of evidence*, 27 March 2023, p 5. TRELIS is a database used to facilitate the delivery of vehicle and driver licensing and registration services.

¹⁷⁴ For example, the Department of Justice and Department of Communities advised that only the Director General can authorise the dismissal of an employee. Communities has delegated other decisions to senior managers of integrity: Dr Adam Tomison, Director General, Department of Justice, *transcript of evidence*, 27 March 2023, p 6; Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 17. The Department of Education has delegated the decision to issue an improvement action to senior integrity managers: Department of Education, letter, 11 May 2023, p 9.

¹⁷⁵ For example, Dr Adam Tomison, Director General, Department of Justice, *transcript of evidence*, 27 March 2023, p 6; Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 17; Department of Education, letter, 11 May 2023, pp 7–8.

- developing a discipline evaluation matrix to ensure consistency across the agency¹⁷⁶
- discussing outcomes at integrity meetings – the Department of Communities includes sanctions and outcomes on the agenda for its weekly meetings to ensure consistency.¹⁷⁷

Delay in an agency receiving information and/or advice about an allegation from the commission may affect its ability to efficiently and effectively deal with a disciplinary matter.

Western Power recommended that the committee consider whether the commission can have regard to the need for the agency to act quickly in disciplining misconduct, because delay in providing information affects its ability to discipline an officer.¹⁷⁸ On the other hand, the Department of Jobs, Tourism, Science and Innovation commended the commission for keeping it informed of an investigation.¹⁷⁹

Finding 16

Delay in an agency receiving information and/or advice about an allegation from the Corruption and Crime Commission may affect its ability to efficiently and effectively deal with a disciplinary matter. When appropriate, the commission should share information with an agency as soon as possible in order to assist it to progress disciplinary action.

A common outcome – local management/improvement action

It is challenging to assess if serious misconduct outcomes are appropriate.

However, the committee was surprised by the prevalence of one outcome in ‘serious misconduct’ matters – ‘local management/improvement action’. According to commission data for 2021–22 allegations, noted at table 4.1, this was:

- 205 of the 292 (70%) police misconduct outcomes
- 105 of the 237 (44%) rest of public sector outcomes.

Again:

- The local management/improvement action category includes verbal guidance and retraining such as retraining on critical skills, and accountable and ethical decision-making.
- Under the PSM Act, an ‘improvement action’ includes action to improve performance or conduct including counselling, training and development, and issuing a warning that conduct is unacceptable or that the employee’s performance is not satisfactory.¹⁸⁰
- An improvement action may be imposed with other sanctions. The committee could not identify how often this happens.

176 For example, the Child and Adolescent Health Service uses a matrix: Submission 22, Child and Adolescent Health Service, p 2; also Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 17.

177 Mike Rowe, Director General, and Andrew Salter, Executive Director, Professional Standards, Department of Communities, *transcript of evidence*, 29 March 2023, p 1.

178 Submission 14, Western Power, p 2.

179 Submission 5, Department of Jobs, Tourism, Science and Innovation, p 2.

180 *Public Sector Management Act 1994*, s 3.

The committee asked agencies why they choose to impose a local management/improvement action, and what this means at their agency.

The Department of Education said:

The Department focuses on enhancing performance and encouraging high standards of staff conduct when determining the appropriate action to take after a complaint is received or following a disciplinary investigation. Improvement action is considered an effective option to encourage a change in behaviour in accordance with expectations set by the Department. This approach acknowledges staff make mistakes and provides an avenue for continued professional development and support. The process is an opportunity for staff to reflect on their conduct and identify how they could have managed the situation differently. [It also noted that it may combine improvement actions with more significant penalties].¹⁸¹

The Department of Communities, which is using improvement actions ‘a little bit more’, said that this option is about early intervention, with the employee working with a line manager and having a conversation about what happened, and the misconduct being a learning opportunity. That this outcome is about ‘continuous improvement, rather than just a letter’.¹⁸²

The Department of Justice also emphasised its focus on educating the employee, clarifying what work must be done to move forward, monitoring the employee and taking the matter further if behaviour does not improve.¹⁸³ The department gave an example of how the outcome may escalate:

I will give you an example of unauthorised access of the TOMS system. If an employee was to do that for the first time and they admitted to it—that is part of it; showing contrition—and say it was out of curiosity, they may receive an improvement action. But if they continued to look at that system—I know of one example where an employee kept looking at it and he received a reprimand and then he kept looking at it again. His third time, he was terminated. So it is education first, because it costs a lot of money to train a prison officer and, hopefully, get them on the straight. There are reasons why people do things, curiosity being one. We hope to educate them before we terminate them.¹⁸⁴

As noted in table 4.1, the commission has recorded local management/improvement action as 205 of the 292 (70%) police outcomes for 2021–22, and, as noted at table 4.2, WA Police recorded ‘verbal guidance’ as 181 of the 362 (50%) outcomes for police complaints in 2022–23. While data records different things, it is clear that WA Police commonly impose a local management/ improvement action and verbal guidance.

181 Jay Peckitt, Deputy Director General, Education Business Services, Department of Education, document attached to email, 11 May 2023, p 9.

182 Andrew Salter, Executive Director, Professional Standards, Department of Communities, *transcript of evidence*, 29 March 2023, p 19.

183 Dr Adam Tomison, Director General, Department of Justice, *transcript of evidence*, 27 March 2023, p 14.

184 James August, Acting Executive Director, People Culture and Standards, Department of Justice, *transcript of evidence*, 27 March 2023, p 14.

WA Police explained that verbal guidance involves:

[Generally] a senior member of a police district will sit with the officer. They know that they have already been investigated and the expectations of the agency will be relayed back to that officer in a long conversation. They will try to get to the cause of why that officer is not following, say, a guideline. Generally, the district will involve the officer in charge or their supervisor because they know this officer well. So, the term “verbal guidance”, there is a lot of work that goes with that. Really, it is the start of if we had not engaged with that officer before early intervention and said, “Hey, this is unacceptable and this is why. How can we help you moderate your behaviour so that it does not repeat and it gets to a higher level?”¹⁸⁵

The Aboriginal Legal Service of Western Australia (ALSWA) raised concerns about WA Police imposing verbal guidance (or any outcome at all), and Civil Liberties Australia (WA) says WA Police impose ‘no sanctions’.¹⁸⁶ One of the examples ALSWA provided to demonstrate its concerns about verbal guidance involved police officers entering the bedroom of an 8-year-old boy staying with his grandmother in a regional town, with one officer pulling him out of bed saying ‘you have to go to school’, despite the officers having no lawful authority to enter the house. The police did not impose any managerial intervention beyond a ‘de-brief session’ with the officers.¹⁸⁷

The previous committee found in its report *If not the CCC ... then where? An examination of excessive use of force allegations against members of the WA Police Force* that a Police district or division investigating their own officers for misconduct ‘can result in either real or perceived conflicts of interest’.¹⁸⁸ In a similar vein, ALSWA is concerned about verbal guidance being provided to a colleague:

There are always concerns about independence, impartiality and effectiveness when guidance is provided by a local Officer In Charge or supervisor, who will invariably work closely with, and/or have a personal relationship with, the subject police officer.¹⁸⁹

We appreciate that public officers are an important resource and asset to agencies, and investing in them by providing guidance and retraining may be an appropriate outcome in a range of serious misconduct matters. It is also understandable why an objective observer or complainant may not consider imposing only a local management/ improvement action, especially a verbal sanction, a proportionate response to serious misconduct.

185 Greg Crofts, Superintendent, Ethical Standards Division, Western Australia Police Force, *transcript of evidence*, 19 October 2023, p 9.

186 Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia, *transcript of evidence*, 15 August 2022, p 1. Civil Liberties Australia (WA) says ‘there are no disciplinary measures taken and no sanctions’ by police: Submission 3, Civil Liberties Australia (WA), p 3.

187 Submission 20, Aboriginal Legal Service of Western Australia, p 13; and Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia, email, 23 August 2022, p 1.

188 Joint Standing Committee on the Corruption and Crime Commission, *If not the CCC ... then where? An examination of excessive use of force allegations against members of the WA Police Force*, Report 15, September 2020, finding 32.

189 Peter Collins, Director, Legal Services, Aboriginal Legal Service of Western Australia, email, 23 August 2022, p 1.

As noted earlier, the committee was surprised at the prevalence of the local management/improvement action outcome for serious misconduct. However, it is difficult to assess based on our inquiries whether this outcome is an appropriate and effective response to serious misconduct in most cases, or if this data reflects a degree of indifference to imposing an appropriate outcome.

The broad range of conduct captured by ‘serious misconduct’, and, in particular, ‘police misconduct’ under the CCM Act makes it difficult to assess whether these outcomes appropriately reflect the objective seriousness and all the circumstances of the conduct. Some police outcomes may reflect not only the broad definition of police misconduct but the nature of complaints arising from police interactions with the public.

It is also not clear from commission or police data what the local management/improvement action outcome involves, what type of conduct it relates to, and how often this outcome is accompanied by another sanction.

What the prevalence of this outcome highlights is the importance of the commission’s even limited oversighting of outcomes (discussed in chapter 2). As noted in finding 7, the commission’s closure report is an important integrity tool.

Further to recommendation 2, the committee considers it appropriate for the commission to enhance its recording and oversight of local management/improvement action outcomes, initially for a trial period of 2 years. The commission could undertake the above by requesting further detail, which need not be long, in agency closure reports. This could include:

- detail on what the local management/improvement action involves in the particular case – verbal guidance, education, training and supervision, courses to be completed or other action, and who is delivering the outcome and supervising this process
- if this outcome is accompanied by a disciplinary sanction
- if this outcome is imposed in the first instance of serious misconduct by the officer
- why the agency considered this the most appropriate outcome in all the circumstances.

Again, the committee emphasises, especially to agencies, that an improvement action may be an appropriate outcome in a serious misconduct matter, especially for a first time offender and an incident at the lower range of serious misconduct. But given that these outcomes are being imposed on ‘serious’ misconduct so frequently, it is appropriate to seek clarification and perhaps assurance that the sector is responding to serious misconduct in an ‘appropriate way’.

The commission seems best placed to undertake this task, as serious conduct is within its remit. If the Public Sector Commissioner was inclined to undertake the task, perhaps under its section 45A prevention and education power in the CCM Act, that is a possible option.

Finding 17

The most common outcome following a finding of serious misconduct is a 'local management/improvement action'. This includes verbal guidance and retraining such as retraining on critical skills, and accountable and ethical decision-making. For 2021–22 allegations, a local management/improvement action was 205 of 292 (70%) of police outcomes and 105 of 237 (44%) of outcomes for the rest of the public sector. While the committee was surprised at the prevalence of this outcome, it is not possible to assess if the outcome is usually being imposed in appropriate circumstances.

Recommendation 5

That the Corruption and Crime Commission enhance its oversight of 'local management/improvement action' for a trial period. This could be done by asking the agency to advise in its closure report:

- details of what the local management/improvement action involves
- if this outcome is accompanied by a disciplinary sanction
- if this outcome is imposed in the first instance of serious misconduct by the officer
- why it considered the outcome to be most appropriate in all the circumstances.

The above should be done for a trial period of 2 years. The commission should report its findings to the committee of the next Parliament.

Recording serious misconduct information and data

The outcomes recorded by the commission following a finding of serious misconduct, as advised by agencies, are noted at tables 4.1 and 4.3.

While the committee commends the commission for recording outcomes and improving its recording in recent years, there is room for a more robust and refined recording of outcomes. The commission said it is looking at ways to better capture data.¹⁹⁰

The committee questions why the commission, in recording outcomes, does not disaggregate and better particularise:

- the 'discretion exercised/no further action' category in table 4.1, which table 4.3 notes as 'discretion exercised-no further action' – we are unsure if this means only no further action.¹⁹¹
- the 'other sanctions' category – the commission said it is considering improvements to this category
- the 'local management/improvement action' category – the commission said they are considering adding 'verbal warning' as an outcome.¹⁹² As noted in table 4.4, PSC's *State*

190 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 11.

191 As noted in table 4.4, PSC's *State of the WA Government Sector Workforce 2021–22* records that no sanction was imposed in 3.2% of disciplinary offences

192 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 11.

of the WA Government Sector Workforce 2021–22 separately records warning/reprimand, counselling, and training and development outcomes.¹⁹³

Commission categories may not always accurately reflect agency outcomes. For example, Western Power does not ‘suspend’ employees as noted in table 4.3 but may stand an employee down while investigating a matter.¹⁹⁴ Differences may be due to the commission using one term to capture outcomes imposed under different disciplinary regimes.

Commission and agency outcomes often cannot be reconciled. This may be due to agencies not being required to advise the commission of the outcomes of serious misconduct allegations the commission did not refer to it; data reflecting different sanctions under different disciplinary regimes; poor agency recording of serious misconduct; and there being little or no standardisation on how serious misconduct is recorded across agencies.

Like the commission, many agencies have improved how they record information and data in the last few years, and can readily extract serious misconduct data as a distinct subset of breach of discipline matters.¹⁹⁵ Case management systems may improve when an agency takes action to build integrity after significant fraud and corruption is exposed at the agency.

Unfortunately, the varying capacity of case management systems and quality of recording serious misconduct information and data between agencies was evident during the inquiry. Some agencies, including the Department of Communities, Department of Justice and health sector agencies, have more mature systems able to produce a range of serious misconduct information. On the other hand, the Department of Education was not able to readily provide the committee with the number of serious misconduct allegations. However, in 2023–24 it intends to implement a new case management system which it anticipates will record and have the capacity to report on serious misconduct.¹⁹⁶

Agencies must strive to improve record keeping systems and standardise how they record *serious misconduct* information and data, including outcomes. The independent review of the commission’s ASD unit recommended that the commission ‘review the way it categorises allegation data to ensure consistent and standardised capturing of information about alleged serious misconduct across the sector’.¹⁹⁷

PSC collects information on all disciplinary processes and minor misconduct from agencies within its remit. Its annual Integrity and Conduct Annual Collection survey to agencies requests details of disciplinary actions against standardised categories of conduct and outcomes.

193 Public Sector Commission, *State of the WA Government Sector Workforce 2021–22*, 23 November 2022, p 50.

194 Sam Barbaro, Chief Executive Officer, Western Power, *transcript of evidence*, 27 March 2023, p 11.

195 For example, since 2020 record keeping at the Department of Justice has ‘dramatically improved’ allowing for more accurate data on serious misconduct: Dr Adam Tomison, Director General, Department of Justice, letter, 29 September 2022, p 1.

196 Lisa Rogers, Director General, Department of Education, letter, 19 October 2022, p 2; Jay Peckitt, Acting Director General, Department of Education, letter, 11 May 2023, p 5.

197 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 13.

As noted above, the commission oversees agencies working under different disciplinary regimes, which may make the task of standardising information and data across agencies more challenging. PSC categories could be a starting point. PSC's Integrity Practitioners' Group may assist in determining if and how to better standardise information and data. A challenge may be that agencies have established their own systems.¹⁹⁸

Finding 18

The Corruption and Crime Commission's recording of information and data on serious misconduct, including outcomes such as disciplinary actions and improvement actions, has improved in recent years, but there is room for further refinement.

Agencies' case management systems and recording of serious misconduct information and data, as a distinct subset of disciplinary matters, varies from good to very poor.

Recommendation 6

That the Corruption and Crime Commission:

- refine its recording of serious misconduct outcomes such as disciplinary actions and improvement actions
- partner with agencies to standardise how information and data on serious misconduct outcomes (including disciplinary actions and improvement actions) are categorised, reported to and recorded by the commission.

The importance of information and data

Robust and sophisticated information and data on serious misconduct (and other misconduct) is important. It enables integrity agencies, and all employing agencies, to take a proactive, intelligence and risk-based approach to integrity.

Analysis of information and data may identify trends, areas that require further attention, and how to most effectively allocate resources.

Data analysis is an increasingly important tool in building integrity.

The commission collects and analyses information and is taking an intelligence approach to its serious misconduct role (see pull quote).¹⁹⁹ For example, information may identify a trend

[The] Commission now captures a range of information about oversight matters which means that as more data becomes available, the intelligence gathered will assist the Commission to identify areas of concern and inform the Commission's allocation of resources.

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198 For example, the North Metropolitan Health Services' Integrity Directorate, established in 2020, has led to centralised integrity assessment and case management, and increased standardisation: Dr Shirley Bowen, Chief Executive, NMHS, attachment to letter, 30 September 2022, p 5.

199 The CCM Act provides that as part of its role to help agencies prevent serious misconduct, the commission may analyse information it gathers from agencies, and systems used within agencies: *Corruption, Crime and Misconduct Act 2023*, s 18(4).

and the value of undertaking a thematic review on a serious misconduct risk. In 2021–22, the commission completed 3 thematic reviews relating to 46 allegations.²⁰⁰

This is consistent with the recommendation by the independent reviewer of ASD (discussed in chapter 2); that the commission expand its thematic review function.²⁰¹ The commission advised that:

In 2023–24 the commission will review and update the allegation categories used in its case management system to improve data collection and the ability to identify emerging trends across the sector.²⁰²

Agencies are increasingly using data and intelligence to improve integrity, particularly those with better case management systems. For example, through data analytics the Department of Transport has improved its ability to identify where to focus its misconduct resources.²⁰³ The Department of Health says improvements around reporting and intelligence have produced ‘really valuable’ reports.²⁰⁴

*[Data and reporting intelligence]
is definitely where integrity is
heading into the future.*

*Dr Kirsty Edmonds, Director,
System-wide Integrity Services,
Department of Health*

Finding 19

Robust and sophisticated information and data on serious misconduct is important. It enables agencies to take a proactive, intelligence and risk-based approach to integrity.

Recommendation 7

That the Government ensure that agencies implement case management systems that improve their capacity to record information and data on serious misconduct in a standardised way.

Transparency, publishing outcomes

The commission does not publish the outcomes imposed after a finding of serious misconduct, including the information in tables 4.1 and 4.3. Neither do agencies. Unless the media or commission reports on outcomes, they are not public.

Accountability and transparency are essential elements of good governance. They build public confidence. The public has the right to know outcomes of serious misconduct in an anonymised and de-identified way. Even if the information made public does not cover all outcomes.

²⁰⁰ Corruption and Crime Commission, *Annual Report 2021–22*, p 24.

²⁰¹ Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 13.

²⁰² *ibid*, p 13.

²⁰³ Iain Cameron, Managing Director, Department of Transport, *transcript of evidence*, 27 March 2023, p 3.

²⁰⁴ Dr Kristy Edmonds, Director, System-wide Integrity Services, Department of Health, *transcript of evidence*, 27 March 2023, p 9.

PSC publishes a summary of outcomes for *all* disciplinary matters for agencies within its remit in its annual State of the WA Government Sector Workforce reports.²⁰⁵ The table from its latest report, the 2021–22 report, follows:²⁰⁶

Table 4.4: Public Sector Commission: actions taken for a breach of discipline in 2020–21 and 2021–22**

Action taken*	2020-21 (% of total)	2021-22 (% of total)
Warning/reprimand	691 (42.3%)	849 (40.0%)
Counselling	305 (18.7%)	310 (14.6%)
Training and development	229 (14.0%)	179 (8.4%)
Termination	138 (8.5%)	527 (24.8%)
No sanction (i.e. no further action was taken)	65 (4.0%)	68 (3.2%)
Reduction in level of classification	29 (1.8%)	28 (1.3%)
Imposition of fine (e.g. financial penalty)	19 (1.2%)	33 (1.6%)
Reduction in monetary remuneration of employee	9 (0.6%)	7 (0.3%)
Transfer	8 (0.5%)	19 (0.9%)
Other [^]	139 (8.5%)	104 (4.9%)
Total	1,632 (100%)	2,124 (100%)

* Individual processes may be counted against more than one row where multiple actions were taken.

[^]Other outcomes included other improvement actions and instances where employees subject to completed process resigned before action was taken.

** The number of terminations in 2021–22 is likely the result of the mandatory COVID–19 vaccination policy.

Commissioner McKechnie recognised that this type of information should be publicly available but raised the question of what head of power the commission would rely on to do this, as it may be considered a ‘corruption prevention’ activity.²⁰⁷ (The need for the commission to have a clear corruption prevention power is discussed in chapter 6.)

Although the Public Sector Commissioner has the primary responsibility for corruption prevention and education under the CCM Act (other than for WA Police), the commission is the preferred body to publish these outcomes as serious misconduct falls within its remit.

The CCM Act provides that the commission’s annual report must include ‘a description of the extent to which investigations carried out by the Commission have resulted in prosecutions of public officers or other persons or disciplinary action against public officers’.²⁰⁸

The commission publishes a summary of prosecutions in its annual report (see table 5.1).

The CCM Act includes confidentiality provisions, and vests the commission with the power to disclose official information in certain circumstances if this in the ‘public interest’.²⁰⁹

205 Sections 45ZD of the *Corruption, Crime and Misconduct Act 2003* and 22D of the *Public Sector Management Act 1994* set out what to include in the Public Sector Commissioner’s annual report.

206 Public Sector Commission, *State of the WA Government Sector Workforce 2021–22*, 23 November 2022, p 50. Agencies occasional note disciplinary outcomes in their annual reports. For example, WA Police and Fremantle Ports: Submission 1, Fremantle Ports, p 1.

207 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, 30 August 2023, *transcript of evidence*, 30 August 2023, p 12.

208 *Corruption, Crime and Misconduct Act 2003*, s 91(2)(e).

209 *ibid*, s 152(4)(c).

If legislative amendment is required to provide the commission with a clear power to publish the outcomes as recommended below, the government should amend the CCM Act or include provisions in its new Act that provide this authority.

Publishing the level of detail recommended below is less than what the Local Government Elected Members Association (LGEMA) considers should be published. Table 4.3 combines the outcomes from all local governments. The LGEMA says each local government should publish its serious misconduct allegations and outcomes in their Annual Report.²¹⁰

Finding 20

The Corruption and Crime Commission does not publish information or data on sanctions and other outcomes imposed on public officers found to have engaged in serious misconduct.

Recommendation 8

That the Corruption and Crime Commission publish information and data on outcomes imposed on public officers found to have engaged in serious misconduct on its website. At a minimum, information similar to that contained in tables 4.1 and 4.3 should be published.

Other outcomes

Recovering money obtained by serious misconduct

Despite committee inquiries, we are unable to report with confidence on:

- how often serious misconduct leads to a financial loss to the State
- how often the State takes action to recover the financial loss through civil action, criminal prosecution or otherwise
- how often the State recovers financial loss.

There is no mechanism for recovering money obtained by serious misconduct through disciplinary processes in the *Public Sector Management Act 1994* (PSM Act).²¹¹

Departments have discussed and negotiated repayments with employees, as noted in the Department of Justice's comment below. In another case, the Department of Communities imposed a fine against the employee to the value of the money misappropriated.²¹²

As noted earlier in this chapter, permitted sanctions for a breach of discipline include a fine not exceeding 5 days' remuneration under the PSM Act, or a fine of not more than 3% of the annual base rate of pay for police. Tables 4.1 and 4.3 demonstrate that this sanction (to date) was an uncommon outcome last year – both note one financial sanction. It seems to the committee that a financial penalty could be an appropriate sanction in many cases involving financial loss.

²¹⁰ Submission 12, Local Government Elected Members Association, p 6.

²¹¹ Department of Communities, attachment to email, 26 May 2023, p 5.

²¹² Mike Rowe, Director General, Department of Communities, letter, 7 October 2022, p 2.

Legal options to recover money include:

- a prosecutor asking the court for an order for restitution to the agency to the amount misappropriated, or supported by the evidence, when the public officer is convicted of a criminal offence arising from the serious misconduct²¹³
- civil action to recover money including property confiscation under the *Criminal Property Confiscation Act 2000*.

Challenges to legal actions to recover money include:

- the financial position of the person from whom recovery is sought
- the location of the person and their assets
- other legitimate claims to the assets
- available defences to the claim
- the legal cost of taking recovery action.²¹⁴

From our inquiries, it appears that the recovery of State money is not common. Many instances of serious misconduct may not involve a financial loss to the State.

Agencies say they seek advice from SSO on options to recover money.²¹⁵ SSO is aware 'of matters' where money has been recovered, and of one decision not to recover money obtained by serious misconduct. It has records of being asked for advice on this on 5 occasions.²¹⁶

Committee inquiries with 14 large agencies revealed that between 2017–18 and 2021–22:

- the South Metropolitan Health Service took action to recover money from a public officer on 8 occasions²¹⁷
- the Department of Mines, Industry Regulation and Safety took action to recover money on one occasion²¹⁸
- the Department of Justice said it has successfully recovered money from public officers including one instance where a staff member received extra payment as a result of a

213 Department of Communities, attachment to email, 26 May 2023, p 5.

214 Graham Hill, State Solicitor, State Solicitor's Office, letter, 17 August 2023, p 2.

215 For example, Angela Kelly, Acting Director General, Department of Health, letter, 3 May 2023, p 4; Mr Adrian Bautista, Chief Executive, Submission 6, PathWest Laboratory Medicine WA, p 2. The State Solicitor's Office cannot estimate how often the State recovers money from a public officer or former officer: Graham Hill, State Solicitor, State Solicitor's Office, letter, 17 August 2023, p 3.

216 Graham Hill, State Solicitor, State Solicitor's Office, letter, 17 August 2023, p 2.

217 Paul Forden, Chief Executive, South Metropolitan Health Service, letter, 5 October 2022, p 3. It is interesting that the North Metropolitan Health Service advised that, between 2017–18 and 2021–22, on no occasion did it take action to recover money from a public officer for conduct the subject of a sustained allegation: Dr Shirley Bowen, Chief Executive, North Metropolitan Health Service, attachment to letter, 30 September 2022, p 8.

218 Richard Sellers, Director General, Department of Mines, Industry Regulation and Safety, letter, 7 October 2022, p 1.

leave form. The department ‘generally’ achieves recovery by negotiating with the employee.²¹⁹

- civil proceedings were successfully pursued against a former overseas based officer employed by the Department of Jobs, Tourism, Science and Innovation.²²⁰

In the committee’s view, the Government must direct all agencies within the remit of the commission to recover financial loss arising from serious misconduct whenever feasible and possible.

Given the lack of clarity on financial loss resulting from serious misconduct, the committee is of the view that it is necessary for the commission to enhance its oversight of this outcome for a trial period. The commission could undertake the above by requesting information in closure reports. The commission could work with Public Sector Commissioner on this. A trial would clarify the facts and identify any issues.

Parliament and the public have an interest in knowing if agencies are acting in the public interest by recovering financial loss.

Finding 21

It is not clear how often serious misconduct by a public officer results in a financial loss to the State, and how often agencies take action to recover, and successfully recover, the financial loss to the State.

Recommendation 9

That the Government direct agencies within the remit of the Corruption and Crime Commission to recover financial loss arising from serious misconduct wherever feasible and possible.

Recommendation 10

That the Corruption and Crime Commission enhance its oversight of what follows after a finding of serious misconduct involving a financial loss to the State. This could be done by asking the agency to advise in its closure report if:

- the serious misconduct involved a financial loss to the State
- the agency took steps to recover the financial loss and, if not, why not
- the agency recovered any financial loss.

The above should be done for a trial period of 2 years. The commission should report its findings to the committee of the next Parliament.

219 James August, Acting Executive Director, People Culture and Standards, Department of Justice, *transcript of evidence*, 27 March 2023, p 7.

220 Submission 5, Department of Jobs, Tourism, Science and Innovation, pp 2–3. Department of Justice, *Review into Prosecutions arising from Corruption and Crime Commission investigations*, May 2020, p 14.

Unexplained wealth and criminal benefits powers

The *Criminal Property Confiscation Act 2000* provides the commission with a mechanism to recover property from public officers.

While unexplained wealth and criminal benefits powers are largely focused on people associated with organised crime, these powers have been applied to public officers.²²¹ For example, the criminal benefit acquired by Paul Whyte, the former senior executive at the Department of Communities, was assessed and declared to be exactly \$11,061,562.12. The commission confiscated 2 Mosman Park properties, an interest in an estate, proceeds of the sale of race horses and \$1.4 million from his government superannuation fund.²²²

The action against Mr Whyte led to amendments to the State Superannuation Regulations 2001. These allow the confiscation of superannuation in Government Superannuation Board (GESB) member accounts in certain circumstances.²²³

Voluntary severance and redundancy payments

The Public Sector Commissioner told the committee that it would be ‘unusual’ for a public officer the subject of a serious misconduct allegation to be given a voluntary severance and redundancy payment (see pull quote). Our inquiries with agencies support the view that this does not appear to be common.²²⁴ However, this has happened.

It would be unusual for someone under subject of serious misconduct to receive a redundancy at the same time but there are cases where this happens ... for fear of alerting the subject of an investigation.

Sharyn O’Neill, Public Sector Commissioner

In or around 2016, the North Metropolitan Health Service (NMHS) paid 3 officers voluntary severance payments totalling \$603,902 – being payments of \$221,932, \$218,464, and \$163,506 – when they were being investigated for serious misconduct.²²⁵ The committee does not know how much the payments exceeded what the officers would have received if they had resigned without the redundancy. The committee is aware that 2 of the 3 officers were later imprisoned for acting corruptly in the performance of their duties and other offence/s.

The Department of Health said the officers were entitled to the severance payments under the voluntary targeted separation scheme. In September 2016, NMHS sought advice from

221 Submission 7, Corruption and Crime Commission, p 2.

222 Corruption and Crime Commission, *Annual Report 2020–21*, p 35; Corruption and Crime Commission, *Exposing corruption in the Department of Communities*, 16 November 2021, p 6.

223 Corruption and Crime Commission, *Annual Report 2020–21*, p 35.

224 The committee asked 14 large agencies to advise, if known, the number of public officers who received a redundancy payment after an allegation was made or sustained between 2017–18 and 2021–22: letters dated 25 August 2022. The Department of Communities reported that one redundancy in 2020–21 was paid after an allegation of serious misconduct was made or sustained: Department of Communities, document received on 7 October 2022, p 2.

225 These amounts were confirmed by Angela Kelly, Acting Director General, Department of Health, attachment to letter, 3 May 2023, p 3. The media reported on the payments.

the commission before approving the payments. While NMHS had ‘some knowledge’ that certain officers were being investigated by the commission ‘that knowledge was limited’.²²⁶

The committee understands that the commission’s preference was to let normal human resources processes run, otherwise it would have alerted the officers to the investigation.²²⁷ The department/NMHS says it was precluded from taking action which had the potential to disclose commission investigations.²²⁸

In September 2019, the Department of Health’s response to a PSC/KPMG *Governance Review of the NMHS* recommended that:

- PSC provides policy advice in relation to the treatment of requests for voluntary severance by staff for which a misconduct investigation is in progress.
- The commission provide clear guidelines in relation to what public sector agency staff can advise on matters under investigation, noting governance requirements to ensure appropriate communication within the agency.
- The relevant employing authority’s chief executive be formally notified by the commission and/or PSC regarding any matters which relate to their staff.²²⁹

When the committee asked about the response to these recommendations, the department and NMHS only said that there is now a ‘greater awareness’ of these matters, they have developed an excellent working relationship with the commission and PSC, and they share information to the extent permitted by legislation.²³⁰

The State did not attempt to recover the voluntary severance payments paid to the NMHS officers. Media reports suggested that SSO was pursuing recovering the payments.²³¹

SSO told the committee that ‘[a]fter a consideration of the merits of commencing proceedings to recover the redundancy payments to one or more of the 3 NMHS officers a decision was taken not to do so’.²³² SSO added that whether a payment could be recovered from an officer or former officer depends on the circumstances of the case including

226 Angela Kelly, Acting Director General, Department of Health, attachment to letter, 3 May 2023, p 3.

227 Sharyn O’Neill, Commissioner, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 15. Commissioner McKechnie said, when discussing severances, that there will be some investigations it cannot tell anybody about, and ‘that is just the regrettable cost’: the Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 15.

228 Angela Kelly, Acting Director General, Department of Health, attachment to letter, 3 May 2023, p 3.

229 Department of Health response to PSC/KPMG *Governance Review of the NMHS*, Legislative Assembly, Tabled Paper No. 2692, tabled 5 September 2019.

230 Angela Kelly, Acting Director General, Department of Health, attachment to letter, 3 May 2023, p 4.

231 Media reports include Gary Adshead, ‘North Metro Health inquiry avoid probing redundancy payouts’, *The West Australian*, 10 December 2018, at < <https://thewest.com.au/news/wa/north-metro-health-inquiry-avoids-probing-redundancy-payouts-ng-b881045046z>> (accessed on 3 July 2023). This reported that a Government spokeswoman said ‘the payouts were being pursued by the State Solicitor’s Office in the hope of recovering the money’.

232 Graham Hill, State Solicitor, State Solicitor’s Office, letter, 17 August 2023, p 3. It is notable that when the committee asked the Department of Health and NMHS about the recovery of these payouts, they said they could not tell us and that ‘recovery of funds is a legal process undertaken by the State Solicitor’s Office’: Angela Kelly, Acting Director General, Department of Health, attachment to letter, 3 May 2023, p 4.

whether there was a mistake in making the payment of which the officer was aware.²³³

Arrangements for redundancy in the public sector are set out in the PSM Act and Public Sector (Redeployment and Redundancy) Regulations 2014. These laws are supported by Commissioner Instructions.

SSO said the ‘mere fact’ a person is under investigation ‘may not be sufficient reason’ to disqualify an officer otherwise entitled to a redundancy.²³⁴ The Public Sector Commissioner, Sharyn O’Neill, advised the committee that voluntary severance payments cannot be made to an employee.²³⁵

- for the purposes of primarily addressing a disciplinary matter for which appropriate mechanisms exist elsewhere²³⁶
- who is to be dismissed under Part 5 Division 3 (Substandard performance and disciplinary matters) of the PSM Act, which includes when a person has been convicted of a serious offence.²³⁷

The Public Sector Commissioner advised that when an employee is subject to disciplinary proceedings, agencies ‘could apply’ the following approach:

- a. Where an allegation of misconduct by an employee is received by an employer, this should be dealt with prior to any consideration of a voluntary severance or redundancy payment.
- b. Where the employer finds that an employee has committed a breach of discipline e.g. misconduct, and that employee is to be dismissed that employee is not able to receive a voluntary severance or redundancy payment.
- c. Where the employer finds that an employee has committed a breach of discipline and does not intend to dismiss the employee, that employee is eligible to receive a voluntary severance or redundancy payment.
- d. Where the agency is aware the CCC is dealing with serious misconduct by a public officer, this should be finalised prior to any consideration of a voluntary severance or redundancy payment.
- e. Where the agency is aware the Public Sector Commission is dealing with minor misconduct by a public officer, this should be finalised prior to any consideration of a voluntary severance or redundancy payment.²³⁸

If NMHS had followed the above approach suggested, not mandated, by the Public Sector Commissioner, the NMHS officers would not have received payments if NMHS was aware of an allegation or investigation against the officer. Also, if an officer was dismissed or committed a serious offence, he would not have been eligible for a payment.

233 Graham Hill, State Solicitor, State Solicitor’s Office, letter, 17 August 2023, p 3.

234 *ibid.*

235 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 2.

236 Public Sector Commission’s Instruction No. 12, *Redeployment and Redundancy*, cl 1.3(d).

237 Public Sector Management (Redeployment and Redundancy) Regulations 2014, r 5. That is, if due to the conduct of the officer, it is open to the authority to dismiss them or to terminate their contract of employment, they are not eligible for voluntary severance payment: Graham Hill, State Solicitor, State Solicitor’s Office, letter, 17 August 2023, p 3.

238 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, pp 2–3.

In effect, officers were awarded payments because of the timing of the offer; during an investigation. The financial loss to the State was confirmed by the decision of the State not to recover any of the redundancy payments.

As to when the Corruption and Crime Commission may inform the agency of an allegation, section 152 of the CCM Act provides that an officer of the commission or commission lawyer is not authorised to disclose ‘operational information’ to any prescribed authority or person unless the commission certifies that ‘disclosure is necessary in the public interest’.²³⁹ On some occasions it may be necessary in the public interest to disclose an investigation to the head of an agency, if the commission is made aware that redundancy payments are being offered.

The Public Sector Commissioner says that guidance provided to agencies about voluntary severance payments to employees the subject of a disciplinary process is ‘reasonably clear’, but the commissioner is considering ‘how it may be strengthened.’²⁴⁰

In the committee’s view, PSC’s guidance should be strengthened. Advice should include the following:

- An agency must not pay a public officer a voluntary severance payment where the agency is aware that an allegation of serious misconduct against the officer has been made and not finalised.
- However, in exceptional circumstances, if an agency is considering making a payment to a public officer the subject of an allegation, it must notify the Public Sector Commissioner of its proposal and outline why this is appropriate in the particular circumstances.

Finding 22

While it may be unusual for a public officer the subject of a serious misconduct allegation to be given a voluntary severance payment, in or around 2016 the North Metropolitan Health Service paid 3 officers voluntary severance payments totalling \$603,902 when they were being investigated for serious misconduct. Two officers were later imprisoned for corruption offences.

The State decided not to commence proceedings to recover any part of the payments.

Recommendation 11

That the Public Sector Commissioner clarify and strengthen advice provided to agencies about voluntary severance payments to public officers the subject of an allegation of serious misconduct. This should include the matters noted above in this report.

Recommendation 12

That the Government, to the extent necessary, amend laws to enable it to recover voluntary severance payments against public officers and former public officers found to have engaged in serious misconduct or convicted of a serious offence.

²³⁹ *Corruption, Crime and Misconduct Act 2003*, s 152(4)(e) and (5).

²⁴⁰ Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 3.

Chapter 5

Criminal prosecutions

Prosecutions arising from serious misconduct investigations play an important role in deterring public officers from engaging in serious misconduct. The public expects the criminal justice system to fairly and effectively prosecute public officers.

Some people may judge the success of anti-corruption agencies on whether a successful prosecution follows a misconduct investigation. Media attention and public criticism often follow when the commission tables a report, but criminal charges do not follow or the person is acquitted of charge/s in court.

The conduct and outcomes of prosecutions arising from serious misconduct investigations are not, and should not be, immune from public criticism. However, by design, the commission, an investigative body, and the State's prosecuting authorities have different roles. The committee considered how to improve outcomes within this dynamic.

From a serious misconduct investigation to prosecution

The commission is not a prosecuting authority. It is an investigative authority with extraordinary powers to investigate serious misconduct, make findings and recommendations, and publish reports to expose serious misconduct in the public sector.

*[The commission and DPP]
do two completely different things
but they look similar at first
glance.*

*The Hon John McKechnie KC
Corruption and Crime Commissioner*

As noted in chapter 3, the commission's findings and opinions of serious misconduct against a public officer, and its recommendations that *consideration* be given to prosecuting a person, have no legal effect on what happens next.²⁴¹ However, as previously noted, this legal distinction may not be clear to the public. The committee addressed the need to clarify this distinction in recommendation 3.

As noted in chapter 3, Robert Owen, the Director of Public Prosecutions, did not raise concerns about the effect of the commission's reporting of serious misconduct on prosecutions dealt with by the DPP.²⁴² Chapter 3 also notes commission practices to minimise prejudice.

After the commission recommends that *consideration* be given to prosecuting a person, only a prosecuting authority – the police, State Solicitor's Officer (SSO) or DPP – can charge and prosecute the person.

241 *Corruption, Crime and Misconduct Act 2003*, ss 43(1)(a) and 43(6), 217A.

242 In this report 'the DPP' refers either to Mr Owen, the Director of Public Prosecutions, or the Office of the Director of Public Prosecutions.

A prosecution may arise from a serious misconduct investigation in a number of ways.

- The commission may refer a matter to a prosecuting authority if it uncovers evidence of criminal offending.²⁴³ This generally occurs after the commission has completed its investigation.²⁴⁴
- The commission may investigate a matter with another agency including WA Police (a cooperative investigation) and the police may then lay ('prefer') criminal charges.
- An investigating agency may refer a serious misconduct matter to WA Police.

The prosecution process follows:

- The commission refers matters involving a possible offence against the *Criminal Code* to WA Police for further investigation and possible charge. The role of WA Police is to investigate crime, decide what charges to lay (if any), and prosecute summary or 'simple' matters in the Magistrates Court of Western Australia.
- The commission refers matters involving a possible offence against Part 11 of the CCM Act, offences interfering with the integrity of the commission's investigation process, to the SSO.²⁴⁵ SSO, the government's lawyer, assesses commission matters, lays charges and prosecutes matters in the Magistrates Court.
- The DPP has the power to commence, conduct and take over the prosecution of summary matters, but does this only if it is 'overwhelmingly in the public interest' to do so.²⁴⁶
- The DPP prosecutes all criminal matters dealt with on indictment, that is, in the District Court of Western Australia or Supreme Court of Western Australia (superior courts). The DPP takes over a prosecution when a matter is 'committed' to the superior court. It analyses the brief of evidence, indicts appropriate charges then prosecutes these matters to sentence, trial or appeal.

The different roles of the commission and prosecuting agencies

The commission does not judge itself by the success or otherwise of a prosecution. Others may.

Some public confusion about the role of the commission could be attributed to its remit and the language of the CCM Act. The commission exposes 'corruption', often publicly understood to be a criminal offence, and 'serious misconduct', which includes, by definition, criminal conduct.

The commission and prosecution agencies have different roles.

243 See *Corruption, Crime and Misconduct Act 2003*, s 18(2)(h).

244 Submission 7, Corruption and Crime Commission, p 2.

245 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 20.

246 Submission 16, Director of Public Prosecutions for Western Australia, p 4. The Memorandum of Understanding dated 24 May 2022, at clause 4.10, provides that if SSO determines that charges should be preferred, and the offences are to be dealt with on indictment, the SSO will write to the DPP requesting they take over the matter under s 11 of the *Director of Public Prosecutions Act 1991*.

The role of the commission is to investigate and expose serious misconduct. When the commission investigates a matter, it assesses whether a public officer engaged in serious misconduct, and makes this determination if the evidence meets the civil standard of proof – the balance of probabilities.

The role of a prosecuting agency is to determine if admissible evidence discloses a prima facie case with reasonable prospects of successfully proving an offence beyond reasonable doubt – the criminal standard of proof. This is a higher standard of proof.

Evidence that may cause the commission to form an opinion of serious misconduct against a person may be insufficient for a court or jury to be satisfied beyond reasonable doubt that the person committed a criminal offence.

The commission has no power to charge or prosecute criminal offences.²⁴⁷ This was settled in the Court of Appeal of Western Australia decision *A v Maughan* (2016) 50 WAR 263.

Commissioner McKechnie supports the separation of the commission’s investigative function and prosecutorial functions, as does the DPP.²⁴⁸

This issue should be considered settled in this State. In 2016 a previous committee found that an overwhelming majority of submitters supported the ongoing separation of the commission’s investigative function and the prosecution function, including the Hon Michael Murray AM QC, the then Parliamentary Inspector, and the Criminal Lawyers’ Association of Western Australia.²⁴⁹ The previous committee was of the view that there was ‘no compelling case’ to justify providing the commission with the power to commence or conduct prosecutions.²⁵⁰

This committee also supports the separation of roles. This provides the assurance of an independent, expert prosecuting agency objectively assessing the strength of a case before laying charges.

Confusion comes as to whether or not sometimes we do not charge as a result of clear findings from the Corruption and Crime Commission, and that is generally because we have not met that standard [beyond reasonable doubt].

*Commissioner Col Blanch
Western Australia Police Force*

247 In *A v Maughan* (2016) 50 WAR 263 at 266 the Court said ‘the Commission’s powers and function do not extend to the prosecution of persons in respect of matters investigated by the Commission which are otherwise unrelated to the administration and enforcement of the legislation establishing the Commission.’

248 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 9; Chair: ‘you would never recommend that the commission be provided with a prosecution capacity?’; Commissioner McKechnie: ‘No’. Also, Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, *transcript of evidence*, 15 August 2023, p 1.

249 Joint Standing Committee on the Corruption and Crime Commission *The ability of the Corruption and Crime Commission to charge and prosecute*, Report 33, November 2016, finding 45, and pp 73–78 for submissions on this issue.

250 Joint Standing Committee on the Corruption and Crime Commission *The ability of the Corruption and Crime Commission to charge and prosecute*, Report 33, November 2016, finding 48.

While not responsible for a prosecution, the commission reviews matters when a prosecution fails, asking if it made a mistake in undertaking its role. Often a person admitted to serious misconduct, but this is not made public at the trial.²⁵¹

Finding 23

By design, the roles of the Corruption and Crime Commission and prosecution agencies differ. The commission investigates and exposes serious misconduct by public officers, assessing whether, on the balance of probabilities, the evidence supports a finding. Prosecution agencies charge and prosecute criminal offences, which must be proven beyond reasonable doubt.

Prosecutions

Prosecutions arising from commission investigations of serious misconduct, either alone or in cooperation with another agency, since 2016 are noted at appendix 6.²⁵²

The commission publicly releases a summary of prosecutions in its Annual Reports.²⁵³ The table for 2022–23 follows:²⁵⁴

Table 5.1: Commission reporting of charges and convictions in 2022–23

Charges and convictions	Against public officers	Against non-public officers	Total
Charges laid	40	57	97
Charges pending before the courts at the end of the reporting period (includes charges laid in previous years)	43	76	119
Charges discontinued, dismissed or set aside	2	544	546
Individuals charged	4	2	6
Individuals convicted	5	0	5
Individuals acquitted	2	0	2

* Committee note: In May 2023, 542 charges were discontinued against one person.

A range of *Criminal Code* offences may follow a serious misconduct investigation including:

- public officer acts corruptly in performance/discharge of functions (section 83(c))
- a person gains a benefit by fraud (section 409(1)(c))
- laundering property (section 563A)

251 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 10.

252 An agency is not required to notify the commission if they refer a matter to WA Police. The commission has ‘limited visibility’ over matters agencies refer to WA Police: Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 2.

253 Like appendix 6, this refers to prosecutions arising from commission and cooperative investigations: *ibid*, p 1.

254 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 2.

- unlawful use of a computer for a benefit (section 441(3))
- common assault in a circumstance of aggravation (section 313(1)(a)).

CCM Act offences, dealt with by SSO, include:

- disclosing a restricted matter contrary to a notation on a summons (section 167(2), (3))
- obstructing the commission in performing a function (section 165).²⁵⁵

Memorandum of understanding between the commission, SSO and DPP

On 24 May 2022 the commission, SSO and DPP signed a Memorandum of Understanding (MOU) to establish a process for the referral of matters from the commission to SSO and the DPP. The MOU covers referral procedures, the standards for briefs of evidence, relevant timeframes, and arrangements for ongoing liaison and monitoring of the prosecution process. The MOU formalised procedures for matters referred to SSO (not the police) for prosecution.

The Department of Justice recommended a formal MOU in its 2020 *Review into Prosecutions arising from Corruption and Crime Commission Investigations*. This review was in response to a previous committee's recommendation in 2016.²⁵⁶

The DPP has repeatedly expressed its strong preference for the commission to refer matters to SSO, rather than directly to the DPP.²⁵⁷ This allows SSO to prepare briefs of evidence to the required standard and put commission evidence in a format that enables disclosure to the accused before the prosecution is commenced, enabling the prosecution to proceed expeditiously.²⁵⁸

SSO advised that, as at August 2023, the commission had referred 11 matters to SSO since 2016; 7 of these in the last 3 years. No matters have been referred since the MOU was signed.²⁵⁹ SSO is resourced to undertake this function. It is positive that in 2022–23, SSO received additional funding of \$1.3 million over the forward estimates for commission matters.²⁶⁰

The committee is pleased to report that the parties are positive about the MOU.²⁶¹

255 Corruption and Crime Commission, *Annual Report 2021–22*, p 27.

256 In November 2016, a previous committee recommended that the Attorney General undertake a review of, and table a report on, the efficiency and effectiveness of the commencement and conduct of prosecutions arising from commission investigations: *The ability of the Corruption and Crime Commission to charge and prosecute*, Report 33, November 2016, recommendation 2. The Department of Justice's review, dated May 2020 and tabled on 31 August 2021, recommended that a formal MOU be signed within 6 months of tabling the report: Legislative Assembly, Tabled Paper No 349.

257 Amanda Forrester SC, Director of Public Prosecutions, Office of the Director of Public Prosecutions, letter, 30 August 2021, p 2.

258 Department of Justice, *Review into Prosecutions arising from Corruption and Crime Commission Investigations*, May 2020, p 18, quoting the Director of Public Prosecutions.

259 Graham Hill, State Solicitor, State Solicitor's Office, letter, 17 August 2023, p 2.

260 *ibid.* Spending changes for commission matters are \$308,000, \$317,000, \$326,000, \$337,000 for 2022–23 to 2025–26, totalling \$1.288m: *Western Australia State Budget 2022–23*, Budget Paper No. 2, p 451.

261 The commission says it has been 'very effective': Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 19. SSO says it has been

Finding 24

On 24 May 2022 the Corruption and Crime Commission, State Solicitor’s Office and Director of Public Prosecutions signed a Memorandum of Understanding to formally establish a process for the referral of matters from the commission to the SSO and DPP. Parties are positive about the MOU.

Timeliness of prosecutions and timely notification of potential prosecutions

It may appear to some that there is an unreasonable delay between a matter being made public when the commission tables a report, and charges being laid against a person.²⁶²

The committee’s review of commission reports tabled since 2018 found that the time taken between the commission tabling a report with an opinion of serious misconduct and the person being charged with an offence ranged between 3 months and 1 year and 7 months. The longer delays appear to reflect more complex prosecutions.²⁶³

The Department of Justice’s 2020 *Review into Prosecutions arising from Corruption and Crime Commission Investigations* noted that the timeliness of Western Australian matters compared favourable to New South Wales, but opportunity to improve timeliness ‘may remain’.²⁶⁴

WA Police are aware that the public expects it to prosecute in a timely manner. Commissioner Col Blanch observed that WA Police essentially have to conduct another investigation – a criminal investigation – before it can charge.²⁶⁵

WA Police told the committee that the commission providing ‘timely notification’ to WA Police when commencing an investigation that may require police resources would improve the effectiveness of prosecutions.²⁶⁶ Earlier referral would enable WA Police to make its assessment early, even before the commission makes its findings.²⁶⁷ WA Police said:

Working in partnership with the CCC at the earliest opportunity will enable investigative opportunities to be identified that maximise the identification of actionable intelligence and evidence gathering for a potential criminal prosecution. This would reduce the potential risk of the suspect disposing of evidence, which

effective: Graham Hill, State Solicitor, State Solicitor’s Office, letter, 17 August 2023, p 1. The DPP is not concerned about the MOU supporting effective referral of matter from the SSO to the DPP: Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, letter, 11 September 2023, p 3.

262 The Parliamentary Inspector said he had received at least one complaint on the impact that a delay in prosecuting following a finding of serious misconduct may have on the person involved: Submission 2, Parliamentary Inspector of the Corruption and Crime Commission, p 2.

263 This was a staff review undertaken in June 2023. An example of a more complex prosecution includes charges arising from the investigation into maintenance and service contracts within North Metropolitan Health Service, reported by the Corruption and Crime Commission in August 2018.

264 Department of Justice, *Review into Prosecutions arising from Corruption and Crime Commission investigations*, May 2020, p 15.

265 Col Blanch, Commissioner, Western Australia Police Force, *transcript of evidence*, 19 October 2022, p 6.

266 Submission 10, Western Australia Police Force, p 5.

267 Col Blanch, Commissioner, Western Australia Police Force, *transcript of evidence*, 19 October 2022, p 8. In one matter, a person was charged before the commission tabled its report.

can occur when there is a delay in the involvement by WA Police Force from the outset.

There have been instances whereby a more effective outcome could have been achieved if the WA Police Force had been able to work collaboratively with the CCC from the outset. [WA Police provided examples including 2 Department of Communities' investigations and the Shire of Ravensthorpe investigation.]²⁶⁸

WA Police were also very positive about its 'great relationship' with the commission and its cooperative investigations with the commission, which save time and achieve the right outcomes.²⁶⁹

Recommendation 13

That the Corruption and Crime Commission:

- notify the Western Australia Police Force as soon as possible of investigations that may require police resources
- continue its practice of cooperative investigations with the Western Australia Police Force and collaborate with police as early as possible.

Prosecuting challenges

A criminal prosecution results in a conviction at trial if the prosecution proves the elements of an offence beyond reasonable doubt. An accused may also plead guilty to a charge.

On a few occasions, many years ago, high profile commission investigations did not lead to convictions.

But when we look individually at each matter and when we look at the statistics in regard to the matters that are ultimately started by the Corruption and Crime Commission, there is no concern from my office in respect of seeing failure.

Robert Owen, Director of Public Prosecutions (2022)

In general, it is not uncommon for a criminal prosecution that proceeds to a trial not to result in a conviction.²⁷⁰ In 2022–23, only 235 of the 427 trials, or 55% of trials, the DPP conducted in superior courts resulted in a conviction on one or more of the charges listed on the indictment. This exceeded the DPP's target of 50%.²⁷¹

The DPP receives, on average, 2 or 3 prosecutions arising from serious misconduct investigations each year. As at August 2022, it had received 19 prosecutions since 2016.²⁷²

²⁶⁸ Submission 10, Western Australia Police Force, pp 5–6.

²⁶⁹ Paul Coombes, Detective Superintendent, Internal Affairs, Western Australia Police Force, *transcript of evidence*, 19 October 2022, pp 6, 7.

²⁷⁰ In 2022–23, 89.6% of the DPP's 2,587 concluded cases resulted in a finding of guilt either by a plea or verdict: Office of the Director of Public Prosecutions for Western Australia, *Annual Report 2022–23*, p 12.

²⁷¹ Office of the Director of Public Prosecutions for Western Australia, *Annual Report 2022–23*, pp 11, 74. The 427 trials refers to trials that recorded a conviction or an acquittal. It does not including trials that resulted in a hung jury or a mistrial.

²⁷² Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, *transcript of evidence*, 15 August 2022, p 3.

This is a very small percentage of its prosecutions in superior courts.

The duty of the prosecutor is not to obtain a conviction at all costs but to put before a jury, or judge alone on some occasions, credible evidence relevant to the crime.²⁷³ Like police, the DPP must provide a fair and just prosecution service for all, including the accused.²⁷⁴

There are a number of challenges in prosecuting matters arising from commission investigations.

Many prosecutions arising from these investigations prosecute corruption offences which involve proving a mental element. Although an accused may admit to the conduct, a prosecution challenge may be proving beyond reasonable doubt that the accused was 'knowingly involved' in corruption.²⁷⁵

Material obtained by the commission during its investigation may present disclosure challenges for the prosecution. The *Criminal Procedure Act 2004* requires full and complete disclosure of all material in the possession of the prosecutor relevant to the charge. Failure to fully disclose may cause a prosecution to fail.

The issue is not the CCC; the issue is the standing issue in regard to the disclosure and growing volume of how much disclosure there is [in prosecutions arising from commission investigations].

Robert Owen, Director of Public Prosecutions

This is particularly relevant to complex and voluminous commission matters.²⁷⁶

A matter arising from a commission investigation may involve 'thousands and thousands of documents or thousands and thousands of megabytes of information' gathered over many years from many sources.²⁷⁷ Extensive electronic information and data gathered by the commission is not easy to view, navigate or organise by people external to the commission. The DPP encourages WA Police to give attention to cataloguing and organising the records at an early stage, otherwise disclosure is difficult and likely to delay a prosecution.²⁷⁸

Another prosecution challenge is resourcing. The DPP is under-resourced. It does not receive separate funding for prosecuting matters arising out of commission investigations, which may exist in other jurisdictions.²⁷⁹ Also, some prosecutions arising from commission matters require specialist knowledge. The DPP has a small number of prosecutors who are experienced in prosecuting financial crimes and who are familiar with methods, concepts and issues relevant to investigating and presenting evidence of this type of crime.²⁸⁰

273 Director of Public Prosecutions for Western Australia, *Statement of Prosecution Policy and Guidelines 2022*, 1 July 2022, p 5.

274 Office of the Director of Public Prosecutions for Western Australia, *Annual Report 2022–23*, p 11.

275 Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, *transcript of evidence*, 15 August 2022, p 3.

276 *Criminal Procedure Act 2004*, ss 35, 42, 44, 61, 63, 95, 97.

277 Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, *transcript of evidence*, 15 August 2022, p 5.

278 Submission 16, Director of Public Prosecutions for Western Australia, p 4.

279 *ibid.*

280 *ibid.*

A further challenge is that evidence obtained by the commission during its investigations may not be admissible in a criminal proceeding. The prosecuting agency, often WA Police, must obtain evidence in admissible form in order to successfully prosecute the person at trial. In particular:

- While the commission has extraordinary powers to compel evidence from witnesses, a statement made by a witness in answer to a question the commission required the witness to answer is not admissible in evidence against the person making the statement in criminal proceedings, other than for offences against the CCM Act.²⁸¹
- Documentary evidence the commission obtains from financial institutions cannot be used as evidence in a criminal prosecution. WA Police must seek and obtain admissible evidence from the financial institution by way of an order to produce under section 52 of the *Criminal Investigation Act 2006*.²⁸²

In 2022 the DPP told the committee that commission material being inadmissible as evidence at trial may delay a prosecution.²⁸³

Despite the above, in August 2022 the DPP said there were ‘no significant issues’ in its prosecution of matters arising from commission investigations.²⁸⁴ The DPP added that the evidentiary challenges of prosecuting these matters, such as limits on the admissibility of commission evidence in court, should not be taken to be unsatisfactory as they reflect the role of the commission as an investigation agency with coercive powers.²⁸⁵

Finding 25

Some prosecutions arising from Corruption and Crime Commission investigations involve the assessment of volumes of documents and electronic evidence obtained by the commission over many years. Prosecution challenges include disclosure and evidentiary challenges.

Despite these challenges, in 2022 the Director of Public Prosecutions said that there were ‘no significant issues’ in its prosecution of matters arising from commission investigations.

A case study – resourcing and setting standards

On 5 May 2023 the DPP discontinued over 542 charges against a person who was an alleged associate of Paul Whyte, the former Assistant Director General at the Department of

281 *Corruption, Crime and Misconduct Act 2003*, s 145(1)(a). The commission’s *The Bench Book – A guide to corruption and crime examinations*, at p 14, also notes that anything a person says in evidence may be admissible in court if ‘1. You are charged with contempt of the Commission; 2. You give false and misleading evidence to the Commission; 3. You give evidence in a prosecution against you inconsistent with evidence you gave to the Commission; or 4. You are a public officer and there are disciplinary proceedings against you’. Also, despite the direct use immunity, the information compelled by the commission may be used to pursue lines of inquiry: Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, *transcript of evidence*, 15 August 2022, p 7.

282 Submission 10, Western Australia Police Force, p 5.

283 Submission 16, Director of Public Prosecutions for Western Australia, p 5.

284 Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, *transcript of evidence*, 15 August 2022, p 1.

285 Submission 16, Director of Public Prosecutions for Western Australia, p 5.

Communities.²⁸⁶ This was not the prosecution of a public officer.²⁸⁷ The media reported extensively on this case. This case confirmed the real risk of the challenges the committee identified in 2022 subverting or delaying a criminal prosecution.

This case raised important questions for this inquiry: Did this case expose an issue with how matters arising from, or relating to, commission investigations are prosecuted? Can measures be taken to negate or minimise the risk of a similar event happening again?

The person was charged in November 2019, pleaded not guilty to the charges, and a judge alone trial in the Supreme Court of Western Australia was listed for July 2023. This matter involved financial evidence.²⁸⁸

In May 2023 the Hon John Quigley MLA, Attorney General, told the Legislative Assembly that the charges were ‘temporarily dropped’ because WA Police did not provide the DPP with evidence in admissible form, there had been a ‘communication breakdown’ between WA Police and the DPP, and a ‘turnover of staff’ at WA Police.²⁸⁹ The explanation given to the House follows:²⁹⁰

It is just regrettable that there was this churn within the police section and that the [evidentiary] issues that had been raised with them had not been properly attended to.

The Hon John Quigley MLA, Attorney General

Mr J.R. QUIGLEY: How were the charges dropped? ... The police had the job of preparing the brief for the prosecution, which was forwarded to the prosecution. The prosecution advised the police that a lot of the evidence—nearly all of it—that had been gathered against [the person] was in an inadmissible form. Had the trial proceeded at that stage and had his defence counsel taken objection to the evidence, he could well have been acquitted. During the year, the prosecution had been asking for extra statements and, as has been said in court, there was a communication breakdown because at the police end, there had been a turnover of staff in the section. The head investigator resigned from the force and others were moved out. People came in and looked at this massive job but the evidence was not prepared for the prosecutor in the format that could have been received

286 Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, letter, 11 September 2023, p 2.

287 At the request of the police, the commission did not provide the police with information on this case after 13 December 2019, because the subject was not a public officer. Its focus was on supporting the police on Mr Whyte’s prosecution: the Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 20. This prosecution arose from a commission’s investigation in the sense that the conduct of the former accused may not have been exposed but for the commission’s investigation into Mr Whyte.

288 Josh Zimmerman, ‘AG’s Warning: It’s not over’, *West Australian*, 26 May 2023, p 25.

289 The Hon John Quigley MLA, Attorney General, and Libby Mettam MLA, *Hansard of Budget Estimates Committee A*, 24 May 2023, Division 30, p E80.

290 During this inquiry the committee has avoided identifying individuals who may be the subject of a criminal prosecution to avoid potential prejudice to the accused. However, the Attorney General’s comments were made in the Legislative Assembly and are publicly recorded in *Hansard*, and comments by the Attorney General, Police Commissioner and DPP have been widely reported in various forms of media. For example: Hamish Hastie and Michael Genovese, ‘Hundreds of charges dropped over WA’s biggest ever public fraud’, *watoday*, 5 May 2023, <https://www.watoday.com.au>; Josh Zimmerman, ‘AG’s Warning: It’s not over’, *West Australian*, 26 May 2023, p 25.

by the court. If they had boxed on at that stage, [the person charged] may well have been acquitted so the matter was discontinued. The police will do their job and complete brief of evidence. There is no bar at law to recharge him on a refreshed brief. We will not have it that either the CCC or the Director of Public Prosecutions did anything less than a stellar job.²⁹¹ ...

It is not a question, as I understand it, of under-resourcing; rather there was staff turnover with an officer resigning and another applying for a promotion and being moved to a sergeant in traffic, which happens.²⁹²

The DPP told the committee that it met with WA Police regularly from June 2021 to 2023, and more than 10 times between August 2021 and August 2022, to progress outstanding matters in this case. It provided investigators with an updated schedule of outstanding matters to assist them.²⁹³

The ODPP reasonably believed that WA Police understood the specific requirements of the evidence it was seeking, which had been regularly documented in requisition scheduled throughout 2021 and 2022.

Robert Owen, Director of Public Prosecutions

The DPP says WA Police investigators ‘provided assurances that action was being taken to obtain evidence [to prove financial transactions] and that it would be available within an acceptable timeframe.’²⁹⁴

WA Police says a number of issues collectively contributed to the discontinuance of the charges.²⁹⁵ It is conducting an internal investigation into why charges were discontinued. As at September 2023, it has identified the following issues:

- Communication issues between the DPP and WA Police resulting in investigative actions not being completed. There appears there was a misunderstanding between the investigations team and the prosecutor from the DPP, and neither party recorded outcomes of meetings with sufficient detail.²⁹⁶
- Lack of stability with the investigation team and movement of staff. The structure and composition of the investigation team changed a number of times.²⁹⁷
- Disclosure issues between the commission and WA Police. WA Police has identified issues in relation to the non-disclosure of commission documents. The volume and format/access to the documents presented a significant challenge.²⁹⁸
- Failure of WA Police to meet full disclosure requirements. This issue was not identified early enough and became highly problematic. ‘With the benefit of hindsight, the WA

291 The Hon John Quigley MLA, Attorney General, and Libby Mettam MLA, *Hansard of Budget Estimates Committee A*, 24 May 2023, Division 30, p E53-54.

292 *ibid*, p E54.

293 Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, letter, 11 September 2023, p 1.

294 *ibid*, p 2.

295 Col Blanch, Commissioner, Western Australia Police Force, letter, 20 September 2023, p 2.

296 *ibid*, p 1.

297 *ibid*.

298 *ibid*, p 2.

Police Force should have invested more resources into the brief compilation to ensure legal obligations were met'.²⁹⁹

The commission told the committee WA Police's allocation of resources to prosecuting its matters 'has been a recent issue'. It considers that a commission/WA Police MOU would be a more effective way to achieve successful and just prosecution outcomes in more complex matters.

The limited allocation of WA Police investigative resources to considering these matters has been a recent issue. The remedy would be a MOU with WA Police that set expectations as to the timeliness for considering charges, and management of disclosure. However, the most effective way to achieve successful and just prosecution outcomes is to maintain an ongoing, collaborative communication between Commission officers and WA Police working on particular investigations. This usually occurs most effectively through establishing a formalised communication framework including scheduled meetings between the Commission investigators and WA Police officers with the direct investigative experience of the particular operation.³⁰⁰

WA Police and the DPP have responded to this event. The DPP met with WA Police in July 2023 to discuss improvements to interagency protocols. A DPP/WA Police working group has been established to progress shared standards and naming protocols on disclosure requirements.³⁰¹ The DPP will work with WA Police to identify cases where early production of reports is required.³⁰² WA Police's Standards and Legal Portfolio has been tasked with liaising with the DPP to address communication issues.³⁰³

It appears to the committee that discontinuing the charges was an aberration for prosecutions arising from commission investigations. This is an unacceptable aberration.

This case highlights the need to always adequately resource prosecutions arising from commission investigations, and for agencies to have protocols and standards in place that ensure disclosure and evidence is provided in an appropriate and timely manner.

Finding 26

It is unacceptable for a prosecution arising from a Corruption and Crime Commission investigation to be discontinued close to trial because of prosecution error.

Recommendation 14

That the Western Australia Police Force ensure that it adequately resources the investigation and prosecution of matters arising from Corruption and Crime Commission investigations.

299 *ibid.*

300 Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 18 August 2023, p 20.

301 Robert Owen, Director of Public Prosecutions, Office of the Director of Public Prosecutions, letter, 11 September 2023, p 2.

302 *ibid.*

303 Col Blanch, Commissioner, Western Australia Police Force, letter, 20 September 2023, p 1.

Recommendation 15

That the Corruption and Crime Commission and Western Australia Police Force enter into an MOU that sets out expectations and standards on timeliness, resourcing, disclosure and other matters to ensure the effective prosecution of matters arising from a commission investigation.

Recommendation 16

That the Western Australia Police Force and Director of Public Prosecutions enter into an MOU, or a similar arrangement, that sets out interagency protocols and shared standards on timeliness, resources, disclosure and other matters to ensure the effective prosecution of matters.

Agencies referring serious misconduct matters to WA Police

Agencies refer serious misconduct matters to WA Police for it to consider whether to lay criminal charges. For example:

- The Public Transport Authority told the committee that between 2017 and 2022 it referred 5 matters to WA Police. In some instances, charges were not laid because the police decided that it was not in the public interest to do so.³⁰⁴
- The East Metropolitan Health Service said it 'routinely' reports allegations involving criminal conduct to WA Police, but it is not necessarily advised on actions taken. It is aware of 4 matters successfully prosecuted in the 4 years to 2021–22.³⁰⁵

PSC's *Guide to the disciplinary provisions contained in Part 5 of the PSM Act*, which applies to the public sector, says:

Any information that indicates criminal conduct should be immediately referred to the WA Police ... for advice and possible investigation. In some cases the WA Police may advise that disciplinary proceedings should not commence or continue while a criminal matter is under investigation or prosecution.³⁰⁶

Western Power and Horizon Power, GTE's who fall within the remit of the commission but are not part of the 'public sector', raised concerns about when to refer a matter to WA Police.

- Western Power has reported matters to WA Police but considers that it is 'not as qualified to make the assessment of what should be reported to the police as the PSC and CCC who regularly deal with misconduct'. Western Power asked the committee to

³⁰⁴ Peter Woronzow, Director General, Department of Transport, attachment to letter, 7 October 2022, p 5.

³⁰⁵ Liz MacLeod, Chief Executive, East Metropolitan Health Service, 5 October 2022, p 3. The Department of Health's *Notifiable and Reportable Conduct Policy* (NARC policy) applies to the health sector.

³⁰⁶ Public Sector Commission, *Guide to the disciplinary provisions contained in Part 5 of the Public Sector Management Act 1994*, 23 June 2020, at 4.3.2, p 15.

consider whether PSC or the commission should report matters to police where appropriate.³⁰⁷

- Horizon Power asked the committee to consider whether the commission or PSC should actively advise agencies whether or not it should report certain matters to WA Police.³⁰⁸

SSO provide advice on whether to refer a matter to WA Police, when asked, but does not provide legal services to GTE's, local government or universities who fall within the remit of the commission.³⁰⁹

As noted in chapter 2, serious misconduct encompasses a wide range of conduct. Whether to refer an assault or serious corruption to police may be an easier decision than whether to refer someone who stole a small item or accessed a computer. PSC's guidance may seem general to some agencies.

WA Police recommends that where there is doubt requests for advice be referred to the commission at first instance. It also advised that if an agency should contact police its Financial Crime Squad Crime Identification Team can be contacted at Financial.Crimes.Report@police.wa.gov.au or on 9267 5860.³¹⁰

In the committee's view, the commission should provide advice to agencies on whether it is appropriate to refer a matter to WA Police when asked about a particular case. The agency should ultimately decide whether to refer the matter to WA Police.

Finding 27

Agencies raised concerns about when to refer a serious misconduct matter to the Western Australia Police Force for consideration of criminal charges. The Corruption and Crime Commission should provide advice to agencies on whether it is appropriate to refer a matter to the police when asked.

Transparency and publishing prosecution outcomes

The public have a legitimate interest in knowing if prosecutions follow commission investigations, particularly after the commission tables a report.

As previously noted, accountability and transparency are important in the serious misconduct space. Transparency may build public confidence in the prosecution process.

The information at appendix 6 on prosecutions arising from commission investigations is not published by the commission. The Local Government Elected Members Association (LGEMA) submitted that ongoing and finalised prosecutions of public officers should be 'reported or searchable', where the offending arises from their employment, to alert others to their

307 Submission 14, Western Power, p 2. This issue arose after the commission report *Review of an investigation by Western Power into serious misconduct*, tabled on 23 September 2020. This case involved falsification of time sheets. The employee was terminated. The Corruption and Crime Commission disagreed with Western Power's decision not to refer the matter to WA Police.

308 Submission 15, Horizon Power, p 2.

309 Michelle Lindley, Senior Assistant State Solicitor, State Solicitor's Office, *transcript of evidence*, 15 August 2022, p 7. Graham Hill, State Solicitor, State Solicitor's Officer, Letter, 17 August 2019, p 4.

310 Col Blanch, Commissioner, Western Australia Police Force, letter, 5 October 2023, p 1.

conduct.³¹¹ This implies that the person would be named.

The commission publishes the summary noted in table 5.1 in its Annual Report. As previously noted, the CCM Act provides that the annual report must include ‘a description of the extent to which investigations carried out by the Commission have resulted in prosecutions of public officers or other persons or disciplinary action against public officers’.³¹²

In Western Australia, details of prosecutions following a commission investigation, or any serious misconduct investigation, are gleaned from media reports. These usually follow the naming of a person in a commission report.

Some prosecution information is publicly accessible. If the name of the person is known, the Department of Justice’s [eCourts Portal](#) (under ‘Person/Matter Listings’) will advise charge/s and the status of a current prosecution. Courts are also open to the public.

Commissions in other Australian jurisdictions differ on if and how they advise of prosecution outcomes arising from their investigations.

The committee is impressed with the level of transparency and very clear and accessible way the Independent Commission Against Corruption (NSW) (ICAC) advises the public about what happened next after tabling its reports. In New South Wales:

- ICAC’s website includes 2 tables – briefs with the DPP and prosecution outcomes (under the investigation tab on the home page, then select ‘[Prosecution briefs with the DPP and outcomes](#)’).³¹³ These name the relevant public officer/s.
- When ICAC publishes an investigation report on its website, it includes, below the report, details of any recommendations for consideration to be given to taking criminal, disciplinary or dismissal action (as well as recommendations for corruption prevention).


Each tab includes details of what ICAC found or recommended and regular updates on subsequent action taken including details of charges being laid (or not) and the status of the prosecution. Again, these name the person.


The following extract from ICAC’s website may assist.


311 Local Government Elected Members Association (LGEMA), letter, 25 September 2023, pp 1-2.


312 *Corruption, Crime and Misconduct Act 2003*, s 91(2)(e).


313 The information notes the different roles of the ICAC and prosecution agencies. On rare occasions, information is removed from the NSW tables. In essence, the NSW DPP determines whether a criminal charge/s can be laid and prosecutes. Given the mandated involvement of the NSW DPP, it may be easier for it to collate commission matters compared to the WA DPP.


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 Recommendations for prosecutions
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 Recommendations for corruption prevention
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As previously noted, the CCM Act includes confidentiality provisions but provides the commissioner with the power to disclose official information in the ‘public interest’. If legislative amendment is necessary to empower the commission to publish prosecution outcomes as recommended below, this should be done.

The committee is of the view that the commission should publish information on prosecutions arising from commission investigations on its website, with the same or similar level of detail that is in appendix 6. This does not involve naming the person. Similar information was tabled in Parliament in 2021 when the Department of Justice tabled its *2020 Review into Prosecutions arising from Corruption and Crime Commission Investigations*.

The recommended action involves publishing far fewer details than are published by ICAC, which names the person and provides progress updates on the prosecution or decision not to prosecute. This is also far less detail than the LGEMA recommended. It recommended that the Department of Local Government, Sport and Cultural Industries publish all court decisions relating to local government in its annual report and on its website.³¹⁴

Publishing the recommended level of information on prosecutions will play a part in making prosecution agencies accountable and provide the public with readily accessible information about what happens next. Even though the commission is not responsible for the success or otherwise of a prosecution, it is the central agency for dealing with serious misconduct. Therefore, it is the agency that should publish this information.

Recommendation 17

That the Corruption and Crime Commission publish information on prosecutions arising from serious misconduct investigations on its website. At a minimum, information similar to that contained in appendix 6 of this report should be published.

³¹⁴ Local Government Elected Members Association, letter, 4 May 2023, p 17.

Chapter 6

Public agency outcomes

The long-term impact of the work of the commission

While what happens to a public officer after a finding of serious misconduct is important, the long-term impact and central role of integrity commissions is to prevent misconduct and improve the integrity of public agencies.

Never waste a good crisis.

Andrew Wolstenholme

The commission is not just an investigative agency. A serious misconduct investigation is a vehicle to preventing misconduct. As criminologist Dr Colleen Lewis noted, one of the most important sources of information on how to prevent misconduct is information gleaned from investigations. These identify 'red flags' that when acted on minimise the risk of public sector misconduct reoccurring.³¹⁵

The impact of a particular investigation is often more evident when significant fraud is exposed, such as the case of Paul Whyte, the senior public servant at the Department of Communities who stole millions (see below) or in the case of the North Metropolitan Health Service (NMHS) officers who corruptly obtained benefits when managing maintenance and service contracts.³¹⁶ While extremely disappointing, the audacity and scale of these frauds led to these agencies taking action to minimise misconduct risks, and had a broader public sector impact.

It is important that agencies are held accountable for how they respond to misconduct risks, and there is transparency in how they respond. This promotes public confidence in the sector.

The Community and Public Sector Union/Civil Service Association of WA (CPSU/CSA) is concerned that employers tend to take an approach to preventing misconduct that places the onus on the employee. In its view, while the onus and responsibility for preventing misconduct is shared between the employee and agency, the bulk of the responsibility should rest on the agency.³¹⁷

When the commission tables and publishes a report that identifies misconduct risks, it effectively informs all public agencies and the public of these risks. It is important to note again that:

315 Dr Colleen Lewis, Honorary Professor, Australian Studies Institute, Australian National University, Submission 21, p 1, to the Parliament of Victoria, Integrity and Oversight Committee, Inquiry into the education and prevention functions of Victoria's integrity agencies.

316 Corruption and Crime Commission, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, 16 August 2018.

317 Community and Public Sector Union/Civil Service Association of WA, Submission 19, p 4.

- Commission reports tabled in Parliament may relate to its investigations, reviews such as thematic reviews and reviews of agency action, agency responses to previous recommendations and other matters.
- Most commission reports are not tabled, but are provided to heads of agencies for their consideration and action.³¹⁸

It is encouraging that agencies told the committee that they learn from commission investigations and published reports. To give one example, Health Support Services (HSS) said it assesses risks identified in all commission reports and determines how the risks may apply to its systems and processes. After the commission released *Exposing corruption in the Department of Communities* and the Ernst & Young (EY) report (see below), HSS conducted an internal gap analysis reflecting the EY report’s recommendations. This led to 56 recommendations for HSS to address its risks. HSS has addressed a ‘significant number’ of these recommendations and outstanding initiatives are in progress.³¹⁹

At the sector wide level, PSC told the committee that it reviews and actively responds to commission reports as part of its misconduct prevention function. This includes discussing reports with the Public Sector Leadership Council and the Integrity Practitioners’ Group it established to promote learnings for all agencies.³²⁰

While public agencies must take systemic action to prevent misconduct and reduce misconduct risks, misconduct risks cannot be eliminated. Fraud is insidious.

As the Department of Communities told the committee, despite its considerable efforts to improve its integrity following Mr Whyte’s fraud it ‘can never say with 100% certainty that it is never going to happen again.’³²¹

Eternal vigilance is needed.

While fraud risks cannot be eliminated, a robust and well-resourced fraud risk management program can minimise the likelihood and consequences of fraud events.

*Office of the Auditor General:
Fraud Risk Management – Better Practice Guide*

Finding 28

The central role of integrity commissions is to prevent misconduct. Serious misconduct investigations provide invaluable insight on how to prevent misconduct and minimise misconduct risks.

318 In 2022–23, of the 34 reports produced by the commission, 28 reports were provided to employing agency directors-general, commissioners or chief executive officers, and 6 reports were tabled in Parliament: Corruption and Crime Commission, attachment to letter from the Hon John McKechnie KC, Commissioner, 23 October 2023, p 2.

319 Submission 24, Health Support Services, pp 3–4.

320 Sharyn O’Neill, Commissioner, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 5. The CPSU/CSA suggests that the commission should make sector wide recommendations, and the Public Sector Commission (PSC) should be required to act on and implement sector wide recommendations made in a commission report: Community and Public Sector Union/Civil Service Association of WA, Submission 19, pp 6–7.

321 Andrew Salter, Executive Director, Professional Standards, Department of Communities, *transcript of evidence*, 29 March 2023, p 11.

The Department of Communities' response to serious misconduct

The scale and audacity of Mr Whyte's procurement fraud shocked the public and tarnished the reputation of the Department of Communities and the public sector.³²²

Unfortunately, corrupt conduct at the department extended beyond the conduct of Mr Whyte. In April and September 2022 the commission exposed and reported on opinions of serious misconduct against other officers at the department.

- The first report involved the conduct of a senior project delivery manager who, between 2014 and 2020, allegedly received \$122,500 in bribes for contracts.³²³
- The second report related to an officer and contractor who, between 2012 and 2020, allegedly directed more than \$7 million worth of project work to their preferred consultants for which they received benefits.³²⁴

While exposing corrupt conduct may deter others from engaging in similar behaviour, the alleged conduct of the above officers continued after the arrest of Mr Whyte.

The Office of the Auditor General (OAG) had raised 'red flags' with the department, with audit findings and qualifications raising concerns about the department's controls including controls around payments for contracts.³²⁵ At that time, the department did not follow up or act on recommendations about financial risks.³²⁶ With this in mind, the committee inquired into the department's response to the fraud of Mr Whyte and others.³²⁷

The fraud of Mr Whyte

Over 11 years Mr Whyte stole \$22 million from the State and received \$5 million in bribes in order to fund his extravagant lifestyle. His procurement fraud was the biggest public sector fraud in Australian history. He invoiced the department for services not provided, and apparently started charging for fake services 2 days after being hired.³²⁸

The commission's investigation of Mr Whyte did not follow an allegation of serious misconduct. The commission decided to investigate the matter after it received information indicating his 'questionable behaviour and lifestyle habits'.³²⁹ At the time Mr Whyte was the

322 In 2017 Mr Whyte was the acting Chief Executive Officer of the Housing Authority. When it was absorbed into the Department of Communities he was appointed Assistant Director General overseeing corporate operations. The Department of Housing is now part of the Department of Communities.

323 Corruption and Crime Commission, *Misconduct in the Department of Communities relating to country building projects*, 7 April 2022.

324 Corruption and Crime Commission, *A report on corrupt procurement practices and conduct in the Department of Communities*, 20 September 2022.

325 Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022, p 4.

326 Corruption and Crime Commission, *Exposing corruption in the Department of Communities*, 16 November 2021, p 2.

327 The committee did not examine and analyse every action the department has taken.

328 Rebecca Trigger, 'Paul Whyte corruption hearing told he started charging for fake services two days after being hired', *ABC News* (web-based), 22 June 2022, accessed 4 September 2022, <<https://www.abc.net.au/news>>.

329 The commission then made a 'proposition' that serious misconduct may be occurring and approved an investigation named Operation Taurus. A number of investigations arose from the Paul Whyte matter.

Assistant Director General at the department. Part of his role was to oversee internal governance and standards and integrity at the department.³³⁰ The committee commends the commission for acting on the initial piece of intelligence.

Mr Whyte's conduct became public on his arrest in November 2019. Mr Whyte pleaded guilty to 562 charges of acting corruptly in the performance or discharge of his duties and 2 charges of property laundering. In November 2021 he was sentenced in the Supreme Court of Western Australia to 12 years' imprisonment with parole eligibility after 10 years.

Further to its November 2021 report on how it exposed Mr Whyte's conduct, the commission has launched an inquiry into governance arrangements during the employment of Paul Whyte at the Department of Housing and Department of Communities.³³¹ The commission is examining how Mr Whyte was able to systematically defraud the State and whether governance contributed to or enabled it.³³² The commission may publicly report on its inquiry in due course.

The Department of Communities' response to Mr Whyte's fraud

There were 2 independent reviews of department practices.

- An EY review of the Housing Authority commissioned by PSC made 56 recommendations to improve governance and financial management.³³³ As at March 2023, the department has actioned all but one recommendation to closure.
- A Deloitte forensic examination commissioned by the department made 64 recommendations.³³⁴ The department has actioned all recommendations to closure.³³⁵

[The department] has pretty radically, I think, reinvigorated its response to integrity.

Mike Rowe, Director General, Department of Communities

The department advised that it has invested significantly in revising and improving policies, procedures and governance regarding misconduct.³³⁶ It continues to actively address its previous shortcomings in integrity.³³⁷ To date, its response has included:³³⁸

330 Corruption and Crime Commission, *Exposing corruption in the Department of Communities*, 16 November 2021, p 2. In 2017, Mr Whyte was the acting Chief Executive Officer of the Housing Authority. When it was absorbed into the Department of Communities he was appointed Assistant Director General overseeing corporate operations.

331 *ibid.* This report was published after Mr Whyte pleaded guilty, to record how his corruption was uncovered. It did not cover his and others' alleged activities to avoid prejudice to others.

332 The commission has held private examinations and 2 public examinations, with the ex-Chief Financial Officer and ex-Director General of the department.

333 EY, *Department of Communities: Housing Authority Review*, June 2020. Tabled by the Hon Mark McGowan MLA, Legislative Assembly, 11 August 2020, Tabled Paper No 3548.

334 Deloitte, *Department of Communities: Forensic Report*, 23 March 2020. This report remains private. The committee viewed this report. There is some crossover between the reports.

335 Andrew Salter, Executive Director, Professional Standards, Department of Communities, *transcript of evidence*, 29 March 2023, p 13.

336 Department of Communities, attachment to email, 26 May 2023, p 1.

337 Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 2. The committee has viewed this private report. There is some crossover between the reports.

338 Unless otherwise noted, the following is sourced from Department of Communities, attachment to email, 7 October 2022, pp 3–4.

- investing in, and allocating more resources, to its integrity function, which has enabled the development of a comprehensive risk-based approach to misconduct prevention and education of staff³³⁹
- establishing a Corruption Prevention and Education business unit and a proactive intelligence function with analytical tools to assess financial and contractual transactions³⁴⁰
- reviewing and implementing key integrity plans and policies including its Integrity Framework, Code of Conduct, Fraud and Corruption Control Plan, and Conflicts of Interest, Gifts and Benefits, and Secondary Employment policies
- reinvigorating its Integrity Advisory Committee, which the Director General chairs, to oversee progress across the department³⁴¹
- appointing an independent Chair and independent members to its Audit and Risk Committee – the Director General is a standing attendee and the leadership team are committee members
- improving processes to ensure adherence to Treasurer’s Instruction 304 *Authorisation of payments* – its purchasing and invoicing systems are now separate
- improving how contracts are managed, and procurement and contract management training – all business contracted by the department must undergo a ‘Proactive Integrity Check’ to ensure the business is legitimate and does not pose a risk
- meetings with PSC, and developing and establishing public sector networks to share information and learnings.³⁴²

The commission has acknowledged the significant improvements made by the department to reduce misconduct risk.³⁴³ The department’s previous quarterly meetings with PSC have been reduced to twice yearly in recognition of the department’s approach to reporting, investigating and following up potential serious misconduct.³⁴⁴

To date, the department’s response to the misconduct risks exposed by Mr Whyte and others appears to be appropriate. Any commission report on its current inquiry into governance arrangements during the employment of Mr Whyte may provide further insight and recommendations.

339 Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 2. As at May 2023, the department’s Professional Standards directorate has 66 FTE and a 2022–23 budget of \$9.132 million: Department of Communities, attachment to email, 26 May 2023, p 6.

340 Corruption and Crime Commission, *More powerful procurement lessons in Department of Communities corruption*, media release, 20 September 2022.

341 Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 2.

342 These quarterly meetings involve the commission, PSC, Department of Education, Department of Justice, Department of Fire and Emergency Services, WA Police and North Metropolitan Health Service: Department of Communities, attachment to email, 26 May 2023, p 4.

343 For example, in the Corruption and Crime Commission, *Misconduct in the Department of Communities relating to country building projects*, 7 April 2022, p 32.

344 Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 3.

Finding 29

The Department of Communities' response to the fraud of Paul Whyte and others, to date, appears to be appropriate. The Corruption and Crime Commission has acknowledged significant improvements by the department to reduce misconduct risks.

The public sector's response to Mr Whyte's fraud

Mr Whyte's fraud has also had a significant impact on the wider public sector.

Mr Whyte's fraud, combined with PSC and OAG tools and actions in recent years, has led to sustained action to improve integrity in the public sector.

Agencies, and heads of agencies, can be under no doubt of the importance of its integrity function and that lax management of misconduct risks and controls is not acceptable.

[The] situation that happened with Paul Whyte meant that ... everybody had a good, hard look at themselves in the integrity landscape.

*Mike Rowe, Director General,
Department of Communities*

To give one example of the broader impact on an agency, WA Police told the committee that Mr Whyte's procurement fraud, and other recent incidents of fraud, provides a current catalyst for it to bolster its fraud prevention activities.³⁴⁵

A direct sector wide impact of Mr Whyte's fraud was the government funding the OAG's Forensic Audit Unit. This unit, and the work of PSC and OAG in providing tools and working with agencies to build integrity, are discussed in chapter 7.

Commission recommendations in reports and agencies responses to commission recommendations

How agencies respond to commission reports is often unknown. This is particularly true when the commission provides a report to the agency and does not publish it.

It is not only important that agencies respond to reports by taking action to improve their systems and controls to minimise risk, but that they are seen to be taking action.

The public has a right to know what happened after a finding of serious misconduct, particularly where the commission considered a matter of such importance that it investigated and then publicly reported on it. As noted in chapter 2, the commission focuses its resources on 'more serious and significant matters which have the greatest impact on improving integrity within the public sector'.³⁴⁶

The CPSU/CSA wants more commission reports to be published, more recommendations and more public sector responses to risks identified by the commission. It submitted that:

345 Col Blanch, Commissioner, Western Australia Police Force, letter, 12 September 2022, p 8.

346 Corruption and Crime Commission, *Annual Report 2021–22*, p 26. The commission has also said that a decision to investigate is 'usually made for more serious or complex matters': *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, p 4.

- it ‘should be the norm’ for the commission to publicly report to Parliament on its investigations when they reveal organisational issues that contribute to misconduct risk³⁴⁷
- publicly reporting the outcome of serious misconduct investigations is ‘a necessary component of mitigating misconduct risk, which is in the public interest and in the interests of employees’³⁴⁸
- when a commission report includes recommendations, the agency should be required to show progress towards implementing recommendations, within a timeframe.³⁴⁹

Making recommendations should ... be standard practice in the CCC’s role of reporting misconduct.

*Community and Public Sector Union/
Civil Service Association of WA*

The Aboriginal Legal Service of Western Australia supports the commission having a power to compel the Police Commissioner to report on its implementation of recommendations.³⁵⁰

The CCM Act provides the commission with a general power to make recommendations:

43. Recommendations by the Commission

- (1) The Commission may – ...
- (b) make recommendations for the taking of other action [other than recommending prosecution or taking disciplinary action against a person provided in (1)(a)] that the commission considers should be taken in relation to the subject matter of its assessments or opinions or the results of its investigations.

In Western Australia, commission reports tabled in Parliament generally do *not* make specific recommendations to the agency to take systemic action to reduce misconduct risks.³⁵¹ Many reports *make observations, suggestions or comments* on action to minimise risks. Reports may also note actions the agency says it has taken, or intends to take, to the extent these are known at the time of tabling the report.

To clarify the commission’s practices, between January 2021 and July 2023, only 3 of the 17 reports the commission tabled in Parliament included recommendations for an agency to take systemic action. These were:³⁵²

347 Submission 19, Community and Public Sector Union/Civil Service Association of WA, p 5.

348 *ibid*. CPSU/CSA added that reports should be private only when publishing the report ‘could jeopardise covert operations or otherwise unduly harm state interests’: *ibid*, p 6.

349 *ibid*, p 6.

350 Alice Barter, Managing Lawyer, Civil Law and Human Rights Unit, Aboriginal Legal Service of Western Australia, *transcript of evidence*, 15 August 2023, p 5.

351 Commissioner McKechnie agreed with the Chair that the commission does not make specific recommendations, but makes observations in its reports: *transcript of evidence*, 30 August 2023, p 15.

352 In the Corruption and Crime Commission’s report *A report on corrupt procurement practices and conduct in the Department of Communities*, tabled on 20 September 2022, the commission recommended an amendment to the *Corruption, Crime and Misconduct Act 2003*. This recommendation was not directed at the agency.

- The August 2021 report *A review of the Department of Transport's management of unlawful access to TRELIS*.³⁵³ The commission made 4 recommendations. In summary, it recommended that the Department of Transport:
 - implement particular TRELIS policies and procedures
 - implement a consistent triage and investigation process for any suspected unlawful access to TRELIS
 - review current TRELIS activity alerts to ensure they are contemporary, focused and effective
 - review current authorisations for TRELIS to access and ensure memorandums of understanding are in place for all external users.³⁵⁴
- The May 2022 *A report on the deployment of police dogs*. This was a systemic review. The commission recommended that WA Police:
 - undertake further analysis of police dog use to explore and address reasons for the higher representation of Aboriginal and Torres Strait Islander persons in police dog deployments
 - develop and implement WA Police Canine Unit policy, procedure and/or guidelines.³⁵⁵
- The May 2023 *Report on oversight of a police investigation into an arrest for disorderly conduct*. This was a review of the police's investigation of an allegation. The commission recommended that WA Police review and amend policies and procedures to clearly articulate acceptable timeframes for investigation and review, including internal reviews of such investigations.³⁵⁶

One further report, the report into *WA Police Force's identification and management of at risk officers* noted that the commission recommended action to WA Police, but WA Police did not support its recommendations.³⁵⁷

When the commission recommends systemic action, it evaluates the agency's response in 12 months to ensure the authority implements positive change.³⁵⁸ Follow up report/s reference and comment on the agency's response. The commission does not publish the agency's written response to its recommendation/s on its website. The committee would like this level of reporting.

Four of the 17 reports tabled between January 2021 and July 2023 reported on an agency's response to earlier recommendations. These were:

353 TRELIS is a database used by the Department of Transport to facilitate the delivery of vehicle and driver licensing and registration services across Western Australia.

354 Corruption and Crime Commission, *A review of the Department of Transport's management of unlawful access to TRELIS*, 5 August 2021, p 27.

355 Corruption and Crime Commission, *A report on the deployment of police dogs*, 10 May 2022, p 30.

356 Corruption and Crime Commission, *Report on oversight of a police investigation into an arrest for disorderly conduct*, 10 May 2022, p 11.

357 Corruption and Crime Commission, *WA Police Force's identification and management of at risk officers*, 2 December 2021.

358 Corruption and Crime Commission, *Annual Report 2021–22*, p 28.

- The June 2021 *Final review of the WA Police Force response to an incident in the lock up of a country town*.³⁵⁹
- The June 2021 *Review of the Office of the Auditor General's response to misconduct risks with access to confidential information*.³⁶⁰
- The April 2022 *A final review of recommendations made following reports on dangerous drugs in Western Australian hospitals*.³⁶¹
- The May 2022 *Report on the balance of recommendations arising out of previous Commission reports on the Department of Corrective Services*.³⁶²

Many other commission reports, whether investigation reports, review of authority action reports or otherwise, make *observations, suggestions or comments* on misconduct risks, but do not formally recommend agency action. The following 2023 reports demonstrate this approach.

In the March 2023 report *A death raises questions at Rockingham General Hospital*, which reported on a preliminary investigation by the commission, the commission found that handwritten notes made by a registrar could not be found, and said:

[The investigation] did ... highlight the serious misconduct risks in relying on paper records. While electronic medical records can be costly to implement and maintain in the hospital system, electronic records offer better security and an audit trail of access. The management of a misconduct risk is a matter for the RPG [Rockingham Peel Group].³⁶³

It is not known if the hospital may or will address the misconduct risk. The media reported that the hospital was implementing a digital medical record system to reduce the need for paper records.³⁶⁴ The public should not have to rely on media reports to be informed of action taken, or not, by an agency.

The commission's July 2023 report *Serious misconduct risks in a Housing Authority project* described the Housing Authority's involvement in stages of a project to develop housing in the City of Cockburn as 'the antithesis of good governance'.³⁶⁵ It estimated that the current

359 Corruption and Crime Commission, *Final review of the WA Police Force response to an incident in the lock up of a country town*, 17 June 2021.

360 Corruption and Crime Commission, *Review of the Office of the Auditor General's response to misconduct risks with access to confidential information*, 24 June 2021.

361 Corruption and Crime Commission, *A final review of recommendations made following reports on dangerous drugs in Western Australian hospitals*, 7 April 2022.

362 Corruption and Crime Commission, *Report on the balance of recommendations arising out of previous Commission reports on the Department of Corrective Services*, 10 May 2022.

363 Corruption and Crime Commission, *A death raises questions at Rockingham General Hospital*, 14 March 2023, pp 4–5.

364 Keane Bourke and Ashleigh David, 'Corruption watchdog dismisses claims Rockingham hospital doctor tried to coerce colleague to alter death certificate date', *ABC News* (web-based), 14 March 2022, accessed 1 September 2023, <<https://www.abc.net.au/news>>.

365 Corruption and Crime Commission, *Serious misconduct risks in a Housing Authority Project*, 20 July 2023, p 39.

loss to the Department of Communities arising from the project was \$29 million.³⁶⁶ The commission's investigation made no finding of serious misconduct.

The purpose of the report was to 'draw attention to the misconduct risks when usual procedures are not followed and transactions are opaque'.³⁶⁷ While the report was produced and made public to highlight misconduct risks, it did not include recommendations. It is not known what action the agency may or will take to implement change to address risks.

Commissioner McKechnie told the committee the commission makes formal recommendations in a report when it sees something 'seriously wrong'.³⁶⁸ That recommendations are about improving gaps or more systemic serious misconduct risks the commission identifies.³⁶⁹ When asked why the commission does not make more recommendations, like other commissions, Commissioner McKechnie replied:

Natural caution, mainly because, as I say, we regard recommendations perhaps as a bit more serious than they do. And we do not run agencies. Our reports should show to somebody that there is something seriously wrong here that needs fixing. Anyway, probably a difference of opinion as to when one should and should not.³⁷⁰ ... One can argue about whether there should be a recommendation or not in a particular case, but where we have made them, we do go back and publish.³⁷¹

The law and practice in Western Australia differs from other states, such as New South Wales and Victoria where:

- commission reports routinely include recommendations to agencies directed at preventing misconduct (and commissions have a clear statutory function to prevent misconduct)
- the agency is required to respond to commission recommendations (promoting accountability)
- agency response/s to the recommendations are published on the commission's website, with the commission's report (providing transparency).

As noted in chapter 5, the committee is impressed with the clear and accessible way the Independent Commission against Corruption (NSW) (ICAC) informs the public about what happens after its investigation. It is clear what systemic action agencies implement, or not,

366 *ibid*, p 1. The department queries this amount but is unable to provide an alternative figure.

367 Corruption and Crime Commission, *Serious misconduct risks in a Housing Authority Project*, 20 July 2023, p 2. The commission formed no opinion of serious misconduct by an officer. The commission estimates the current loss to the Department of Communities from this project to be \$29,049,936. The department queries this amount but does not offer an alternative figure: *ibid*, p 1.

368 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 16.


369 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 4.

370 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 16.

371 *ibid*, p 17.

to prevent corruption. ICAC almost always includes recommendations to prevent corruption in its reports.³⁷²

To clarify ICAC's process, in its 2020 report *NSW Department of Family and Community Services – allegations concerning a headlease coordinator (Operation Cygnet)* ICAC reported on its investigation into whether a headlease coordinator at a department awarded work to his own company to gain a financial benefit and the public officer authorised payment of public funds for private work at his residence. ICAC made 14 corruption prevention recommendations to the agency ranging from a more general recommendation to review practices to more detailed recommendations. The responses from the agency were published on ICAC's website, with its report. Extracts from ICAC's website follow:

 Recommendations for corruption prevention
▼

The Commission makes the following 14 corruption prevention recommendations to assist the Department of Communities and Justice (DCJ) to improve its systems and help prevent the recurrence of the conduct exposed in the investigation:

Recommendation 1

That the DCJ reviews the design of its headleasing repairs process so that responsibilities for key activities are clarified and sufficiently segregated.

Recommendation 2

That the DCJ develops and enforces a clear and comprehensive set of policies and procedures governing the headleasing process. The policies and procedures should include:

- assessing and negotiating the scope of repair work
- recordkeeping requirements
- sourcing and assessing quotations
- extending rental payments.

...

Responses to ICAC recommendations

The documents posted below have been provided by the Department of Communities and Justice in response to the ICAC's recommendations. Their publication here is to show the status of the responses. It does not constitute approval or endorsement by the Commission.

 [Final progress report - Department of Communities and Justice](#)

 [12 month progress report - Department of Communities and Justice](#)

 [Plan of Action - Department of Communities and Justice](#)

³⁷² This is based on a committee staff review of ICAC reports published on its website as at 5 September 2023. Between January 2021 and July 2023 all but one of the 11 investigation reports ICAC published recommended action for corruption prevention, and the one report made policy recommendations.

ICAC has the power to make recommendations, *and* the agency must respond to the recommendations and provide progress reports until they are fully implemented.

Section 111E of the *Independent Commission Against Corruption Act 1988* (NSW) follows:

111E Public authority response to corruption prevention recommendations of Commission

- (1) As soon as practicable after making a recommendation under section 13(3)(b) for a specified public authority to take action to reduce the likelihood of corrupt conduct occurring, the Commission must furnish a copy of the recommendation to the authority and to the Minister for the authority.
- (2) The public authority must inform the Commission in writing within 3 months (or such longer period as the Commission may agree to in writing) after receiving the recommendation, whether it proposes to implement any plan of action in response to the recommendation and, if so, of the plan of action.
- (3) A public authority that informs the Commission of such a plan must provide a written report to the Commission of any progress in implementing the plan—
 - (a) 12 months after informing the Commission of the plan, and
 - (b) if the plan is not then fully implemented, 12 months after that.

In Victoria, its Independent Broad-based Anti-corruption Commission (IBAC) also makes recommendations in reports and publishes agencies' responses on its website (under the heading 'opportunities'). Like NSW, the *Independent Broad-based Anti-corruption Commission Act 2011* provides IBAC with the power to make recommendations and requires the agency to respond to IBAC 'within a reasonable specified time'.³⁷³

IBAC publishes responses to our investigations to inform the community about actions agencies advise they are taking, and to share learnings that may help other agencies improve their systems and practices to prevent corruption and misconduct.

Independent Broad-based Anti-corruption Commission (Victoria)

IBAC publishes agency responses on its website with the original report. Again, these are a learning tool for other agencies (see pull quote). An example of an IBAC report and published agency response to recommendations is [here](#).

The *National Anti-Corruption Commission Act 2022* includes elements similar to the above. It also provides that if the National Anti-Corruption Commission (NACC) is not satisfied with the agency's response to its comments or recommendations, it may refer the response to the Parliament or Minister.³⁷⁴

³⁷³ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), ss 159(1), (6).

³⁷⁴ *National Anti-Corruption Commission Act 2022* (Cth), ss 53, 54.

In summary, while the commission in Western Australia investigates allegations that it considers will have the ‘greatest impact on improving integrity in the public sector’,³⁷⁵ its reports often do not include formal recommendations to agencies to minimise misconduct risks. Its threshold for including a recommendation is relatively high; when it sees something ‘seriously wrong’.

A central role for any commission is to prevent misconduct, or, as the law in this State currently provides, for the commission to ‘build capacity’.

While in Western Australia the commission evaluates agencies’ responses when it makes recommendations directed at minimising misconduct risks, the commission does not recommend such action as a matter of course. The commission’s practice of not recommending that agencies take action to minimise misconduct risks means that agencies do not publicly respond to commission reports nor report on action taken to minimise misconduct risks. This practice needs to change.

The committee recommends that the commission adopts the following practice in reports it tables in Parliament:

- The commission should, as standard practice, formally recommend agency action to minimise misconduct risks (prevent misconduct) when it identifies misconduct risks. This could range from asking the agency to review its risks to detailed recommendations.
- The commission should replace its observations, suggestions or comments on action to minimise misconduct risks, with recommendations as a matter of course and wherever possible. In particular, reports on its investigations should as a standard include recommendations.
- Agencies should be required to respond in writing to commission recommendations by advising of its initial plan and providing progress report/s until recommendations are implemented, if the agency agrees with the recommendation. If the agency does not agree with a recommendation it should explain why not.
- The commission should publish the response from the agency on its website with the relevant report.³⁷⁶

To aid the above, the commission should be given a clear statutory misconduct prevention and education function (see below).

It is also recommended that the commission consider when and whether to continue its current practice of reporting on an agency’s response to a recommendation. Requiring the

375 The commission has also said that a decision to investigate is ‘usually made for more serious or complex matters’: Corruption and Crime Commission, *Annual Report 2021 22*, p 26; and *Corruption and Crime Commission monitoring of agency investigations*, 8 October 2021, attachment to submission 7, p 4.

376 When asked whether agency response should be published, the Department of Communities said it did not believe there was any reason why they should not be: Mike Rowe, Director General, Department of Communities, *transcript of evidence*, 29 March 2023, p 8.

agency to respond in writing until recommendations are implemented may obviate the need to table a further report. In both cases the agency's written response/s should be published.

The wider public sector can benefit from viewing these recommendations and responses. They may review their processes, undertake risk assessments and take action to prevent similar misconduct at its agency.

The committee does not dispute that a public sector agency is responsible for its misconduct risks and integrity. Or that it is for the agency to weight up the costs and benefit of any action to reduce misconduct risks. Our recommendation calls for the commission to take a greater role in making agency's accountable, more often. This is entirely consistent with the role of the commission.

Improving accountability and transparency promotes public confidence in the integrity of the public sector and the value of the work of the commission.

Finding 30

Most Corruption and Crime Commission reports tabled in Parliament do not include recommendations for the agency to take systemic action to minimise misconduct risks.

Many reports make observations, suggestions, or comment on action to minimise risks, but do not recommend action.

The commission only makes formal recommendations when it sees something 'seriously wrong'. The commission follows up and reports on these recommendations.

Finding 31

It is not publicly known how public agencies respond to most Corruption and Crime Commission reports tabled in Parliament.

Finding 32

The law and practice in Western Australia differs from some other states, particularly New South Wales. In that state:

- tabled ICAC reports almost always include recommendations to agencies directed at preventing misconduct (and the law provides ICAC with a clear statutory function to prevent misconduct)
- the agency is required to respond in writing to ICAC's recommendations
- agency response/s are published on ICAC's website, with its report.

This ensures public sector accountability and transparency, as to what action the agency has taken to reduce the likelihood of misconduct reoccurring.

Recommendation 18

That Corruption and Crime Commission reports tabled in Parliament should, as standard practice and wherever possible, formally recommend agency action to minimise misconduct risks (prevent misconduct) when the commission identifies misconduct risks.

The commission should replace its practice of making observations, suggestions, or comments on misconduct risks with formal recommendations requiring agency response.

Recommendation 19

That the Attorney General amend the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, a law similar to section 111E of the *Independent Commission Against Corruption Act 1988* (NSW).

A clear misconduct prevention and education function for the commission

The commission, the lead agency in dealing with serious misconduct in this State, only has a ‘supporting’ role in misconduct prevention and education.

In Western Australia, the CCM Act provides that:

- A function of the Public Sector Commissioner is ‘to help to prevent misconduct’ (the prevention and education function).³⁷⁷ The Public Sector Commissioner may perform this function by, among other things, analysing systems used within the agencies to prevent misconduct, making recommendations to agencies and reporting on ways to prevent and combat misconduct.³⁷⁸
- The Public Sector Commissioner, in undertaking the prevention and education function, ‘is to be supported by the Commission, other independent agencies and appropriate authorities’.³⁷⁹ Also, an ‘aspect’ of the commission’s serious misconduct function is that it ‘may help agencies to prevent serious misconduct’ by undertaking particular tasks including analysing information it gathers from the serious misconduct function, analysing systems used within agencies, generally increasing the capacity of agencies to prevent serious misconduct, and reporting on ways to prevent and combat serious misconduct.³⁸⁰
- The commission has a ‘capacity development’ function for public agencies.³⁸¹
- The commission has a prevention and education function to help prevent *police* misconduct.³⁸²

The scope and limits of the commission’s role in ‘supporting’ the Public Sector Commissioner’s misconduct prevention and education function are not clear. Neither are the limits of the commission’s ‘capacity development’ function.

Commissioner McKechnie appeared to agree when he told the committee:

I always feel a bit uncomfortable when I write a report that educates as to whether I am exceeding the boundaries. I get legal advice that I am not because we have put it under “capacity building”.³⁸³

³⁷⁷ *Corruption, Crime and Misconduct Act 2003*, s 45A(1) provides that ‘It is a function of the Public Sector Commission (the *prevention and education function*) to help prevent misconduct’.

³⁷⁸ *ibid*, s 45A(2)(b), (c) and (g).

³⁷⁹ *ibid*, s 45A(4).

³⁸⁰ *ibid*, s 18(4).

³⁸¹ *ibid*, s 21AB(1).

³⁸² *ibid*, s 21AA(1).

³⁸³ The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 16.

It is clearly not desirable for the commission to question when it may take action to educate and prevent misconduct at public agencies.

The commission previously had a clear prevention of misconduct and education function for public agencies.³⁸⁴ This function was transferred to the Public Sector Commissioner in 2015, when legislation split the commission's misconduct function into 'serious misconduct' and 'minor misconduct' to be dealt with by the commission and Public Sector Commissioner respectively.³⁸⁵

During the passage of the relevant Bill, the Hon Adele Farina MLC, the lead speaker for the opposition in the Legislative Council, expressed concern that confusion may arise from splitting the prevention and education function, and said it 'makes little sense' to separate the education function from the capacity building function.³⁸⁶

Commissioner McKechnie wants the prevention and education function returned to the commission. Returning this function to the commission will provide it with more opportunities to assist agencies to deal with their misconduct risks. The commission's *Annual Report 2021–22* said:

Responding to risks in priority areas within the public sector

The Commission does not have a prevention and education function for the public sector so opportunities for assisting public authorities in recognising and managing risks are curtailed.³⁸⁷

Commissioner McKechnie told the committee:

I think an unintended consequence of the transfer of the corruption prevention and education function, except for police, ... is that there is no longer that coverage that there once was by the commission that could see trends and then perhaps prepare a corruption prevention program in relation to that particular thing.³⁸⁸ ...

I would like to see at least a degree of corruption prevention and education returned to the commission. ... I am not suggesting a return to the days when we ran conferences and seminars and things of that nature, because I think that is the Public Sector Commission, but I do think we have a specific role. **We see what the misconduct is. We should be able to report more widely on steps that might prevent that particular misconduct.**³⁸⁹ ...

We just want a greater flexibility to be able to add in, where appropriate, matters that might be of general help. We try and do that, as I say, in our reports.

We might say, "This case has exhibited a number of red flags which should have

384 Section 17 of the *Corruption and Crime Commission Act 2003* previously provided that 'The commission has a function (the "prevention and education function") of helping to prevent misconduct'.

385 The Hon Michael Mischin MLC, Legislative Council, *Hansard*, 16 October 2014, pp 7408–09. The *Corruption and Crime Commission Amendment (Misconduct) Act 2014* was given royal assent on 9 December 2014.

386 The Hon Adele Farina MLC, Legislative Council, *Hansard*, 2 December 2014, p 9074.

387 Corruption and Crime Commission, *Annual Report 2021–2022*, p 29.

388 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 4.

389 *ibid*, p 16.

been picked up.” Hopefully, other agencies will see that and say, “Maybe we’ll have a look.”³⁹⁰ [Committee emphasis.]

When asked about a corruption prevention and education role being returned to the commission, the Public Sector Commissioner, Sharyn O’Neill, said:

There is no doubt that more education—I come from an education background, so more education is always something to be contemplated. We have the role and, as I understand, the legislation provides for us to be supported by the CCC in that role and we believe we are supported.³⁹¹

Integrity commissions in other jurisdictions in Australia have significant prevention of misconduct and education roles.³⁹² In December 2022 all integrity chiefs in Australia agreed that a ‘corruption prevention function’ was one of the 12 best practice principles fundamental to the functions and powers of anti-corruption commissions.³⁹³

In Victoria, for example, where IBAC has ‘education and prevention functions’,³⁹⁴ it has a *Corruption Prevention Strategy 2021–2024*, an Executive Director of Prevention and Communication, and a whole of IBAC approach to prevention. Its prevention and education role is integral to everything it does, from applying a prevention lens when deciding what matters to investigate through to tabling reports on misconduct risks. Submissions to a Parliament of Victoria Integrity and Oversight Committee inquiry praised the high quality and usefulness of IBAC’s prevention and education resources, such as intelligence and research reports, guides and guidelines, and fact sheets.³⁹⁵

In Western Australia, the commission not having a clear misconduct prevention and education power has practical implications. For example, when the commission made the sensible decision to involve WA Police early in its investigation of Mr Whyte, it had to do so under its ‘capacity building’ function. This is because, as Commissioner McKechnie noted, ‘it is the only bit in the Act that we think we can label it as. It is really corruption prevention and education, but we do not have that power’.³⁹⁶

390 *ibid*, p 15.

391 Sharyn O’Neill, Commissioner, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 11.

392 For example, the Commonwealth, Victoria, New South Wales, Queensland, and the Northern Territory. Prevention and education provisions may be more detailed, for example section 13 of the *Independent Commission Against Corruption Act 1988* (NSW) and section 15 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), or short, for example section 23 of the *Crime and Corruption Act 2001* (Qld) provides that ‘The commission has a function (its prevention function) of helping to prevent major crime and corruption’. Commissions publish guides, for example Queensland’s Crime and Corruption Commission’s *Fraud and Corruption Control Best Practice Guide*.

393 Corruption and Crime Commission and other Australian anticorruption commissions, *Nation’s integrity chiefs agree to best practice principles for Australian anti-corruption commissions*, media release, 9 December 2022, p 1.

394 *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), s 15(5).

395 Parliament of Victoria, Integrity and Oversight Committee, *Inquiry into the education and prevention functions of Victoria’s integrity agencies*, April 2022, p 91. For example, in August 2018 IBAC tabled a report on *Corruption and misconduct risks associated with employment practices in the Victorian public sector* which highlighted recruitment risks.

396 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 12.

Some commission activities could be described as corruption prevention and education, including liaison with agencies, community engagement, presentations, and resources on its [website](#) such as anti-corruption posters, videos and podcasts.

A clear misconduct prevention and education function would give the commission the power, flexibility and confidence to be proactive and respond to integrity priority areas on an as needs basis. For example, the commission could allocate its resources to focus on misconduct risks sector wide, at a particular agency or in local government. This function should pervade all aspects of the commission's serious misconduct operations. It would give it options on how to use its growing intelligence function to inform, educate and assist agencies to prevent misconduct. A misconduct prevention and education function could also promote transparency by providing a clearer power to make outcomes imposed on public officers' public (as discussed in chapter 4).

The commission could also use this power to report on corruption prevention and education, and misconduct risks at public agencies in reports tabled in Parliament. The commission did this in its *Report on serious misconduct by a senior police officer* tabled on 26 October 2023, where it used its corruption prevention and education power *for the police* to report on misconduct risks with police vehicles and misuse of confidential information.

In short, the commission could use this power to be more effective in reporting and recommending measures to minimise misconduct, and targeting and preventing misconduct.

In the committee's view it is in the public interest for the commission, the peak integrity body responsible for exposing and dealing with serious misconduct, to have the power and flexibility to take action to prevent misconduct in the manner it chooses. A clear misconduct prevention and education function for the commission is entirely consistent with the main purpose of the CCM Act to 'improve continuously the integrity of, and to reduce the incidents of misconduct in, the public sector'.³⁹⁷

To be clear, the committee is not suggesting that the Public Sector Commissioner should not also have this function, or that it is not doing good work to build integrity at public agencies (this is discussed in chapter 7). The committee expresses no view on how legislation could be drafted to provide the commission with a clear misconduct prevention and education function for public agencies.

Finding 33

Integrity commissions in other jurisdictions in Australia have a prevention of misconduct and education function for public agencies. In December 2022 integrity chiefs in Australia agreed that a corruption prevention function was fundamental to the functions and powers of anti-corruption commissions.

³⁹⁷ *Corruption, Crime and Misconduct Act 2003*, s 7A(b).

Finding 34

The Corruption and Crime Commission does not have a clear misconduct prevention and education function for agencies under its remit (other than police). It 'supports' the Public Sector Commissioner in this role, and has a public agency 'capacity development' function.

Finding 35

The Corruption and Crime Commission not having a clear misconduct prevention and education function curtails the commission's opportunities to assist agencies to recognise and manage misconduct risks. The commission wants this power and greater flexibility to take action to prevent misconduct.

Recommendation 20

That the Attorney General amend the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, the Corruption and Crime Commission with a clear, rather than subordinate, misconduct prevention and education function for all agencies within the remit of the commission. This function may be shared with the Public Sector Commissioner.

Chapter 7

Building integrity

What happens after a finding of serious misconduct happens in the context of the existing level of integrity at the agency. With this in mind, the committee reviewed initiatives to build integrity.

It is a truism that ‘prevention is better than cure’ and this expression is equally apt with respect to corruption and other misconduct in the public sector.

Parliament of Victoria Integrity Oversight Committee: Education and Prevention functions of Victorian integrity agencies

The need to build integrity

It is concerning that in 2021 the Office of the Auditor General (OAG), after conducting a high-level review of State Government entities’ fraud risk management, found that:

many entities fell well short of better practice. We reported similar results in our 2013 report, *Fraud Prevention and Detection in the Public Sector*, and in our 2019 report, *Fraud Prevention in Local Government*. **Significant work is required across the public sector to raise the standard of fraud risk management to a satisfactory level.**³⁹⁸ [Committee emphasis.]

The scale and audacity of the fraud of Mr Whyte at the Department of Communities and the corrupt conduct of officers at the North Metropolitan Health Service and others have raised concerns about the integrity of the public sector. The Special Inquiry into Government Programs and Projects (the Langoulant report),³⁹⁹ and the previous committee in its report on procurement, *Red flags ... red faces: Corruption risk in public procurement in Western Australia* also raised concerns about integrity. The previous committee found that:

- A sector-wide approach, system wide improvements, and agency improvement, is required to reduce the opportunity for corruption.⁴⁰⁰
- The sector needs to avert the risk of agencies emphasising compliance and regulation after a misconduct event, but, when the scandal subsides, returning to ‘business as usual’ with the entrenched organisational culture remaining largely unchanged.⁴⁰¹

Getting the fundamentals right

It is critical that the public sector recognises the risk of misconduct, and focuses on and commits to implementing holistic and effective governance systems and integrity frameworks.

398 Office of the Auditor General, *Fraud Risk Management – Better Practice Guide*, 22 June 2022, p 8.

399 State of Western Australia, Special Inquiry into Government Programs and Projects, *Special Inquiry into Government Programs and Projects: Final Report*, February 2018.

400 Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020, findings 58 and 59, p 133.

401 *ibid*, finding 26, p 48.

Commissioner McKechnie told the committee that he would like to see, across agencies, ‘a greater recognition of the risk of corruption within their agencies and treating it like any other risk, like a work health safety risk or reputational risk ... and manage it the same way.’⁴⁰²

Public Sector Commission (PSC) and OAG tools have set out the fundamentals and elements of implementing a robust integrity framework.

Integrity is a non-negotiable fundamental part of public administration. In providing a range of services to the public, busy agencies must give a higher priority to integrity as an integral part of its work, and integrate risk management into all activities and decisions. As the Public Sector

Commissioner says in PSC’s *Integrity Strategy for WA Public Authorities 2020–2023*:

Integrity has to be embedded in all aspects of our work – in governance and administration; systems and controls; culture and attitude; and accountabilities and responses. Every day. By everyone. All public authorities and individuals must take an interest in promoting integrity and preventing misconduct and corruption. While the Commission has a significant role to play, the primary responsibility for preventing misconduct and corruption – and operating with integrity – lies with leaders and individuals in public authorities.⁴⁰³

Main Roads Western Australia provided an example of embedding integrity in its work. It has adopted a proactive approach to preventing fraud and corruption in major contracts which includes, as a baseline, the requirement for contractors to comply with the Australian Standard *AS 8001–2021 Fraud and Corruption Control*. It also offers to assist contractors to meet these obligations.⁴⁰⁴

The tone at the top and the ethical culture created by the leadership of a workplace is also critical to preventing fraud. Directors general and chief executive officers should take principal responsibility for integrity and misconduct risks. As the previous committee said, chief executives and directors general must be accountable for the expenditure of public money.⁴⁰⁵

Improved integrity requires sustained effort which is why all public authorities are expected to commit to implementing this strategy and taking action

*Public Sector Commission:
Integrity Strategy for WA Public
Authorities 2020–2023*

Rules and procedures may govern practice, but when it comes to individuals and individual decisions, culture will determine how things get done.

Public Sector Commission

402 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 9.

403 Public Sector Commission, *Integrity Strategy for WA Public Authorities 2020–23*, p 3.

404 Tracey Manton, Acting Integrity and Governance Manager, Legal and Commercial Services, Finance and Commercial Services Directorate, Main Roads Western Australia, email, 3 November 2023, p 1.

405 Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020, finding 55, p 121. The previous committee also said that this accountability needs to be embedded into their key performance indicators.

While a robust misconduct control system with appropriate prevention and detection processes can reduce the risk of misconduct, improving integrity is more than establishing systems and processes. Committing to continually developing an integrity culture and ‘speak-up’ culture is essential.⁴⁰⁶ A code of conduct may help develop the expectations and standards of behaviour within an organisation. However, a code may also become a ‘tick the box’ exercise, primarily used in disciplinary matters, especially where there is disconnect between the code and behaviour.

The wrong culture increases misconduct risk. The committee agrees with the previous committee’s finding that:

Culture pervades every activity in an organisation, and impacts on the attitudes of staff and management as to how they do their jobs. Culture influences whether lip service is paid to compliance, accountability and integrity or whether these measures are genuinely implemented. If organisational culture does not support agency internal controls, corruption risk is heightened.⁴⁰⁷

An organisation enforcing its policies and procedures is key. Policies and processes are not effective if not enforced. As Commissioner McKechnie observed, in his experience:

most of the reports that I have authored and, I think, [the Acting Commissioner] has authored, the policies and procedures of the organisation look fine. They are great on paper; they have all sorts of checks and balances and so forth. For various reasons, nobody has bothered to enforce them or anything: “Yes, we had corruption training when we first joined. That was 15 years ago. Conflict of interest—what’s that? We just fill out the sheet.” The department has had the right policies, but nobody follows them.⁴⁰⁸

Public agencies must have a proactive, not only reactive, approach to integrity. As OAG observed, many public agencies have been reactive, not proactive, in their approach to corruption.⁴⁰⁹

The work of PSC and OAG, discussed below, embodies a proactive, holistic, misconduct prevention approach to integrity. Integrity strategies are part of the new best practice approach to misconduct (fraud and corruption) prevention. PSC resources and tools are designed to shift agencies focus from ‘ad-hoc integrity policy and education, to coordinated, context-dependent risk-based approaches that emphasise a culture built on integrity’.⁴¹⁰

406 A study from Australia showed that employee whistle-blowing was ‘the single most important way’ wrongdoing was brought to light in public sector organisations: Brown, A. J., ed. (2008). *Whistleblowing in the Australian Public Sector. Enhancing the Theory and Practice of Internal Witness Management in Public Sector Organizations*, Australian National University E Press.

407 Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020, finding 40, p 84.

408 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 12.

409 Office of the Auditor General of Western Australia, *Fraud Risk Management—Better Practice Guide*, 22 June 2022, p 24. Also, Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020, p 129.

410 Submission 8, Public Sector Commission, p 5.

Building effective governance systems and integrity frameworks, with adequate controls, involves many steps beyond undertaking a risk assessment and monitoring and reviewing risks.⁴¹¹ And effective governance systems involve many elements well beyond having risk and audit committees. In addition to PSC and OAG tools, other directives and resources apply, including Treasurer’s Instruction 825 *Risk Management*, Standards Australia AS ISO 31000:2018 *Risk management – Guidelines* (2021 update), and regulation 17 of the Local Government (Audit) Regulations 1996. In this chapter, we focus on the work of PSC and OAG.

Building integrity

In recent years PSC and OAG have published important resources and tools to build integrity.

Public Sector Commission

Under the Public Sector Commissioner’s misconduct prevention and education role in section 45A of the CCM Act, PSC helps to prevent misconduct by providing prevention advice and developing resources and programs for all ‘public authorities’ within the scope of the Act. This includes ‘public sector’ bodies and employees under the PSM Act, as well as local governments, universities, GTEs, judicial officers and public universities, but not the police.⁴¹²

In Western Australia, the focus of the Commission[s] actions under the Integrity Strategy for WA Public Authorities 2020–23 has been the development of resources to assist agencies to have solid foundations in place for the promotion of integrity and prevention of misconduct.

Public Sector Commission

In December 2019, PSC published its [*Integrity Strategy for WA Public Authorities 2020–2023*](#). The strategy provides high level guidance on integrity. With this strategy PSC wanted to introduce very clear expectations to agencies, that they must have a coherent and comprehensive approach to integrity and risk management, not a piecemeal approach.⁴¹³

The Strategy focuses on 4 key improvement areas and controls to promote integrity and help prevent misconduct and corruption. These are:

- Plan and act to improve integrity: effective governance systems and frameworks are established.
- Model and embody a culture of integrity: a culture of integrity exists and is reinforced and communicated by leaders.
- Learn and develop integrity knowledge and skills: individual and authority integrity knowledge, skills and competence are grown.

411 Office of the Auditor General of Western Australia, *Fraud Risk Management–Better Practice Guide*, 22 June 2022, pp 10, 17.

412 Submission 8, Public Sector Commission, p 2.

413 Sharyn O’Neill, Commissioner, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 9. The Strategy applies to public authorities: *Integrity Strategy for WA Public Authorities 2020–23*, p 4. The work on the strategy started before Paul Whyte’s conduct was exposed.

- Be accountable for integrity: prevention, detection and response to integrity matters are everyone’s personal and professional responsibilities.

For each improvement area there are actions for PSC, the agency and employees. The strategy aims to embed integrity into systems, controls, culture, and individuals’ actions.⁴¹⁴

In December 2021, PSC released an [Integrity Framework Template](#) and accompanying [Integrity Framework Guide](#) to help agencies develop or strengthen their integrity frameworks. This complements the strategy, reflecting the 4 areas noted above. While many agencies may have had elements of a framework, such as an audit committee or education programs, they may not think of them or coordinate them as a framework.⁴¹⁵ The template asks the agency head to set clear expectations and develop a statement.⁴¹⁶ A framework should outline governance systems, mechanisms and controls to support employees in promoting and supporting a culture of integrity at the agency.

Public sector agencies are required to implement an integrity framework by 2 October 2023.⁴¹⁷

(The committee understands that this mandate applies to the ‘public sector’, not all agencies within the remit of the commission such as local governments, universities and GTEs).⁴¹⁸

***The Public Sector Commission
has put out some quite useful
tools to guide agencies.***

*The Hon John McKechnie KC
Corruption and Crime Commissioner*

In PSC’s 2022 Integrity and Conduct Annual

Collection survey, 66.4% of agencies reported that they had used the *Integrity Framework Template* and guide to commence developing an integrity framework, develop and implement an integrity framework, or strengthen an existing integrity framework.⁴¹⁹

Many agencies, including large agencies, have implemented integrity frameworks in recent years.⁴²⁰

414 Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020, p 129.

415 Public Sector Commission, *Integrity Framework Template: Helping WA public authorities develop their integrity framework*, front cover.

416 *ibid*, p 1.

417 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 5.

418 Under the *Public Sector Management Act 1994* the Public Sector Commissioner may issue instructions to ‘public sector bodies’, and these bodies must comply with Commissioner’s Instructions, public sector standards, codes of ethics, codes of conduct: ss 9, 22A. While PSC tools are available to all public agencies, the Commissioner’s power to mandate compliance is restricted to the ‘public sector’.

419 Public Sector Commission, *State of the WA Government Sector Workforce 2021–22*, 23 November 2022, p 47. PSC publishes agency responses to its survey in the [State of the WA Government Sector Workforce Statistical Bulletin](#).

420 These include the Department of Jobs, Tourism, Science and Innovation (in March 2021 JTSI’s Strategic Corporate Executive Committee approved the implementation of a new Fraud and Corruption Risk Management Framework): Rebecca Brown, Director General, Department of Jobs, Tourism, Science and Innovation, letter, 21 October 2022, p 2; Department of Education (it released its integrity framework in 2022): Lisa Rodgers, Director General, Department of Education, *transcript of evidence*, 27 March 2023, p 2; Department of Local Government, Sport and Cultural Industries (as at May 2023 its executive had recently adopted its first integrity framework): Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 2. Large agencies often have dedicated integrity units.

PSC has also published self-assessment tools – an [Integrity Snapshot Tool for WA Public Authorities](#), a tick the box self-assessment tool which allows agencies to audit themselves and identify areas for development,⁴²¹ an [Integrity in financial management: Self-assessment checklist](#), and an [Integrity Framework Maturity Self Assessment Tool](#).

The *Integrity Framework Maturity Self Assessment Tool*, published in December 2022, is attached at appendix 7. This tool reflects PSC’s continuous improvement approach to integrity. The maturity self assessment tool:

- Helps agencies identify the strengths and weaknesses of its current approach to integrity – assessed against 4 levels of maturity: emerging, developing, embedded and excelling – and develop a plan to reach its desired level of maturity.
- Asks the agency to assess itself against 13 elements, giving the agency a maturity rating against each element and an understanding of its strengths, weaknesses and areas for improvement.⁴²²

Obtaining an ‘excelling’ rating may not be possible or necessary for all agencies, including smaller agencies. The appropriate level of maturity depends on the agency’s operating context and risk profile, which differ from agency to agency. The benefit of self assessment is that it drives continuous improvement, if used regularly. We discuss this tool further below.

PSC has published a number of other resources including *Developing detection systems*; *Commissioner’s Instruction 40: Ethical Foundations*, which requires public sector bodies and employees under section 3 of the PSM Act to have a code of conduct and integrity framework in place with minimum requirements; *Developing a code of conduct*; and *A Statement of personal interest for CEOs*.⁴²³

Other PSC measures support its integrity role including its:

- Integrity Advisory Service which provides process and practice advice to agencies undertaking disciplinary processes
- Integrity and Risk Division which delivers a range of integrity related education programs to agencies including ‘Misconduct prevention: an introductory workshop for managers’
- Integrity Practitioners’ Group which collaborates on strategic approaches to integrity and preventing misconduct.

421 The Western Australian Country Health Service described PSC’s *Integrity Snapshot Tools* as ‘instrumental’ in helping it identify gaps in its approach and areas for focus and improvement to integrity and minimising risks: Robert Pulsford, Acting Chief Executive, WA Country Health Service, letter, 7 October 2022, p 8.

422 Public Sector Commission, *Integrity Framework Maturity Self Assessment Tool*. The 13 elements are: clear expectations, roles and responsibilities, legislation and regulations, risk analysis and planning for integrity, internal controls audit and governance, fraud corruption and detection systems, values and standards, leadership and management attitude, organisational culture, integrity education and capacity, response to integrity breaches, self analysis and review, and oversight.

423 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 5.

Feedback about the *Integrity Framework Maturity Self Assessment Tool* has been positive. PSC will evaluate this tool in next year's survey.⁴²⁴

Committee members are aware that other jurisdictions have praised this maturity tool.⁴²⁵ Other jurisdictions requested early copies of this tool, and PSC was asked to present on this at the 2022 Australian Public Sector Anti-Corruption Conference (APSACC).⁴²⁶ Other jurisdictions have or are developing maturity tools.

The committee considered whether it should be mandatory for agencies to use the *Integrity Framework Maturity Self Assessment Tool*. The Public Sector Commissioner's preference is for agencies to implement their integrity frameworks, and from there the commissioner would 'expect' agencies to use the tool.⁴²⁷

In the committee's view, the Public Sector Commissioner should mandate that public sector agencies use this tool annually, after the agency has complied with the commissioner's requirement to implement an integrity framework. An agency that does not want to use the tool must seek approval from the Commissioner.

The committee understands that tools and best practice on how to build integrity may evolve, but in the immediate future agencies should use this tool to drive continuous review and improvement in its integrity. Integrity is not a 'set and forget' function.

Finding 36

Since 2020, the Public Sector Commission and Office of the Auditor General have published a range of important resources and tools to assist agencies to build integrity. These resources appear to be of high quality and useful.

PSC tools include its *Integrity Strategy for WA Public Authorities 2020–2023*, *Integrity Framework Template and guide*, and *Integrity Framework Maturity Self Assessment tool*.

The maturity assessment tool helps an agency identify its strengths and weaknesses, develop a plan to reach its desired level of maturity, and continually improve its integrity to the level appropriate to its operational context and risk profile.

Recommendation 21

That the Public Sector Commissioner require public sector agencies, after implementing their Integrity Frameworks, to complete the PSC's *Integrity Framework Maturity Self Assessment Tool* on an annual basis, or seek permission from the Commissioner to not complete this tool.

The committee also strongly recommends that public authorities within the remit of the Corruption and Crime Commission, that are not part of the 'public sector', including local governments, GTEs and universities, implement an integrity framework and complete the *Integrity Framework Maturity Self Assessment Tool* on an annual basis.

424 *ibid.*

425 This is partly based on comments made at interstate conferences attended by committee members. For example, a senior officer from an interstate integrity commission called this tool 'groundbreaking'.

426 Sharyn O'Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 6.

427 *ibid.*, p 6.

Office of the Auditor General

OAG operates mostly at the preventative end of misconduct by promoting robust systems of control to help agencies minimise the risk of conduct.⁴²⁸ Its annual financial and information systems audits of State *and* local government entities seek to identify weaknesses in financial management and IT control environments that increase misconduct risks.⁴²⁹

It is concerning that financial audit qualifications for State agencies hit a record high in 2021–22.⁴³⁰ As noted above, a 2021 review by OAG found that many agencies ‘fell well short’ of better practice on fraud risk management.

In June 2022 OAG published its *Fraud Risk Management – Better Practice Guide* and associated [tools](#) to raise the standard of fraud and corruption control across the sector.⁴³¹ The detailed guide outlines 10 essential fraud control principles, and advises agencies why and how to develop a fraud risk management program.

The most effective way for an entity to manage its risk of fraud is by controlling the opportunity – implementing or enhancing controls aimed at preventing fraud or detecting it quickly if it does occur.

*Office of the Auditor General:
Fraud Risk Management – Better Practice Guide*

Earlier, in March 2020, in an Australian first, OAG established a Forensic Audit Unit. This was established in response to the fraud of Mr Whyte at the Department of Communities.⁴³²

The objective of the Forensic Audit Unit is to improve public sector resilience to fraud and corruption. It has an intelligence led focus. The unit uses information gathered through OAG’s financial and information systems audits to help develop its own risk-driven, targeted program of audits to identify vulnerabilities to, and indicators of, significant fraud risk.⁴³³ The unit ‘fills an important gap’ between OAG’s traditional audit tools and the investigatory powers of the commission and WA Police.⁴³⁴

428 Submission 9, Office of the Auditor General, p 1.

429 Since 2019, OAG financial audit program has included auditing 148 local government entities including Christmas Island and Cocos and Keeling Islands. Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022, pp 1–2.

430 That year the number of agencies with serious deficiencies requiring a qualified opinion on financial statements and/or controls increased from 17 to 21: Office of the Auditor General, *Financial Audit Results – State Government 2021–22*, Report 12, 22 December 2022, p. 7. This was the third year in a row where the number of qualified audit opinions increased: *ibid*, p 11. However, some entities made substantial improvements to their controls and financial reporting: *ibid*, p 12.

431 Office of the Auditor General, *Fraud Risk Management – Better Practice Guide*, 22 June 2022, p 2. Under section 23(2) of the *Auditor General Act 2006* the Auditor General may provide advice or information that they consider is in the State’s interests.

432 The Premier, then Treasurer, in December 2019, requested that this unit be established. This unit is extremely rare anywhere in the world: Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022, p 1.

433 Submission 9, Office of the Auditor General, p 1.

434 Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022, p 2.

The Forensic Audit Unit engages with agencies to close identified risks.⁴³⁵ Where its work leads to a reasonable suspicion of misconduct, it refers the matter to the appropriate agency which may include the commission or WA Police. The forensic audit team also hosts fraud resilience forums which focus on topics such as integrity frameworks.⁴³⁶

To date, forensic audits have identified a number of concerning findings and trends relating to lost data, inadequate maintenance of supplier information, and poor fraud risk management and non-compliance with Commonwealth requirements in entities with a heightened risk of criminal activity.⁴³⁷ Matters of significance are reported to Parliament.⁴³⁸

Our initial program of targeting forensic audits has delivered results.

*Caroline Spencer, Auditor General
OAG: Forensic Audit Results 2022*

The Forensic Audit Unit is *not* funded to audit local government. In our view, it should be. (This is discussed in chapter 8.)

Finding 37

It is concerning that a 2021 review by the Office of the Auditor General found that many agencies ‘fell well short’ of better practice on fraud risk management.

Finding 38

OAG has published a *Fraud Risk Management – Better Practice Guide* and other tools to raise the standard of fraud and corruption control across public agencies.

In March 2020, in an Australian first, OAG established its Forensic Audit Unit in response to the fraud of Mr Whyte at the Department of Communities. It has identified and reported to Parliament on a number of misconduct findings and trends.

(See also recommendation 34, which relates to the local government sector.)

A good start

It is difficult to measure the effectiveness of integrity strategies and initiatives. Fraud and corruption are also difficult to measure due to their covert nature. As PSC recognised:

Perhaps the biggest challenge we face with misconduct and corruption prevention is measuring the effectiveness of strategies and initiatives implemented ...

It is common for prevention agencies and authorities to want to measure outputs, for example; how many training sessions were held or how many calls were received by the internal reporting hotline. Measuring outcomes, like attitudinal or behavioural change is difficult, but preferred. From my perspective, more

435 Office of the Auditor General, *Annual Report 2022–2023*, p 80.

436 *ibid*, p 10.

437 *ibid*, p 9.

438 For example, Office of the Auditor General, *Forensic Audit—Construction Training Fund*, Report 19, 22 June 2022, *Compliance Frameworks for Anti-Money Laundering and Counter-Terrorism Financing Obligations*, Report 6, 19 October 2022.

sophistication is required around data, and turning that data into valuable strategic insights and intelligence, recognising the challenges of doing so.⁴³⁹

As the committee said in chapter 4 when discussing disciplinary outcomes, an increase in sustained matters may not mean there is more misconduct at an agency, and fewer sustained matters may not mean there is less misconduct. People may not be reporting misconduct. In 2022, Sharyn O’Neill, the Public Sector Commissioner, told the committee:

I can say, on our figures this year to date, compared to last year, we have had fewer reports or fewer matters raised in terms of minor misconduct. So I could say, “Okay, well, look, the strategy is obviously successful.” But I am not going to make that claim. ... the converse of that is, you know, are people reporting sufficiently? And that is why it is hard to have such a one-dimensional measure.⁴⁴⁰

The Public Sector Commissioner is ‘heartened’ by the work of agencies and says many agency leaders have shown a commitment to integrity and embraced PSC initiatives.⁴⁴¹

Our observation is that many agencies are responding to PSC initiatives, and incidents of misconduct and commission investigations, to improve governance systems.⁴⁴² Many agencies have established dedicated integrity or professional standards units.⁴⁴³

Commissioner McKechnie was positive when asked if the public sector has improved its capacity to deal with integrity matters. While noting that some agencies are behind, the Commissioner said:

Overall I do not lie awake worrying about the public sector.

*The Hon John McKechnie KC
Corruption and Crime Commissioner*

[With] seven years’ experience in the job. I can see an improvement in the way that things are handled. ... from my observation the directors general are keen to be on top of any misconduct issue—it reflects on them, apart from anything else—and that filters down. Now, there are some departments that are behind that a bit and some that are ahead of the curve.⁴⁴⁴

Caroline Spencer, the Auditor General, also sees uplift in the public sector. She, like PSC, highlights that building integrity requires constant vigilance, and ‘[g]ood public

439 Public Sector Commission, submission 19 to the Parliament of Victoria Integrity and Oversight Committee’s inquiry into the education and prevention functions of Victoria’s integrity agencies, pp 3-4. PSC’s *Integrity Strategy for WA Public Authorities 2020–2023* does include ‘measures of success’ relating to that strategy, rather than ultimate outputs in reducing misconduct, p 15.

440 Sharyn O’Neill, Commissioner, Public Sector Commission, *transcript of evidence*, 21 September 2022, p 11.

441 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 6.

442 Commissioner McKechnie noted in particular the improvements in integrity systems at the Department of Justice, which the commission played a part in, and that it is now functioning ‘particularly well’: the Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 21.

443 For example, in 2017 misconduct at the Department of Justice was dealt with by the Human Resources (HR) section but the department has now established a People, Culture and Standards division that reports directly to the Director General: Dr Adam Tomison, Director General, Department of Justice, *transcript of evidence*, 27 March 2023, p 1.

444 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 22.

administration is not a set-and-forget proposition.’ The Auditor General said agencies’ audit committees have played a positive part in uplift over recent years. They are helping agencies track audit recommendations, and findings and recommendations from other integrity agencies.⁴⁴⁵

Unfortunately, in 2022 the Auditor General was disappointed with the lack of improvement in procurement practices. The Auditor General said:

there has not been as yet a tangible improvement in procurement practices in the state as evidenced by our record number of audit qualifications in last year’s state financial audit season. ... there were certainly too many significant procurement control weaknesses detected I think cultural change takes some time.⁴⁴⁶

Building integrity requires constant vigilance and continuous improvement.

If you are standing still, you are going backward; it is about continuous improvement.

The committee commends PSC and OAG on being proactive and publishing resources and tools to assist agencies to raise standards of fraud and corruption control and build integrity. Their work complements the work of the commission.

*Caroline Spencer,
Auditor General of Western Australia*

On the subject of resourcing, the previous committee found in its *Red flags ... red faces* report that agencies generally have limited capacity to carry out audits and investigations, and agencies were increasingly outsourcing internal audit and investigative functions to consultancies, at considerable financial cost.⁴⁴⁷ And the Auditor General has observed that a ‘robust and well-resourced fraud risk management program can minimise the likelihood and consequences of fraud events.’⁴⁴⁸

As noted in chapter 6, the Department of Communities’ response to the fraud of Mr Whyte and others included allocating more resources to its integrity function. This has enabled the development of a comprehensive risk-based approach to misconduct prevention and education of staff. As at March 2023, its Professional Standards directorate has 66 FTEs and a 2022–23 budget of \$9.132 million.⁴⁴⁹

Building integrity requires appropriate resourcing. Resources should not only be provided following a significant corruption event. The Government must ensure that agencies are sufficiently funded to implement a robust, strategic integrity function, with a proactive approach to minimising misconduct risks.

445 Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 27 March 2023, pp 10–11.

446 Caroline Spencer, *transcript of evidence*, 6 April 2022, p 13.

447 Joint Standing Committee on the Corruption and Crime Commission, *Red flags ... red faces: Corruption risk in public procurement in Western Australia*, 14 May 2020, findings 38, 39, pp 78, 82.

448 Office of the Auditor General, *Fraud Risk Management – Better Practice Guide*, 22 June 2022, p 2.

449 Department of Communities, attachment to email, 26 May 2023, p 6. Also, Mike Rowe, Director General, suggested that it had effectively doubled the number of FTE working in the misconduct space: *transcript of evidence*, 29 March 2023, p 2.

Finding 39

While it is difficult to measure the effectiveness of integrity strategies and initiatives, the committee is encouraged by agency actions to build integrity in recent years. As building integrity involves continuous vigilance and improvement, this work should continue.

Integrity tools

Consistent with the truism that ‘prevention is better than cure’ the committee considered integrity initiatives that promote integrity and minimise misconduct risks.

A public agency employment register

Other jurisdictions have established public sector employment registers that record if a public officer, or former public officer, has committed misconduct and/or resigned when facing an allegation of misconduct.

*I very strongly support
[an employment register].*

*The Hon John McKechnie KC
Corruption and Crime Commissioner*

The Public Sector Commissioner ‘at this time’ has not prioritised developing a register. PSC’s focus has been on actions under the *Integrity Strategy for WA Public Authorities 2020–23* and developing resources and tools to assist agencies to have solid foundations that promote integrity and the prevention of misconduct. The Commissioner says that before developing a register, PSC would need to consider the benefits and challenges of a register ‘given the mitigation strategies that already exist to prevent people who have been dismissed for misconduct re-entering the public sector workforce.’⁴⁵⁰

It is understood that directors general in Western Australia have mixed views on a register. There may be some concern about penalising the ex-officer again. There may be a perceived issue around ‘double jeopardy’; penalising a person twice.⁴⁵¹

The Department of Local Government, Sport and Cultural Industries says a register would be appropriate, where there is proven conduct.⁴⁵² (Why an employment register is particularly appropriate for the local government sector is discussed in chapter 8.)

In Western Australia, the health sector has established a pre-employment integrity check (PEIC) to check prior conduct. The health sector must inform the system manager if a person has had a disciplinary finding made against them or left the sector prior to a matter being finalised, or if there is information relevant to patient safety. The system manager may place the person on the case management system (CMS). Prior to employment, an authorised person checks if there is an ‘integrity flag’ against a person. The relevant health service is

450 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 4.

451 Peter Woronzow, Director General, Department of Transport, *transcript of evidence*, 27 March 2023, p 8. The principle of ‘double jeopardy’ means that a person cannot be tried twice for the same criminal offence.

452 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 9.

informed of any ‘flags’ and assesses the risk of employing the person.⁴⁵³ The fact a person is registered on CMS does not preclude them from employment.⁴⁵⁴

However, this system doesn’t cover all staff employed in the health sector. People engaged through external recruitment agencies do not go through stringent pre-employment checks, and a person on the CMS may be engaged through an agency, avoiding the PEIC.⁴⁵⁵ The Department of Health says that each health service provider must assess the risks involved in engaging staff.⁴⁵⁶ Pathwest told the committee it would be of assistance if there was a register of persons who have committed serious misconduct.⁴⁵⁷

While the committee commends the Department of Health for implementing the PEIC process, all people working in the sector should be subject to a robust integrity check.

Registers in other jurisdictions

The committee is aware that South Australia, Tasmania and the United Kingdom have established an employment register.

The South Australian *Eligibility for Re-employment Register* (the Re-employment Register) provides a centralised record of former public sector employees and public officers who have:

- been dismissed on the grounds of misconduct
- resigned during a misconduct investigation.

The Re-Employment Register also records when an employee has resigned on accepting a voluntary separation package, termination payment or redeemed a claim for workers’ compensation.

The Re-Employment Register was established in response to a Premier’s direction in 2018 following a recommendation by the South Australian Independent Commissioner Against Corruption.⁴⁵⁸ This followed publicised examples of government agencies employing former public officers unaware of their misconduct record.

I made that recommendation [to establish a register] to better protect the integrity of recruitment within public administration by ensuring that a public authority had access to such information before determining whether or not to employ a person.

*The Hon Bruce Lander QC
Independent Commissioner Against Corruption
(South Australia)*

453 Dr Kristy Edmonds, Director, System-wide Integrity Services, Department of Health, *transcript of evidence*, 27 March 2023, pp 6–7, and Department of Health and NMHS, attachment to letter from Angela Kelly, Acting Director General, Department of Health, 3 May 2023, pp 1–3.

454 Submission 21, East Metropolitan Health Sector, p 2.

455 *ibid.*

456 Department of Health and NMHS, attachment to letter from Angela Kelly, Acting Director General, Department of Health, 3 May 2023, p 3.

457 Submission 6, Pathwest, p 2.

458 Government of South Australia, *Independent Commission Against Corruption and Officer for Public Integrity Annual Report 2016–17*, p 12.

The purpose of the register is to support more rigorous integrity-checking during the recruitment process, and help achieve better informed recruitment outcomes. A person's inclusion on the register does not preclude them from a future public sector position. An authorised person at the employing agency must consult the register during the recruitment process. The register does not override the requirement for other pre-employment screening tools but is one of a range of tools to ensure offers are made to appropriate candidates.⁴⁵⁹

Establishing the register involved a number of stages to ensure appropriate safeguards were implemented. This included consulting and engaging with stakeholders such as employee associations and unions, system development and testing, and developing a user guide.⁴⁶⁰

The register is generally effective in achieving the intended purpose.

*Erma Ranieri
Commissioner for Public Sector Employment
(South Australia)*

The Office of the Commissioner for Public Sector Employment (SA) maintains the ICT infrastructure for the register, monitors compliance of agencies using the register, and publishes and maintains guidance for agencies on the appropriate use of the register. An authorised person at the agency enters information and may access the register. Stringent security protocols protect the confidentiality of data in the register.⁴⁶¹

It is also understood that since 2022 Tasmania has had a register that records public servants who have been terminated, or would have been terminated had they not resigned, for Code of Conduct breaches. Again, this is to screen applicants for employment. The register is to record terminations or terminations that would have been applied as a sanction that have occurred since 1 July 2017.⁴⁶² It took 5 years to establish this register. The register was recommended in the Tasmanian Integrity Commission's 2017 *Own motion investigation into the management of misconduct in the Tasmanian Public Sector*.⁴⁶³

In the United Kingdom, the Public Sector Fraud Authority manages the Internal Fraud Hub (IFH), a database of civil servants dismissed for fraud or dishonesty, including those who would have been dismissed if they did not resign.⁴⁶⁴

The IFH [Internal Fraud Hub] is one of many useful tools available to those seeking to prevent fraud.

*Rob Malcomson, Deputy Director of Policy
Public Sector Fraud Authority (United Kingdom)*

459 Erma Ranieri, Commissioner, Office of the Commissioner for Public Sector Employment, letter, 4 April 2023, pp 1–2.

460 *ibid*, p 2.

461 *ibid*, p 3.

462 Government of Tasmania, State Service Management Office, Practices, Procedures and Standards No 5: *Register for Tasmanian State Service Code of Conduct breaches resulting in or that would have resulted in terminations*, 8 July 2022, p 2.

463 Government of Tasmania, Integrity Commission, *Own motion investigation into the management of misconduct in the Tasmanian Public Sector*, Report 3, 2017, recommendation 3.

464 The UK's Internal Fraud Policy ensures that when a person resigns during an investigation the investigation is concluded where possible or the decision to abandon an investigation is signed off at an appropriate level: Rob Malcomson, Deputy Director of Policy, Public Sector Fraud Authority (UK), letter, 10 November 2023, p 1.

A person included in the database is banned from working in the civil service for 5 years from the date of their resignation or termination, reducing the risk of exposure to fraud through their reemployment.⁴⁶⁵

A tool to improve integrity checking

The committee is confidentially aware of instances where employees facing a misconduct allegation have resigned and moved to another agency or local government which, unaware of their past conduct, employs the person. That agency retains the undisclosed risk. This is clearly undesirable.

[S]ometimes a person resigns. They are notified of disciplinary proceedings and they resign. The department says, ‘Well, that saves us trouble’ and that is it. Six months later, they pop up in another department.

*The Hon John McKechnie KC
Corruption and Crime Commissioner*

Commissioner McKechnie, who supports a register, made a similar observation (see pull quote). The commissioner also said a register would require a public agency to conclude an investigation even after a person had resigned.⁴⁶⁶ Although this would be ideal, the register could record when a person resigned during an investigation.

Sectors employing from a small candidate pool, such as regional local governments, may be more exposed to the risk of employing a person without an undisclosed misconduct history. The Local Government Elected Members Association (LGEMA) supports a public register.⁴⁶⁷ Again, the local government aspect of a register is discussed in chapter 8.

A register prevents a recycling of names and misconduct, and the commission again saying ‘we’ve seen that one before’.⁴⁶⁸ Apart from making it easier to spot ‘bad apples’, a register would provide agencies with greater certainty about all recruits. It may deter misconduct.

In the committee’s view, an employment register is in the public interest simply because it allows prospective employers to be informed of a prospective employee’s history and matters going to their integrity and trustworthiness, before deciding whether or not to employ the person. It supports more rigorous integrity-checking during recruitment and helps manage risk. It does not obviate the need for, but complements, other recruitment tools and other robust pre-employment practices.

We believe a register will be more effective than only relying on other screening tools. This is especially so where the previous employer is unable to discuss the employee because of a confidentiality clause in a termination agreement. Prospective employees, referees and previous employers are not always honest.

465 *ibid.*

466 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 13.

467 Submission 12, Local Government Elected Members Association, p 6.

468 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 14.

The committee acknowledges that establishing a register will involve a number of stages including consulting with a range of stakeholders, and it may take time to establish a register with appropriate safeguards and guidelines.

The legal implications and ramifications of establishing the register, including privacy considerations, will need to be considered.

(This was the case when SSO was involved in establishing the debarment regime for suppliers, discussed below.)

In the committee's view, the register should cover all employees of agencies within the remit of commission' serious misconduct function.

Establishing a register that covers all agencies, including WA Police and local government, not only 'public sector' agencies covered by the PSM Act, may require new legislation. The committee is strongly of the view that if legislation is required, then it should be enacted.

There needs in my view to be a central registry of that so that future employers just know it. They might hire the person but at least they know what the issue is.

*The Hon John McKechnie KC
Corruption and Crime Commissioner*

Finding 40

Other jurisdictions including South Australia and the United Kingdom have established a centralised employment register which records former public sector officers and public officers who have been dismissed on the grounds of misconduct or resigned during a misconduct investigation (and other matters).

A register ensures that prospective employers are aware of an employee's history and matters going to their integrity and trustworthiness, before deciding whether or not to employ the person.

Recommendation 22

That the Public Sector Commissioner, working with the Government, establish a centralised public employment register with appropriate safeguards that records public officers who have:

- been dismissed on the grounds of misconduct
- resigned during a misconduct investigation.

The register should cover all employees employed by agencies within the remit of the Corruption and Crime Commission including local government. (See recommendation 31.)

Recommendation 23

That the Government, to the extent necessary, amend laws to enable the Public Sector Commissioner to establish the above public employment register.

Pre-employment practices – application forms

The committee considered one aspect of onboarding practices – whether application forms ask prospective employees whether they have been the subject of a misconduct allegation, investigation or finding.

The Victorian Public Sector Commission advised the committee that although it does not have an employment register, it has recently developed a comprehensive package of materials to assist its agencies implement pre-employment and misconduct screening.⁴⁶⁹

In Western Australia, the issue of what screening questions should be asked as part of recruitment remains at the discretion of the employing agency.⁴⁷⁰ However, following discussions at the Public Sector Leadership Council, PSC has piloted the inclusion of several screening questions in its application form. These relate to whether candidates have had any action taken against them by their current employer in relation to both performance and/or their conduct. Answering yes to a question does not disqualify the person from the process but invites further discussion. The pilot has been ‘paused’ to allow further consultation with stakeholders.⁴⁷¹

Commissioner’s Instruction 2 *Filling a Public Sector Vacancy* requires that before an appointment proceeds, certain documentation is to be provided, such as essential qualifications. It also sets out that a CEO/employing authority may require additional documentary evidence including information regarding outstanding disciplinary processes and criminal record checks.⁴⁷² All public sector agencies should have policies that require referee checks be undertaken on candidates who are deemed suitable for appointment.⁴⁷³

The committee’s preference is that a simple question should be asked of potential employees of a public authority when applying for a position – words to the effect of ‘Have you been the subject of a misconduct allegation, investigation or finding’. The question could be asked of all candidates – previous public officers and others.

While the committee appreciates that there are many elements to pre-employment screening, we recommend that PSC incorporates this requirement into its current pilot, and ultimately, its instructions and guidelines to the public sector agencies. Agencies outside the public sector who fall within the remit of the Corruption and Crime Commission, should also ask this question on application forms, if they do not already do so.

Debarment regime

The committee was pleased to hear that in January 2022 the Department of Finance, the central agency for procurement, established a debarment regime which establishes grounds, process and governance that allows it to work with suppliers to improve business practices.

469 These materials can be accessed here: <https://vpvc.vic.gov.au/workforcecapability-leadership-and-management/recruitment-in-the-public-sector/preemployment-and-misconduct-screening/>.

470 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, p 3.

471 *ibid.*

472 Public Sector Commission, Commissioner’s Instruction 2, *Filling a Public Sector Vacancy*, cl 8.

473 Sharyn O’Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, pp 3, 4.

In the worst cases of misconduct, the regime prevents suppliers from working with the Government.

This regime was established to protect the use and expenditure of public funds and maintain public confidence in the government's contracting. Debarment regimes are used in other countries.⁴⁷⁴

The partnering of integrity agencies

Integrity and governance systems often refer to the 'lines of defence' to minimise risk and misconduct, for example, internal controls, monitoring and oversighting, internal review and auditing. In a similar vein, PSC, OAG and the commission, who operate in the misconduct space, provide layers of defence, or layers of support, in building integrity at public agencies.

The commission says it regularly collaborates, exchanges information, shares expertise and capabilities as well as best practice approaches with other integrity agencies.⁴⁷⁵

Some cooperative arrangements are formalised in Memoranda of Understanding, for example, in 2021–22 the commission established an MOU with PSC in relation to establishing a framework for the parties to collaborate and exchange information and resources.⁴⁷⁶ The commission works closely with PSC to ensure consistent, coordinated and effective misconduct management across the public sector.⁴⁷⁷ The commissioners and their staff meet regularly.⁴⁷⁸ Part of their exchange includes the commission providing a copy of reports on a review of agency action to PSC.⁴⁷⁹

Since establishing its forensic audit function, OAG has had ongoing dialogue with the commission. It has a number of arrangements with the commission.

The Auditor General raised whether a more formal coordination between integrity agencies would be of benefit.⁴⁸⁰ The Auditor General also noted that other integrity agencies are reluctant to re-establish the Integrity Coordinating Group (ICG) due to concerns raised by Parliament and others.⁴⁸¹

474 Department of Finance, 'Debarment Regime', accessed 29 September 2023, <<https://www.wa.gov.au/government/publications/debarment-regime-frequently-asked-questions#what-is-a-debarment-regime>>.

475 Corruption and Crime Commission, *Annual Report 2021–22*, p 37. Under the CCM Act the commission is to consult, cooperate and exchange information with 'independent agencies' which includes the Public Sector Commissioner and Auditor General: *Corruption, Crime and Misconduct Act 2023*, ss 3, 18(2)(g).

476 Corruption and Crime Commission, *Annual Report 2021–22*, p 38.

477 *ibid.*

478 *ibid.*

479 Tracey Polmear, Director, Assessment and Strategy Development Directorate, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, p 4.

480 'I think there is benefit in each of us integrity officers coming together in a group to make sure that we are not duplicating precious public resources around the work we are doing': Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 27 March 2023, p 9.

481 *ibid.* ICG members were the commission, Public Sector Standards Commission, Office of the Auditor General and Ombudsman. A previous committee, in its report *The CCC's interaction with the State's Integrity Coordinating Group* (Report 9, February 2014), said it did not receive 'any evidence that has shown there is a tangible benefit to the CCC's formal involvement within the ICG'. It recommended that

Commissioner McKechnie said the commission did not see value in an ICG, and its regular and ad-hoc liaison with the Ombudsman, Auditor General and Information Commissioner is 'quite satisfactory'.⁴⁸²

We did not see the value in an integrity group really.

The Hon John McKechnie KC
Corruption and Crime Commissioner

The Public Sector Commissioner agrees. In her view, integrity agencies are effectively engaging with each other, the level of interagency engagement is 'considered adequate', and there is no need for a formal coordinating group. She meets regularly with Commissioner McKechnie and the OAG's forensic audit team, and contacts heads of integrity agencies as needed.⁴⁸³

The committee does not support more formal collaboration between integrity agencies in Western Australia. There appears to be role clarity between the commission, PSC and OAG, and they appear to be partnering and working well together.

the commission 'consider whether it would be more effective for it to have stand-alone meetings with relevant Integrity Coordinating Group agencies, as required.': recommendation 4, p 24.

482 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 22.

483 Sharyn O'Neill, Commissioner, Public Sector Commission, letter, 29 August 2023, pp 4, 5.

Chapter 8

Local government

What happens after a finding of serious misconduct in the local government sector is a broad topic that could be the subject of its own inquiry and report.

Chapters 1 to 7 of this report canvass matters relevant to the local government sector, as one sector under the remit of the commission. For example, tables 4.1 and 4.3 include local government outcomes. However, evidence to the inquiry also raised important issues specific to local government. In this chapter, the committee considers select issues relevant to the inquiry. Some evidence remains closed evidence and is uncited. Sources also raised a range of issues about the governance and administration of local government, and dysfunction at some local governments, outside the remit of this inquiry.

There are 137 local governments in Western Australia. This is a very diverse sector. There are substantial differences in the size, resourcing and integrity maturity of local governments.⁴⁸⁴ In a sector that spends close to \$5 billion each year, there are opportunities for misconduct. Good governance is central to local governments performing well and maintaining the confidence and support of the community. Elected members and the administration of local government must be held accountable.

Local governments operate in a more complex environment than many other agencies within the remit of the commission. This complexity affects matters considered in this chapter. For example, a range of laws apply to the sector. Further to the CCM Act, the *Local Government Act 1995* (the LG Act) and related laws set out the framework for the sector including how to deal with misconduct. Also, the Department of Local Government, Sport and Cultural Industries (the department) has a role in regulating and supporting the sector. Further to this dynamic is the division between elected members and the administration of local governments, and the commission's role in dealing with serious misconduct.

As noted in chapter 1, substantial reform of local government and the LG Act is underway. This wide ranging and, we could argue, long overdue reform has amended laws, and is likely to further amend laws relevant to misconduct and integrity in the local government sector. In particular:

- The first phase of reform, the *Local Government Legislation Amendment Act 2019*, introduced 'measures to prevent and address misconduct in local governments' including mandatory training for candidates and council members.⁴⁸⁵
- The second phrase involves 2 tranches of legislation. The first tranche, the *Local Government Amendment Act 2023*, was assented to in May 2023. The second tranche will propose establishing a Local Government Inspector and monitors (discussed below).

484 Submission 11, Department of Local Government, Sport and Cultural Industries, p 1.

485 *ibid*, p 2.

Serious misconduct in local government

The commission deals with allegations of ‘serious misconduct’ against employees and elected members (council members) of local governments. It refers most allegations to the department or local governments to investigate, and, if required, sanction the person.⁴⁸⁶

Since its inception, the Commission has invested substantial resources toward addressing serious misconduct in the local government sector.

Corruption and Crime Commission

Allegations of serious misconduct against employees and elected members involve a range of conduct.

This may include fraud and procurement fraud, stealing, misuse of council resources, unlawfully disclosing information, unauthorised access to TRELIS, falsifying timesheets, using a person’s position to gain private benefits, failure to disclose a gift, not declaring a conflict of interest, and failing to submit an annual return by the required deadline.

The misconduct risks at a particular local government may reflect its integrity maturity, the level of dysfunction at that local government, if any, and the culture of its leadership.⁴⁸⁷

The commission often deals with allegations arising from a breakdown in relationships and communication between elected members and local government administration.⁴⁸⁸

As noted below, it has repeatedly dealt with chief executive officer (CEO) misconduct in recent years. Small, isolated, regional councils not subject to scrutiny are a misconduct risk.⁴⁸⁹

The local government sector attracts the second most allegations of serious misconduct, behind WA Police. In 2021–22, 571 allegations, or 8.1% of allegations, were made against local governments.⁴⁹⁰ The Local Government Elected Members Association (LGEMA) is concerned that serious misconduct in local government ‘is not always identified, reported or investigated’.⁴⁹¹

[A] lack of transparency, without more, is neither corrupt nor criminal.

Matthew Zilko SC

Parliamentary Inspector for the Corruption and Crime Commission

The commission, after assessing each allegation, takes no further action on most allegations. The ‘vast majority’ of allegations may relate to a decision that did not involve corrupt conduct and therefore fall

486 The term ‘public officer’ in section 1 of the *Criminal Code*, picked up by section 3 of the *Corruption, Crime and Misconduct Act 2003*, includes ‘a member, officer or employee of any ... local government, [or] council of a local government’.

487 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 13.

488 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 17.

489 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 13.

490 Corruption and Crime Commission, *Annual Report 2021–22*, p 85. More than 50% of allegations relate to police misconduct.

491 Submission 12, Local Government Elected Members Association, p 1. The LGEMA represents approximately 100 elected members, former members and community members interested in good governance in local government: Sandra Boulter, Deputy Chair/Secretary, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 1.

outside of the remit of the commission.⁴⁹² The Parliamentary Inspector, Matthew Zilko SC, has observed that many allegations reflect a person's 'deep dissatisfaction with their local government but did not constitute serious misconduct'. A lack of transparency, and ill-advised, uncommercial or poorly communicated decisions in and of themselves may not amount to corrupt or criminal conduct.⁴⁹³

Further to the CCM Act, the LG Act provides the framework for dealing with the conduct of elected members, breaches by elected members and options on how to sanction elected members.⁴⁹⁴ The department investigates whether 'serious misconduct' under the CCM Act has occurred and, while doing so, considers whether the conduct constitutes a breach of the LG Act.⁴⁹⁵ The department considers the interaction of the 2 regimes clear and effective.⁴⁹⁶

Different employment arrangements add another layer of complexity to how the sector deals with misconduct. The council employs the CEO and the CEO is responsible for the management and dismissal of employees subject to 'senior employee' exceptions.⁴⁹⁷

As to misconduct outcomes, the LGEMA is critical of there being 'no outcome' against senior employees for their failings and 'little obvious impact' following employee, including CEO, misconduct.⁴⁹⁸ The LGEMA says the department takes the view that it cannot penalise or take action against local government employees.⁴⁹⁹ The LGEMA is also concerned about an 'indifference' to CEO misconduct, and there being different consequences for CEOs and elected members who engage in misconduct. It said:

The consequence of a minor breach of an Elected Member Code of Conduct is harshly severe, shaming, open and are unfairly restrictive in terms of the opportunity to provide evidence to the Standards Panel because the DLGSC wrongly advises Elected Members that the complaint must be dealt with completely confidentially. Furthermore, there are few if any consequences for CEOs or employees or ROs [returning officers] for breaching their Code of Conduct. ... Indeed there appears to be a weight of indifference to *serious misconduct* behaviour within Local Government oversight bodies, especially in Councils who are fearful of enacting disciplinary measures against powerful CEOs committing *misconduct*.⁵⁰⁰ [Original emphasis.]

492 For example, in 2022–23 the commission assessed 476 allegations but took no action on 405 of these, 85% of allegations: Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 17.

493 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2022–2023*, p 11.

494 *Local Government Act 1995*, pt 5 div 9 (Conduct).

495 Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 2.

496 *ibid*.

497 *Local Government Act 1995*, ss 5.36, 5.41(g), 5.37. The employment of CEOs and senior employees are governed by a written contract: *ibid*, s 5.39.

498 Keri Shannon, Chair, and Sandra Boulter, Deputy Chair/Secretary, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 5; Local Government Elected Members Association, letter, 4 May 2023, p 3.

499 *ibid*, p 5. Said in the context of discussing the failure to declare financial interests.

500 Submission 12, Local Government Elected Members Association, p 8.

A misconduct risk – CEO misconduct and council oversight

In recent years the commission has regularly investigated and formed opinions of serious misconduct against CEOs of local governments for misusing public money.

[Regulations] may cause confusion regarding the extent to which a council member can inquire into the operations of local government.

Corruption and Crime Commission

Commission reports since 2015 have focused on CEO conduct, and commented on structural weaknesses in local government and elected members' failure to oversee CEOs. The commission described its September 2021 report *Serious misconduct by the CEO of the Shire of Ravensthorpe* as 'yet another report exposing serious misconduct in local government involving a Chief Executive Officer abusing their power and influence to misuse public funds for personal benefit'.⁵⁰¹ In that case, for over a year, the CEO used Shire funds to pay for sexual services. He was imprisoned for his conduct.

Under section 2.7 of the LG Act, the council of a local government 'governs the local government's affairs' and 'is responsible for the performance of the local government's functions'. The council also 'oversee[s] the allocation of the local government's finances and resources' and 'determine the local government's policies'.⁵⁰² However, regulations 19 and 20 of the Local Government (Model Code of Conduct) Regulations 2021 also provide the following division of responsibility between council and local government administration:⁵⁰³

19. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the local government or by the CEO to undertake that task.
- (2) Subclause (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

20. Relationship with local government employees

...

- (2) A council member or candidate must not –
 - (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person's capacity as a local government employee; ...
- (3) Subregulation (2) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.

The commission has repeatedly highlighted its concerns about the lack of understanding, confusion and/or interpretation of the above regulations.⁵⁰⁴ In 2016 the commission

501 Corruption and Crime Commission, *Abuse of trust in local government under the spotlight again*, media release, 22 September 2021, p 1.

502 *Local Government Act 1995*, ss 2.7(1), 2.7(2)(a).

503 With a few minor amendments, these were previously regulations 9 and 10 of the Local Government (Rules of Conduct) Regulations 2007.

504 Corruption and Crime Commission, *Report on a Matter of Governance at the Shire of Dowerin*, 10 October 2016, p 7.

recommended that the department advise local governments on ‘the proper interpretation of [then] regulation 9 and its interaction with a council's responsibility for governance.’⁵⁰⁵

A theme of the Government’s local government reform is ‘clear roles and responsibilities’.⁵⁰⁶ The *Local Government Legislation Amendment Act 2019* provided for mandatory training for council members and candidates.

In August 2023, Commissioner McKechnie told the committee that there is still a tension between CEO and council responsibilities, and this remains a misconduct risk. He said:

It seems to me there remains a tension that may be able to be cured legislatively between a council’s responsibilities and a CEO’s responsibilities. It is no new ground to anyone. The provision that broadly councillors should not be involved in administration is understandable and correct, but it is being interpreted or misinterpreted sometimes by councils to justify their inaction on something—“Well, we can’t do it”—and sometimes by CEOs who we have subsequently formed an opinion of misconduct on, who say, “Oh, that’s administration business. You can’t ask us anything about that.” My own feeling is that relationship needs to be clarified in legislation so that people understand. As I said, the principle is good. You do not want a councillor going down to the licensing clerk and saying, “Give me a licence”, but it is not working well and harmoniously ... it is a misconduct risk.⁵⁰⁷ [Committee emphasis.]

In an attempt to address one aspect of the tension between councils and CEOs, the *Local Government Amendment Act 2023* amended the LG Act to provide that a local government must have a communications agreement, and elected members and employees must comply with the agreement.⁵⁰⁸

The Government says the purpose of a communications agreement is to ‘set a clear standard for how all members of a council are to seek and receive information relevant to their role and function as an elected representative’.⁵⁰⁹ The Government says agreements will ‘provide an improved framework for how council members receive information and advice from the CEO’.⁵¹⁰ It is important to note that if the council and CEO cannot agree to a communications agreement, a default agreement determined by the Minister applies. As at 25 October 2023, the above law has been assented to but not proclaimed.⁵¹¹

505 *ibid*, p 14.

506 Department of Local Government, Sport and Cultural Industries, *reform of the Local Government Act – update*, accessed 17 October 2023, <<https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform>>.

507 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, pp 17–18.

508 *Local Government Act 1995*, s 5.92A. (Inserted by *Local Government Amendment Act 2023*, s 74.)

509 Hon John Carey MLA, Minister for Local Government, Legislative Assembly, *Hansard*, 23 February 2023, p 721.

510 *ibid*, p 720.

511 Changes are dependent on regulations being developed in consultation with the sector: <https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform/local-government-reform-explained#Commencement_of_communications_agreements_meeting_procedures_and_council_plans>, accessed 30 October 2023.

The LGEMA ‘vehemently’ opposes the communications agreement because, in its view, it gives the CEO more power to refuse to provide documents to elected members and entrenches the power of the CEO. It says the communications agreement will reduce the clarity of section 5.92 of the LG Act, which provides that a council member can have access to any information held by the local government that is relevant to the performance of their function.⁵¹²

The LGEMA is very concerned that elected members are not being provided with access to information, and section 5.92 of the LG Act is not being followed by CEOs and enforced by the department. The committee heard from various sources that councils have not been provided with information including external contracts or deeds of settlement, answers to questions about employee misconduct or financial matters, and are not informed when legal proceedings are served against a local government.⁵¹³ The CEO often advises that requested information is confidential, which may be correct in some cases.

The relevance to this inquiry is that elected members not given appropriate access to information cannot fulfil their responsibility to govern the local government and respond to misconduct. The LGEMA is of the view that legislation setting out the functions of a CEO, at section 5.41 of the LG Act, should include an obligation for the CEO to act in good faith.⁵¹⁴ Given the conflict in this area, an obligation to act in good faith seems reasonable.

Finding 41

The Corruption and Crime Commission has repeatedly raised concerns about the lack of understanding and confusion around the division of responsibilities between the council and administration of local government. This is a misconduct risk. The committee also heard that elected members are not being provided with requested information.

Recommendation 24

That the Minister for Local Government advise the Parliament what action it has taken, and proposes to take, to address the issues identified in finding 41.

Recommendation 25

That the Minister for Local Government investigate and report to Parliament on the need for laws to resolve the tension around the division of the responsibilities of council and the chief executive officer.

Recommendation 26

That the Minister for Local Government enact legislation that requires chief executive officers of local governments to act in good faith.

512 Keri Shannon, Chair, and Sandra Boulter, Deputy Chair/Secretary, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, pp 10–11.

513 For example, Keri Shannon, Chair, and Sandra Boulter, Deputy Chair/Secretary, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, pp 7–9, and other uncited sources.

514 Keri Shannon, Chair, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 7.

Systemic responses to misconduct

The LGEMA is concerned that commission recommendations to improve local government in reports ‘have not been implemented and/or given sufficient resources’.⁵¹⁵

The commission, department and sector have discussed and responded to matters raised in commission reports. As Commissioner McKechnie told the committee:

We had long discussions with the department of local government, as it was then, and examined various things. I attended a particularly feisty meeting of WALGA. I think the answer is not just on that matter but on a number of matters about which we have reported and also a number of matters which the department has got and the current reforms for local governments, including an inspector, and why they are currently being pursued or put before Parliament.⁵¹⁶

Communication barriers

During the inquiry many parties raised concerns about the lack of information, communication and/or feedback provided by the department, commission and/or administration of a local government on serious misconduct allegations and outcomes.

Informing a local government of misconduct allegations and, most importantly, outcomes of investigations is critical to the ability of a council and the administration of local government to prevent misconduct. As noted in finding 28, serious misconduct investigations provide invaluable insight on how to prevent misconduct and minimise misconduct risks.

The commission and department may not advise the administration of a local government of the outcome of a serious misconduct allegation it referred to the commission; which may relate to an elected member. The City of Joondalup expressed its concern about how this lack of feedback inhibits its ability to improve and respond to misconduct:

There are instances when the City has not been informed of the action taken in regard to matters that it has reported to the Commission. Feedback to the City on the outcome of investigations based on reports made to the Commission by the City would help the City to reinforce, and improve where need be, its processes including its integrity and conduct controls, and use these learnings to enhance organisational culture to support ethical conduct.⁵¹⁷

The City of Joondalup added that as the department must provide a closure report to the commission, ‘it would seem to be in the interest of the initial reporting authority to be advised by the Commission of their satisfaction of actions taken, and for a summary of these actions to be provided.’⁵¹⁸

Also, elected members may not be informed of outcomes of serious misconduct allegations at their local government. The LGEMA says serious misconduct findings and outcomes are

515 Submission 12, Local Government Elected Members Association, p 21.

516 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 15 August 2022, pp 10–11.

517 Submission 18, City of Joondalup, p 2.

518 *ibid*, p 3.

‘hidden, confidential, or hard to discover’, and that it appears that ‘extraordinary mechanisms are employed by some CEOs to ensure that any misconduct, especially serious misconduct by senior employees, are not published or known’.⁵¹⁹ The LGEMA says that CEOs, the ‘gatekeepers’ in providing information to the council, appear to prioritise the employee’s reputation and hiding the investigation and finding from the council and community.⁵²⁰ They may be bound by confidentiality provisions. The LGEMA suggests that each local government CEO be required to ‘notify all allegations of misconduct, serious or otherwise to their Council, which must be codified as serious misconduct and an LG Act offence not do so.’⁵²¹

The department says it communicates and provides feedback to local government on outcomes of investigations only when it is legally permitted to do so under section 153 (disclosure by other officials) of the CCM Act and section 5.123 of the LG Act.⁵²² Section 153(4) provides that the prohibition on disclosing information does not ‘prevent disclosure of the fact that an allegation has been received or initiated by the Commission or the details of an allegation’.

As noted in chapter 4, the CCM Act includes confidentiality provisions. Section 151 provides the limited circumstances as to when a ‘restricted matter’ may be disclosed, and section 152 (disclosure by the commission) provides that an officer of the commission or commission lawyer is not authorised to disclose ‘operational information’ to any prescribed authority or person unless the commission certifies that ‘disclosure is necessary in the public interest’.⁵²³ Commissioner McKechnie told the committee that:

[The CCM Act] allows us to tell the person under investigation the outcome, but not the complainant, unless I am satisfied it is in the public interest to do so and give a certificate.

The CHAIR: I think that is the point, really, that they are touching on. **They feel left in the dark.**

Mr McKECHNIE: **I think it could be easily cured, again legislatively, by just giving the commission the power to do it in appropriate cases,** as it has with the person under investigation.⁵²⁴ [Committee emphasis.]

The Parliamentary Inspector, Matthew Zilko SC, has, over many years, raised concerns about the effect of confidentiality provisions in the CCM Act and the commission providing minimal information to *complainants* when closing an allegation.⁵²⁵ In the committee’s 2022 report, ‘*A good year: The work of the Parliamentary Inspector of the Corruption and Crime*

519 Local Government Elected Members Association, letter, 4 May 2023, p 3.

520 *ibid.*

521 Submission 12, Local Government Elected Members Association, p 6.

522 Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, pp 3–4. Section 5.123 restricts disclosure of information on complaints.

523 *Corruption, Crime and Misconduct Act 2003*, s 152(4)(c).

524 The Hon John McKechnie KC, Commissioner, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 18.

525 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 9.

Commission, we made the following recommendation, which Hon John Quigley MLA, Attorney General, accepted.⁵²⁶

That the Attorney General direct the Department of Justice in its review of the *Corruption, Crime and Misconduct Act 2003* to review if legislative change is required to prescribe or clarify whether the commission is authorised to disclose information which demonstrates that the complaint has been dealt with in an appropriate way.⁵²⁷

In a similar way, legislation should provide the commission and department with the power to inform elected members and/or the administration of local government of allegation and, more importantly, the outcomes of serious misconduct investigations at their local government, when it deems this appropriate.

Unlike other agencies, who investigate most serious misconduct at their agency, local governments are being kept out of the loop due to local government arrangements and legislation. Providing information to local government will assist it to take measures to similar prevent misconduct, like other agencies.

Finding 42

The council and/or administration of local government are not routinely advised by the Corruption and Crime Commission and Department of Local Government, Sport and Cultural Industries about allegations and outcomes of allegations of serious misconduct at their local government. This impedes their ability to take action to minimise misconduct risks.

Confidentiality provisions in the *Corruption, Crime and Misconduct Act 2003* and *Local Government Act 1995* may apply. The commission advises the person under investigation of the outcome.

Recommendation 27

That the Attorney General amend the *Corruption, Crime and Misconduct Act 2003* to provide, or the new Act provide, Corruption and Crime Commission officers with the power to disclose information relating to an allegation and outcome of a serious misconduct allegation to local government councils and administration, without the need for the commission to certify disclosure.

Recommendation 28

That the Minister for Local Government amend the *Local Government Act 1995*, or appropriate legislation, to provide Department of Local Government, Sport and Cultural Industries officers with the power noted in recommendation 27.

⁵²⁶ The Hon John Quigley MLA, Attorney General, Government Response, 8 June 2022, p 2.

⁵²⁷ Joint Standing Committee on the Corruption and Crime Commission, Report 3, 'A good year': *The work of the Parliamentary Inspector of the Corruption and Crime Commission*, February 2022, p 6.

Confidential agreements and payments

Local governments enter into confidential agreements, or deeds of settlement, with CEOs and employees, including people the subject of a misconduct allegation or finding, that include payments in excess of entitlements on resigning or terminating employment.

There is no accountability and transparency about [deeds of settlement]. ... The only way you change culture is by having transparency and accountability.

Keri Shannon, Chair

Local Government Elected Members Association

The department told the committee that when a CEO determines it is appropriate to terminate or dismiss an employee, either by mutual agreement, due to non-performance or misconduct, 'often' the parties enter into a cessation of employment agreement with confidentiality provisions.⁵²⁸ (Again, in local government the council employs the CEO, and the CEO is responsible for managing and dismissing other employees, subject to 'senior employee' exceptions.)⁵²⁹

The CEO or employee may then move to another local government. That local government and community bears the undisclosed risk of employing the person.

Confidential termination agreements, with or without extra payment, may be attractive because they negate the risk of future legal claims against the local government. Employment laws can be quite strict, and there may be a desire to avoid reputational damage. CEOs, as both the managers and investigators of employees, may be tempted to accept a resignation, provide a payment, and avoid scrutiny by signing a confidential agreement.

[There is a] great temptation when you have a problem and somebody offers a resignation to grab it with both hands. It saves everybody time, effort and money.

The Hon John McKechnie KC

Corruption and Crime Commissioner

But these agreements and payouts may not be in the public interest or the interest of the community.

We understand that councils (elected members) of the local government are not informed of confidential agreements with employees. The department says this is because the CEO, as the 'notifying authority' under the CCM Act, is responsible for investigating minor and serious misconduct.⁵³⁰

528 Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 6.

529 *Local Government Act 1995*, ss 5.36, 5.41(g). Section 5.37 outlines senior employee provisions.

530 Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 6. The LGEMA says mayors and presidents are also the principal officers of a notifying authority, and it is arguable that CEO's functions require them to inform council about proposed and settled agreements: Sandra Boulter, Deputy Chair/Secretary, Local Government Elected Members Association, letter, 18 August 2023, pp 2, 5.

The LGEMA is concerned that CEOs who commit misconduct are being paid out and ‘poorly performing CEOs are financially rewarded to move on even if they have committed serious misconduct or been convicted of a crime.’⁵³¹ The LGEMA is also concerned that ‘[one] or some or more or all’ local government CEOs:

- (d) seek to hide the reasons for an employee leaving from Council and the community, following the outcome of a serious misconduct finding
- (e) allow employees to resign following a serious misconduct finding, rather than terminating their employment
- (f) give generous payouts over and above the monies owed on employment completion
- (g) enter non-disparagement agreements with employees completing their employment, even where following a serious misconduct finding.⁵³²

The 2020 *Report of the Inquiry into the City of Perth* noted instances of the City of Perth paying settlement sums additional to the employee’s entitlements, including to employees who resigned under settlement deeds with confidentiality and non-disparagement clauses, despite findings of misconduct.⁵³³ The Special Inquirer, Tony Power, observed that the City ‘appeared to use as a business practice a “deed of settlement” when dismissing or separating with an employee.’⁵³⁴ The Special Inquirer recommended:

- 182. The employment of an employee shall only be terminated in accordance with that employee’s contract or prescribed conditions of employment.⁵³⁵ ...
- 184. The City develop a framework for the termination of employment, including the terms of separation, and resolving actual or potential legal claims from current or former employees arising out of their employment including:
 - the circumstances in which it is appropriate for the City enter into Deeds of Settlement; and
 - the appropriateness of the terms of such Deeds, such as;
 - whether it is appropriate for the City to make payment in excess of an employee’s statutory and contractual entitlements and the amount of such payments; and
 - whether it is appropriate for the City to agree to any obligations of confidentiality or non-disparagement.

*The City is to strike an appropriate balance between managing its exposure to risk from legal claims and its accountability to the community, including its use of community funds.*⁵³⁶

531 Submission 12, Local Government Elected Members Association, p 8.

532 Local Government Elected Members Association, letter, 4 May 2023, p 1.

533 Government of Western Australia, *Report of the Inquiry into the City of Perth*, Anthony (Tony) Power, 30 June 2020, pp 525, 712.

534 *ibid*, p 512.

535 *ibid*, volume 3, p 81.

536 *ibid*, p 82.

The current law permits agreements with extra payments. The LG Act requires a local government to adopt and publish a policy that sets out additional payment to an employee. Section 5.50(1) provides:

A local government is to prepare a policy in relation to employees whose employment with the local government is finishing, setting out –

- (a) the circumstances in which the local government will pay an employee an amount in addition to any amount to which the employee is entitled under a contract of employment or award relating to the employee; and
- (b) the manner of assessment of the additional amount.⁵³⁷

A local government must not make a payment to an employee in excess of that which the employee is entitled under contract of employment or award *unless* that local government has adopted a policy.⁵³⁸ However, if a local government pays more than the additional amount in the policy, a local public notice is to be given in relation to the payment.⁵³⁹ The local government must also comply with regulation 19A of the Local Government (Administration) Regulations 1996 which limits the value of additional payments to an employee who is not a CEO or senior employee.⁵⁴⁰

There is no mechanism by which DLGSC becomes aware of such [confidential] agreements unless otherwise reported to DLGSC, usually as a result of a query or complaint of non-compliance.

Department of Local Government, Sport and Cultural Industries

There is no requirement to advise the department of any proposed or settled agreement. The department is not informed of agreements, either before or after they are settled. When asked about this, the department emphasised that local governments are autonomous entities.⁵⁴¹

[We] do have mayors that will call us and ask those questions [about a prospective employee], and we are able to share with them, you know, “Don’t go there”, if we are aware of it and if they make that call.

*Lanie Chopping, Director General
Department of Local Government, Sport and Cultural Industries*

The department may become aware of agreements. If the department is aware of an employee being moved on with a confidential agreement, it is ‘able to raise it.’⁵⁴² The department says it does get calls from mayors and will assist them, if

⁵³⁷ *Local Government Act 1995*, s 5.50(1).

⁵³⁸ *ibid*, s 5.50(1a).

⁵³⁹ *ibid*, s 5.50(2).

⁵⁴⁰ Local Government (Administration) Regulations 1996, s 19A(1). Also, Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 6.

⁵⁴¹ Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 5.

⁵⁴² Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 11. Mr Fraser said ‘there are matters that came to the department’s attention regarding specific councils and sometimes the employment’. When asked if the department agrees or disagrees with confidentiality agreements, Mr Fraser said ‘I think it is a particular context and why they are used’: *ibid*, p 10.

asked (see pull quote).⁵⁴³ Obviously, the department can only raise the confidential deed of settlement, if it chooses to, if it is aware of the agreement.

The department is supporting local governments to do more due diligence and follow PSC's selection and recruitment processes.⁵⁴⁴ It considers pre-employment screening an issue. It added that if the prospective employer called the mayor of the previous local government and they said 'I am not able to comment because it is the subject of a confidentiality agreement', that would be a 'red flag' and you would make further inquiries.⁵⁴⁵ The problem is that under confidential agreements the previous employee cannot mention the agreement or comment on the employee.

When the department was asked for its view on requiring a local government to inform it about confidential agreements with additional payments, it said it anticipates that the proposed Local Government Inspector will have a role in relation to non-compliance with the LG Act.⁵⁴⁶

The committee acknowledges that the law provides for settlement agreements, and there may be cases where a local government entering into a confidential agreement and paying a person in excess of entitlements may be appropriate.

In the committee's view, however, it is clearly unacceptable to financially reward a CEO or employee who is the subject of an open allegation or finding of serious misconduct, and potentially move that risk to another local government by signing a confidential agreement.

One outcome of the department's new regulation model (see below), is for local governments to 'exercise their autonomy in meeting their legislative requirements and community needs.'⁵⁴⁷ While the department often emphasises the autonomy of local governments, it also has a regulating role. As the LGEMA said, the spending of public funds in the context of serious misconduct is something the government should take 'very, very seriously'.⁵⁴⁸

In the committee's view, local governments should be prohibited from entering into termination or resignation agreements with confidentiality clauses and/or payment above entitlements. If this is not accepted by the Government, these agreements must be regulated and oversighted. The department, as the entity that regulates local government, is the entity best placed to do so.

543 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 12.

544 Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 11.

545 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 12.

546 Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 6.

547 Department of Local Government, Sport and Cultural Industries, *Local Government Regulatory Approach*, undated, p 9.

548 Keri Shannon, Chair, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 6.

Finding 43

Local governments are entering into confidential agreements with chief executive officers and employees the subject of a serious misconduct allegation or finding, which include payments above entitlements on resigning or terminating employment.

Finding 44

A local government is not required to advise the Department of Local Government, Sport and Cultural Industries of the above proposed or signed agreements. The department, if aware of an agreement, says it advises prospective local government employers of the agreement, if asked.

Finding 45

It is clearly unacceptable to financially reward a chief executive officer or employee of a local government who is the subject of an allegation or finding of serious misconduct, and potentially move that risk to another local government. This is a serious misconduct risk that negatively impacts on the integrity of the sector.

Recommendation 29

That the Minister for Local Government enact laws to provide that a local government cannot enter into a termination or resignation agreement with confidentiality clauses and/or payment above entitlements, if the chief executive officer or employee is the subject of a serious misconduct allegation or finding.

Recommendation 30

If the above recommendation is not accepted, that the Minister for Local Government:

- require local governments to inform the department when it proposes to enter into a termination or resignation agreement with a chief executive officer or employee the subject of a serious misconduct allegation or finding, whether the agreement includes confidentiality clauses, payment above entitlements or otherwise
- provide the department with the power to veto agreements on the basis that it is not in the public interest to enter into the agreement.

That legislation be amended to provide for the above.

An employment register

The committee discussed public sector employment registers in chapter 7. As noted in that chapter, Commissioner McKechnie supports a public agency employment register.

At recommendation 22, the committee recommended:

That the Public Sector Commissioner working with the Government establish a centralised public agency register with appropriate safeguards that records public officers who have:

- been dismissed on the grounds of misconduct
- resigned during a misconduct investigation.

The register should cover all employees employed by agencies within the remit of the Corruption and Crime Commission, including local government.

The department supports an employment register for local governments where there is proven misconduct. The Director General, Lanie Chopping, told the committee:

I think a register, where there is proven conduct, would be appropriate and that will be the advice that we will provide upwards. I would go further than that to say that where there are certain individuals that the kind of conduct that has been engaged in would, in my mind, render them to be unfit to serve in particular roles of responsibility, and that there should be a way that the ratepayers and the community should be able to be assured that that person cannot just move on to another location ...

a register of previous conduct and the other elements that could go towards addressing the issue of the repurposing of personnel within the system with all the other measures that I talked about is definitely worth consideration.⁵⁴⁹

The department says there is a lack of diversity in CEOs and leadership in local government, and it is a challenge to attract the brightest and best people to lead local government.⁵⁵⁰ One of the department's 'static risk factors' is the high CEO and senior executive turnover.⁵⁵¹

In the committee's view, a register would be particularly effective for the local government sector for a number of reasons including:

- It is not uncommon for employees to move from one local government to another in Western Australia.
- A local government, particularly a regional local government, may recruit from a small pool of candidates, especially for executive positions. This exposes the local government and community to a higher risk when recruiting.
- Local governments routinely enter into confidential deeds of settlement (discussed above). This compounds the risk of a local government employing a person without knowledge of their past conduct.

It is important that the register records public officers who have been dismissed on the grounds of misconduct, or resigned during a misconduct investigation. It is understood that the department closes allegations against a CEO or employees if they leave the local government.⁵⁵² (As noted in chapter 4, this is not uncommon in the public sector.) Any register clearly must include people who have entered into a confidential agreement.

In the committee's view, there must be a local government employment register. This would be an important tool to minimise misconduct risks in this exposed sector.

The recommended register does not go as far as the LGEMA suggestion that people who engage in serious misconduct be disqualified from future positions in local government.⁵⁵³

549 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 9.

550 *ibid.*

551 Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 10.

552 Local Government Elected Members Association, letter, 4 May 2023, p 10.

553 *ibid.*, p 2.

Finding 46

It is particularly important that the employment register recommended at recommendation 22 includes the local government sector given employment risks in this sector. Otherwise, in the committee’s view, there must be a separate local government employment register.

Recommendation 31

If the Government does not accept recommendation 22, the committee recommends that the Department of Local Government, Sport and Cultural Industries establish a local government employment register recording the information noted in recommendation 22 for chief executive officers and employees in the local government sector.

Oversight and support of local government

The role of the department

While each local government is responsible for its own governance, the department has an important role in regulating and supporting the sector.

The department has authority under section 8.3(1) of the LG Act to inquire into all local governments and their operations and affairs. However, the department says the LG Act provides ‘limited mechanisms’ to regulate local government (see pull quote). It drew the analogy of having a ‘homicide squad’ option, such as authorised inquiries, or ‘constable care’ option, and ‘nothing really in between’ focused on outcomes.⁵⁵⁴ It is intended that the proposed Local Government Inspector and monitors will provide a greater span of tools to regulate and support the sector (see below).

[The LG Act] provides limited mechanisms for [the department] to scrutinise the affairs of a local government and regulate the conduct of public officers in a local government.

Department of Local Government, Sport and Cultural Industries

The department’s regulation of the sector has been criticised in the past. In February 2015, the commission called for greater external oversight of procurement by local governments in order to combat ‘systemic weaknesses’ in the sector. It noted that the lack of risk assessment for misconduct in procurement was a significant issue for the sector.⁵⁵⁵ And the department’s consultation report during its reform process observed that the public is frustrated about the department’s ‘lack of independent oversight of and intervention in council and administrative decision making.’⁵⁵⁶

554 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 6. Also, ‘we can just send a letter or we can initiate a full-blown authorised inquiry’, ‘We do have the power under section 8.2 to request information, but we cannot necessarily make someone cough, as it were, if they are not willing to’: Liam O’Neill, Principal Strategy Officer Local Government, *ibid*.

555 Corruption and Crime Commission, *Report on Misconduct Risk in Local Government Procurement*, 4 February 2015, p 14. Tabled by the Hon Tony Simpson MLA, Minister for Local Government, Legislative Assembly, 26 February 2015, tabled paper number 2664.

556 Department of Local Government, Sport and Cultural Industries, *Consultation report – complaints management*, undated, pp 4–5.

It is concerning that in 2021, the Office of the Auditor General (OAG) said the department ‘is not providing efficient and effective regulation and support to the LG sector and lacks fundamental aspects of a good regulatory framework.’⁵⁵⁷ In its report, *Regulation and Support of the Local Government Sector*, the OAG found that the department’s:

Independent and external oversight of [local government] authorities is an effective means for identifying and preventing misconduct.

*Corruption and Crime Commission:
Misconduct Risk in Local Government*

- use of its ‘limited resources’ is ‘not underpinned by a good understanding of risk and clear objectives’ for the sector
- performance in regulating and supporting the sector ‘does not currently reflect the expectations of LG entities and their communities’⁵⁵⁸
- increasing use of reactive regulation, at the expense of preventative interventions such as education, guidance and monitoring, was not cost-effective, and the department needs to ‘re-balance’ its regulatory activities to contribute to improving good governance of the sector.⁵⁵⁹

The department agrees with, and has implemented, OAG recommendations.⁵⁶⁰ For the first time, the department has released a document that articulates its regulatory approach.⁵⁶¹ The stated mission of its *Local Government Regulatory Approach* is:

To support and regulate WA local governments using a capability building and risk-based approach where oversight, support and intervention efforts are targeted based on analysis of greatest risks, and informed by relevant legislation and an understanding of the challenges local governments experience.

The regulatory approach recognises that local governments are responsible for their operations and for complying with legislative requirements. **It also embraces themes regarding early intervention, effective regulation, greater transparency and accountability, and clear roles and responsibilities.**⁵⁶² [Committee emphasis.]

As recommended by the OAG, the department is developing a capability and compliance framework that aligns with its regulatory approach. The department is ‘trying to actually

557 Office of the Auditor General, *Regulation and Support of the Local Government Sector*, Report 21, 30 April 2021, p 4.

558 *ibid*, p 2.

559 *ibid*.

560 In its report, the OAG made 3 recommendations and also noted earlier recommendations that remained open: *ibid*, pp 25–26. In July 2023, the department said it had closed 29 of the 47 performance audit recommendations, had removed but was internally monitoring 16 recommendations, and the remaining 2 recommendations are expected to be closed in 2023 and 2025: Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 7.

561 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 14. The *Local Government Regulatory Approach*, is available at <<https://www.dlgsc.wa.gov.au/department/publications/publication/local-government-regulatory-approach>>, accessed on 26 October 2023.

562 Department of Local Government, Sport and Cultural Industries, *Local Government Regulatory Approach*, undated, p 9.

work’ with local governments that might be struggling.⁵⁶³ It also said there is a move towards being more transparent about its regulatory role, and encouraging greater transparency in the sector.⁵⁶⁴

The proposed Local Government Inspector and monitors

The department says that measures implemented as part of local government reform will proactively address dysfunction and potential misconduct in local government. This includes establishing a new Local Government Inspector (Inspector) and monitors.⁵⁶⁵

A new oversight Inspector for local government will be appointed to handle complaints, manage investigations, and coordinate the proactive resolution of significant problems identified within local governments.

Department of Local Government, Sport and Cultural Industries

The next tranche of legislative reform, intended to be introduced into Parliament in 2023–24, will establish the Inspector, monitors and their powers to undertake enforcement action.⁵⁶⁶ The detail of proposed legislation was being considered at the time this inquiry. What is known is noted below.

It is proposed that the Inspector will have the powers of a standing inquiry.⁵⁶⁷ It is also anticipated that the Inspector and appointed monitors will have a greater span of tools to oversight local government, and intervene earlier and deal with dysfunction and misconduct.⁵⁶⁸ This is consistent with the commission’s view that the department should have expanded powers to undertake remedial intervention in local government.⁵⁶⁹

The Inspector will be supported by specialist independent monitors. They will have ‘a range of expertise in governance, financial management and/or conflict resolution and can be appointed to work within a local government to resolve issues.’⁵⁷⁰ It is said that monitors will visit and work with local governments to ‘fix problems, to provide for faster resolution

563 Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 4.

564 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 14.

565 Department of Local Government, Sport and Cultural Industries, *Early intervention, effective regulation and stronger penalties*, accessed 19 October 2023, <<https://www.dlgsc.wa.gov.au/department/publications/publication/earlier-intervention-effective-regulation-and-stronger-penalties>>.

566 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 7. The department’s websites says it will be introduced in 2023–24, <https://www.dlgsc.wa.gov.au/local-government/strengthening-local-government/local-government-act-reform/local-government-reform-explained#Commencement_of_communications_agreements_meeting_procedures_and_council_plans>, accessed 30 October 2023.

567 Submission 11, Department of Local Government, Sport and Cultural Industries, p 2.

568 Liam O’Neill, Principal Strategy Officer Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 7.

569 Corruption and Crime Commission, *Local Government Act 1995 Review, Corruption and Crime Commission response to Phase 1: Consultation Paper*, undated, p 2.

570 Submission 11, Department of Local Government, Sport and Cultural Industries, pp 2–3.

where problems are identified.⁵⁷¹ The Government is considering the power to suggest mediation or conciliation options.⁵⁷² Local governments will be able to request the assistance of monitors as a pre-emptive measure.⁵⁷³

The department also said that given the employment relationship between elected members and the executive, ‘there is only so far that it would be appropriate for us to go.’⁵⁷⁴

The LGEMA is broadly supportive and cautiously optimistic about an Inspector, because, it says, the present system is not working.⁵⁷⁵ There is some concern that ex-CEOs and local government employees with an ‘interest in protecting employees rather than good governance’ will be appointed to the new roles.⁵⁷⁶

In the committee’s view, where there is dysfunction, misconduct and misconduct risks at a local government, the department should be proactive in overseeing and working with elected members and the administration of the local government to resolve issues in a fair, unbiased and balanced way. It is positive that the Inspector and monitors will, it is proposed, have more tools and levers to proactively work with local governments to achieve better outcomes, in addition to dealing with complaints. It is essential that they be given all the tools available and necessary to achieve good outcomes for the community, including mediation and conciliation options.

It is also important that the Inspector and monitors support both arms of local government. The LGEMA considers the department’s current ‘lack of guidance and apparently apathy ... unacceptable’ and this is fundamentally at the heart of the issues its elected members encounter in pursuing good governance.⁵⁷⁷

The department is confident that the actions that it is taking place it in good stead to be an effective regulator of the local government sector as we prepare for the establishment of the role of the inspector for local government, which is anticipated as part of the local government reforms.

Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries

571 Department of Local Government, Sport and Cultural Industries, *Early intervention, effective regulation and stronger penalties*, accessed 19 October 2023, <https://www.dlgsc.wa.gov.au/department/publications/publication/earlier-intervention-effective-regulation-and-stronger-penalties>.

572 Liam O’Neill, Principal Strategy Officer Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 8.

573 Submission 11, Department of Local Government, Sport and Cultural Industries, pp 2–3.

574 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 7.

575 Keri Shannon, Chair, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 11.

576 Sandra Boulter, Deputy Chair/Secretary, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 11.

577 Submission 12, Local Government Elected Members Association, p 2.

Building integrity

The department undertakes some activities and initiatives to build the capacity of local government,⁵⁷⁸ (for example, see pull quote.)⁵⁷⁹ It has also run ‘several sessions’ on corruption prevention with elected members and the sector.

The department says it is focused on expanding its education role.⁵⁸⁰

DLGSC has increased in-person visits to local councils, with the aim of providing advice, building capability and strengthening networks between the DLGSC and the sector.

Department of Local Government, Sport and Cultural Industries

Under its new regulatory approach, a measure of the department’s success is that it has ‘[c]ollaborated with other government agencies to provide presentations to local governments on a range of conduct and integrity matters, and deliver multi-agency briefings.’⁵⁸¹ The department, Western Australian Local Government Association (WALGA) and the commission have conducted seminars and raised awareness in the sector.⁵⁸²

The committee heard that there is opportunity for the department and commission to take advantage of the commonalities in the sector, and enhance training, education and awareness raising in the sector. Local governments have latitude on how proactive they want to be on training. The committee heard that there is no cross sector training for employees other than through PSC resources. It is notable that the LGEMA was established to provide education and build capacity.⁵⁸³

Local government may, and do, use PSC integrity tools, such as its *Integrity Framework Template* and guide, and *Integrity Framework Maturity Self Assessment tool*, discussed in chapter 7. But the Public Sector Commissioner cannot mandate compliance with integrity and governance tools outside the ‘public sector’.⁵⁸⁴

At recommendation 21, the committee strongly recommended that all public authorities within the remit of the commission, including local governments, implement an integrity framework, and complete the *Integrity Framework Maturity Self Assessment Tool* on an annual basis.

578 Submission 11, Department of Local Government, Sport and Cultural Industries, p 3.

579 The department lists other initiatives in submission 11, Department of Local Government, Sport and Cultural Industries, p 4.

580 Lanie Chopping, Director General, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 2.

581 Department of Local Government, Sport and Cultural Industries, *Local Government Regulatory Approach*, p 18.

582 For example, the department partners with WALGA to produce monthly webinars, and has delivered webinars and presentations on financial matters. The department lists webinars and financial education undertaken in Erin Gauntlett, Acting Director General, Department of Local Government, Sport and Cultural Industries, letter, 5 July 2023, p 3.

583 Keri Shannon, Chair, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 3. Also, submission 12, Local Government Elected Members Association, p 1.

584 The ‘public sector’ (departments etc.) must comply with Commissioner’s Instructions, public sector standards, codes of ethics, codes of conduct: *Public Sector Management Act 1994*, ss 9, 22A.

The department meets quarterly with the commission to share intelligence and discuss issues and themes within the sector. It meets regularly with the OAG.⁵⁸⁵ The commission meets with ‘a handful’ of local governments to assist in capacity building; it is very difficult to meet with all local governments.⁵⁸⁶

While the department is positive about its improved relationships with the commission and OAG in recent years, it wants to enhance collaboration (see pull quote). It told the committee:

[The OAG] have been doing their audits ... over the last sort of four to five years, [and] the CCC have got more involved. I guess as we develop our regulatory model and that sharing of information and that actual

interaction, I think there is always room for improvement. ... the real-time sharing, we would love greater sharing of information directly with those agencies to highlight some of the areas that get raised.

We are on a journey with them, we will continue to develop that relationship and work with them, but certainly, we have gone from a period where it is fair to say, we did not have—or we had contact, and, you know, there were regular meetings, through to us now doing joint work with them around meeting with particular councils, running information sessions and webinars, highlighting particular themes around corruption risk, and others. So I think we have developed; I think there is always room for improvement.⁵⁸⁷

There are opportunities for the department to enhance cross sector training and education provided to the local government sector. There is also opportunity for the department, commission and other regulatory agencies to work together to deliver training and education to local government.

The commission being provided with a standalone misconduct prevention and education role for all agencies within its remit, as recommended in recommendation 20, would support its ability to have a greater role in working with local government to address identified misconduct risks.

DLGSC would welcome the opportunity for enhanced communication and collaboration between the CCC and other regulatory agencies, with the aim of improving the effectiveness and transparency or serious misconduct investigations and outcomes.

Department of Local Government, Sport and Cultural Industries

585 Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 13. Commission liaison with agencies is discussed in chapter 2.

586 Tracey Polmear, Director, Assessment and Strategy Development, Corruption and Crime Commission, *transcript of evidence*, 30 August 2023, p 17.

587 Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 13.

Finding 47

In 2021, the Office of the Auditor General found that the Department of Local Government, Sport and Cultural Industries was ‘not providing efficient and effective regulation and support to the LG [local government] sector and lacks fundamental aspects of a good regulatory framework.’ The department has responded with a new regulatory approach with a mission to ‘support and regulate WA local governments using a capability building and risk-based approach’. It says it also embraces early intervention.

Finding 48

The department says the *Local Government Act 1995* provides ‘limited mechanisms’ to regulate local government. The Government intends to table legislation that establishes a Local Government Inspector and monitors, which will provide more tools to proactively work with local governments to achieve better outcomes the sector.

Recommendation 32

That that Minister for Local Government ensure that proposed legislation to establish a Local Government Inspector and monitors includes robust powers to intervene and proactively work with local governments to achieve better misconduct outcomes and build integrity. Tools available should include mediation and conciliation options.

Finding 49

There is opportunity for the Department of Local Government, Sport and Cultural Industries and the Corruption and Crime Commission to enhance cross sector training, education and awareness raising.

Recommendation 33

The that Department of Local Government, Sport and Cultural Industries, working with the Corruption and Crime Commission, Office of the Auditor General, WALGA and other entities, enhance the cross sector training and education provided to the local government sector.

Office of the Auditor General – extending the remit of the Forensic Audit Unit

Since 2017 the OAG has audited the local government sector as part of its financial and information systems audits (discussed in chapter 7).⁵⁸⁸ The LGEMA supports the OAG also auditing WALGA, who receive public funds.⁵⁸⁹

The Auditor General, Caroline Spencer, says the transition to auditing local government has been a success, and the OAG has developed productive working relationships with the sector, but the Auditor General ‘would still like to bed down in that sector to settle to a more satisfactory rhythm’.⁵⁹⁰ There have been some issues with the timeliness of audits for a

588 The *Local Government Amendment (Auditing) Act 2017* was proclaimed on 28 October 2017, giving the Auditor General the mandate to audit local governments and regional councils.

589 Keri Shannon, Chair, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 6.

590 Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022, p 2.

number of reasons, including resourcing and the local government's capacity to provide requested data. There is a 'real variation' in the quality of financial management and reporting in the local government sector. The OAG's role is to help lift the sector.⁵⁹¹

As noted in chapter 7, the remit of OAG's Forensic Audit Unit does not cover local government. The logical question is: should this unit cover the local government sector? The department would 'absolutely' welcome the unit including local government.⁵⁹² The LGEMA also supports this.⁵⁹³

The committee supports extending the remit of the Forensic Audit Unit to cover local government. This is a logical progression. This is appropriate given that the sector spends significant public funds, some local governments have a 'low base' of integrity maturity, and the range of concerns about integrity in the sector.⁵⁹⁴ Forensic oversight by the OAG could only uplift the sector.

The Auditor General said that while OAG is working to 'bed down' its financial audit program in the sector, investment is best placed in lifting the sector through the general work of the OAG and investing in some local governments to lift their capacity before forensic audit becomes the priority. The committee agrees. The OAG should be given time to 'get the basics right'.⁵⁹⁵

The Government would need to provide appropriate funding to the OAG to expand the remit of the Forensic Audit Unit. Resourcing this function may take time. It is challenging to recruit people with the specialist skills required to work in this multidisciplinary team.⁵⁹⁶

Recommendation 34

That the Government fund the Office of the Auditor General to expand the remit of its Forensic Audit Unit to include the local government sector. (See finding 38.)

MR M. HUGHES, MLA
CHAIR

591 *ibid*, p 10.

592 Tim Fraser, Executive Director Local Government, Department of Local Government, Sport and Cultural Industries, *transcript of evidence*, 17 May 2023, p 16.

593 Keri Shannon, Chair, Local Government Elected Members Association, *transcript of evidence*, 10 May 2023, p 6.

594 At hearing, the Deputy Chair, the Hon Steve Thomas MLC, said 'there may be an argument down the track for the extension of the forensic unit into local government. But I would have thought there might be a natural progression down this path, because many of them are starting at a very low base'. The Auditor General though this was a 'fair assessment': Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022, p 10.

595 Caroline Spencer, Auditor General, Office of the Auditor General, *transcript of evidence*, 6 April 2022.

596 Carl Huxtable, Assistant Auditor General, Forensic Audit, Office of the Auditor General, *transcript of evidence*, 6 April 2022, p 2.

Appendix 1

Committee functions

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, Crime and Misconduct Act 2003*.

Appendix 2

Inquiry terms of reference

The committee will inquire into what happens after a public officer* is found to have engaged in serious misconduct including:

1. disciplinary and other sanctions imposed by departments, local government, the Western Australia Police Force and other authorities
2. unexplained wealth and criminal benefits proceedings initiated by the Corruption and Crime Commission
3. criminal prosecutions arising from serious misconduct investigations including prosecuting arrangements, challenges and outcomes
4. the roles of the Corruption and Crime Commission, Public Sector Commission, departments, local government, the Western Australia Police Force and other authorities in taking action, overseeing and/or reporting the above outcomes
5. measures to improve the effectiveness, transparency and/or oversight of the above.

* 'public officer' includes a public service officer, police officer, member of either House of Parliament, and member, officer or employee of any authority, board, corporation, commission, local government or council of local government.

The committee will report by 30 November 2023.

Appendix 3

Submissions

Number	From
1	Department of Health
2	Parliamentary Inspector of the Corruption and Crime Commission
3	Civil Liberties Australia (WA)
4	The Law Society of Western Australia
5	Closed submission
6	PathWest Laboratory Medicine WA
7	Corruption and Crime Commission
8	Public Sector Commission
9	Office of the Auditor General
10	Western Australia Police Force
11	Department of Local Government, Sport and Cultural Industries
12	Local Government Elected Members Association Inc.
13	Fremantle Ports
14	Western Power
15	Horizon Power
16	Director of Public Prosecutions for Western Australia
17	Department of Communities
18	City of Joondalup
19	Community and Public Sector Union/Civil Service Association of WA
20	Aboriginal Legal Service of Western Australia Limited
21	East Metropolitan Health Service
22	Child and Adolescent Health Service
23	WA Country Health Service
24	Health Support Services
25	North Metropolitan Health Service
26	Department of Transport

During the inquiry the committee received further correspondence from many of the above and others. Further responses were recorded as correspondence. The committee has published public submissions and public correspondence on its website. A range of evidence remains closed evidence.

Appendix 4

Public hearings

Date	Participants
15 August 2022	<p>Corruption and Crime Commission</p> <ul style="list-style-type: none"> • The Hon John McKechnie KC, Commissioner • Scott Ellis, Acting Commissioner • David Robinson, Acting Chief Executive • Kirsten Nelson, Director, Legal Services • Tracey Polmear, Director, Assessment and Strategy Development • Jonothan Tuttle, Deputy Director, Operations <p>Aboriginal Legal Service of WA</p> <ul style="list-style-type: none"> • Peter Collins, Director, Legal Services • Alice Barter, Managing Lawyer, Civil Law and Human Rights Unit <p>Office of the Director of Public Prosecutions</p> <ul style="list-style-type: none"> • Robert Owen, Acting Director of Public Prosecutions • Alison Finn, Legal Projects Officer <p>State Solicitor's Office</p> <ul style="list-style-type: none"> • Angela Komninos, Acting State Solicitor • Michelle Lindley, Senior Assistant State Solicitor
21 September 2022	<p>Public Sector Commission</p> <ul style="list-style-type: none"> • Sharyn O'Neill, Public Sector Commissioner • Dan Volaric, Executive Director, Integrity and Risk • Melissa Travers, Principal Legal Officer
19 October 2022	<p>Western Australia Police Force</p> <ul style="list-style-type: none"> • Colin Blanch, Commissioner of Police • Paul Coombes, Detective Superintendent, Internal Affairs • Greg Crofts, Superintendent, Ethical Standards Division
27 March 2023	<p>Office of the Auditor General</p> <ul style="list-style-type: none"> • Caroline Spencer, Auditor General • Sandra Labuschagne, Deputy Auditor General • Carl Huxtable, Assistant Auditor General, Forensic Audit • Tim Hughes, Principal Advisor <p>Department of Health</p> <ul style="list-style-type: none"> • Dr David Russell-Weisz, Director General • Dr Kristy Edmonds, Director, System-wide Integrity Services <p>North Metropolitan Health Service</p> <ul style="list-style-type: none"> • Dr Shirley Bowen, Chief Executive • Mike Cullen, Director, Integrity

Appendix 4

	<p>Department of Education</p> <ul style="list-style-type: none"> • Lisa Rodgers, Director General • Susie Baker, Acting Director, Standards and Integrity • Cindy Barnard, Executive Director, Workforce • Jay Peckitt, Deputy Director General, Education Business Services • Mary Brown, Executive Director, Professional Standards and Conduct
	<p>Western Power</p> <ul style="list-style-type: none"> • Sam Barbaro, Chief Executive Officer • Chris Porteous, Senior Forensic Advisory Specialist • Andrew Cook, Managing Counsel
	<p>Department of Justice</p> <ul style="list-style-type: none"> • Dr Adam Tomison, Director General • James August, Acting Executive Director
	<p>Transport</p> <ul style="list-style-type: none"> • Peter Woronzow, Director General • Iain Cameron, Managing Director, Department of Transport • Mark Burgess, Managing Director, Public Transport Authority
29 March 2023	<p>Department of Communities</p> <ul style="list-style-type: none"> • Michael Rowe, Director General • Shayne Maines, Deputy Director General, Governance, Integrity and Reform • Andrew Salter, Executive Director, Professional Standards
10 May 2023	<p>Local Government Elected Members Association</p> <ul style="list-style-type: none"> • Keri Shannon, Chair • Sandra Boulter, Deputy Chair – Secretary • John Raftis, Committee Member • Daniel Kingston, Committee Member
17 May 2023	<p>Department of Local Government, Sport and Cultural Industries</p> <ul style="list-style-type: none"> • Lanie Chopping, Director General • Michael Palermo, Director Integrity • Tim Fraser, Executive Director, Local Government • Liam O’Neill, Principal Strategy Officer, Local Government
30 August 2023	<p>Corruption and Crime Commission</p> <ul style="list-style-type: none"> • The Hon John McKechnie KC, Commissioner • Scott Ellis, Acting Commissioner • Emma Johnson, Chief Executive • Kirsten Nelson, Director, Legal Services • Tracey Polmear, Director, Assessment and Strategy Development • Natasha Erlandson, Executive Director

Appendix 5

The definitions of 'serious misconduct', 'minor misconduct' and 'police misconduct' in the *Corruption, Crime and Misconduct Act 2003*

serious misconduct means —

- (a) misconduct of a kind described in section 4(a), (b) or (c) by a public officer; or
- (b) police misconduct;

minor misconduct means misconduct of a kind described in section 4(d) that is not any of the following —

- (a) police misconduct;
- (b) conduct engaged in by a member of a House of Parliament or the Clerk of a House of Parliament;
- (c) conduct engaged in by —
 - (i) a member of a local government or council of a local government; or
 - (ii) a member of a council of a regional local government;

police misconduct means —

- (a) misconduct by —
 - (i) a member of the Police Force; or
 - (ii) an employee of the Police Department; or
 - (iii) a person seconded to perform functions and services for, or duties in the service of, the Police Department;
- or
- (b) reviewable police action;

reviewable police action means any action taken by a member of the Police Force, an employee of the Police Department or a person seconded to perform functions and services for, or duties in the service of, the Police Department that —

- (a) is contrary to law; or
- (b) is unreasonable, unjust, oppressive or improperly discriminatory; or
- (c) is in accordance with a rule of law, or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or
- (d) is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or
- (e) is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given;

Term used: misconduct

Misconduct occurs if —

- (a) a public officer corruptly acts|or corruptly fails to act in the performance of the functions of the public officer's office or employment; or
- (b) a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or
- (c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or
- (d) a public officer engages in conduct that —
 - (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct; or
 - (ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or
 - (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
 - (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

[(v) deleted]

- (vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

Appendix 6

Prosecutions arising from commission investigations

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 1	Stealing as a servant Possession of prohibited drug	3 September 2016 and 19 October 2016	Convicted and sentenced (5 December 2016) 12 months' imprisonment, wholly suspended for 18-month Community Based Order	Corruption and Crime Commission
Person 2	2 x Disclosing Official Secrets (s 81(2) Criminal Code) 2 x Unlawful use of a computer for a benefit 2 x Public Officer Acts Corruptly in Performance/Discharge of Functions	Initial charges laid on 31 March 2017. In August 2017, the DPP prosecutor decided, by agreement with the defence counsel, to reduce the charges against Person 1 to 2 x Disclosing Official Secrets in exchange for pleas of guilty The charges of Unlawful Access and Corruption were discontinued and Person 1 was dealt with in the Magistrates Court	Convicted and sentenced (17 October 2017) Intensive Supervision Order - 12 months duration with supervision and programs	Corruption and Crime Commission Department of Transport
Person 3	2 x Disclosing Official Secrets 2 x Unlawful use of a computer for a benefit 2 x Public Officer Acts Corruptly in Performance/Discharge of Functions	Initial charges laid on 31 March 2017 On 22 November, all charges, except 2 x Disclosing Official Secrets were discontinued	Convicted of two charges of counselling/procuring Person 6, without lawful authority, to make an unauthorised disclosure of official information and sentenced (16 January 2018) Custodial sentence to be served concurrently	Corruption and Crime Commission Department of Transport

Appendix 6

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 4	78 x Agent receiving payment (s 529 Criminal Code) Fresh charges on 23 and 28 August 2018 by the WA Police Force: 4 x Corruption (Criminal Code s 83)	Initial charges laid on 4 October 2017 Subsequently withdrawn and a review conducted of the Commission's holdings with a view to considering charges of corruption The WA Police Force signed new prosecution notices on 16 August 2018	Convicted of 5 counts of corruption and sentenced (11 November 2020) Two years' immediate imprisonment with a non-parole period of 12 months.	Corruption and Crime Commission Horizon Power
Person 5	4 x Fraud (Criminal Code s 409)	Initial charges laid on 4 October 2017 Subsequently withdrawn and a review conducted of the Commission's holdings with a view to considering charges of corruption The WA Police Force signed new prosecution notices on 16 August 2018	Charges discontinued (30 June 2020)	Corruption and Crime Commission Horizon Power
Person 6	12 x Corruption (s 83 Criminal Code)	19 March 2018	Convicted and sentenced (29 November 2018) Two years' immediate imprisonment	Corruption and Crime Commission Department of Transport
Person 7	1 x Corruptly Falsifying a Record (s 85 Criminal Code)	28 March 2018	Acquitted (25 August 2019)	Corruption and Crime Commission

Prosecutions arising from commission investigations

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 8	1 x Corruptly Falsifying a Record (s 85 Criminal Code)	28 March 2018	Acquitted (25 August 2019)	Corruption and Crime Commission
Person 9	2 x Common Assault	2018	Convicted and sentenced 8 month suspended sentence, \$1,500 fine and \$16,500 court costs	Corruption and Crime Commission
Person 10	18 x Gains Benefit by Fraud, (Criminal Code s 409(1)(c))	1 August 2019	Convicted and sentenced (2 June 2020) 9 months' imprisonment.	Corruption and Crime Commission
Person 11	4 x Public Officer Acts Corruptly in Performance/Discharge of Functions (Criminal Code s 83(c))	1 August 2019	Convicted and sentenced (5 June 2020) 9 months' imprisonment, suspended for 18 months.	Corruption and Crime Commission
Person 12	7 x Public Officer Acts Corruptly in Performance/Discharge of Functions (Criminal Code s 83(c))	1 August 2019	Convicted and sentenced (2 June 2020) 19 months' imprisonment.	Corruption and Crime Commission
Person 13	2 x Public Officer Acts Corruptly in Performance/Discharge of Functions (Criminal Code s 83(c))	1 August 2019	Convicted and sentenced (2 June 2020) \$18,000 fine.	Corruption and Crime Commission

Appendix 6

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 14	12 x Gains Benefit by Fraud (Criminal Code s 409(1)(c)) 4 x Disclosed restricted matter – person served with notice or summons, (CCM Act 2003 s 167 (3) & (2)(a)) 1 x Wilfully destroyed evidence (CCM Act s 171) 1 x Public Officer Acts Corruptly in Performance/Discharge of Functions (Criminal Code s 83(c))	1 August 2019	Convicted and sentenced (3 June 2020) 2 years, five months' imprisonment with eligibility for parole after 14.5 months.	Corruption and Crime Commission
Person 15	551 x Public officer acts corruptly in performance/discharge of functions	14 November 2019	Convicted and sentenced (19 November 2021) 12 years' imprisonment with parole eligibility after 10 years	Corruption and Crime Commission WA Police Force
	1 x property laundering			
Person 16	530 x Public officer acts corruptly in performance/discharge of functions 3 x property laundering	14 November 2019	All charges discontinued (5 May 2023)	Corruption and Crime Commission WA Police Force
Person 17	9 x Official corruption 65 x Public Officer Acts Corruptly in Performance/ Discharge of Functions	3 December 2019	All charges discontinued (10 November 2020)	Corruption and Crime Commission WA Police Force
Person 18	1 x Public Officer Omitted to make an Entry in any Record (Criminal Code s 85(b)) 20 x Public Officer Acts Corruptly in Performance/ Discharge of Functions (Criminal Code s 83(c)) 26 x Gains Benefit by Fraud (Criminal Code s 409(1)(c))	12 March 2020	Sentenced and convicted (23 February 2023) 4 years and 6 months imprisonment with eligibility for parole after 2 years and 6 months.	Corruption and Crime Commission

Prosecutions arising from commission investigations

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 19	1 x Public Officer Omitted to make an Entry in any Record (Criminal Code s 85(b)) 9 x Public Officer Acts Corruptly in Performance/Discharge of Functions (Criminal Code s 83(c))	12 March 2020	Convicted and sentenced (25 February 2022) 50 months imprisonment, eligible for parole after 7.5 months	Corruption and Crime Commission
Person 20	21 x Public officer acts corruptly in performance/discharge of functions 1 x Engaged in transaction involving property that is proceeds of an offence	8 July 2020	Ongoing. 5 x public officer acts corruptly. Charges discontinued (28 November 2022) Other charges still before the courts.	Corruption and Crime Commission WA Police Force
Person 21	7 x property laundering	11 August 2020	All charges discontinued (9 August 2021)	Corruption and Crime Commission
Person 22	2 x property laundering	11 August 2020	All charges discontinued (9 August 2021)	Corruption and Crime Commission
Person 23	1 x Breaching - Disclosure contrary to s 99 notation (CCM Act s 167)	1 September 2020	Convicted and sentenced (2 September 2021) \$3,000 fine and spent conviction.	Corruption and Crime Commission Department of Justice
Person 24	1 x Public Officer making a false entry in any record 1 x Assault occasioning bodily harm [12409/2020] 4 x Disclosed Restricted Matter Contrary to Notation on Summons (CCM Act s 167(3) & (2)(a))	19 November 2020 24 November 2020 - 1 December 2020	Convicted and sentenced for disclosure of restricted matter charges. Issued with a \$4,000 fine (global) and a spent conviction. Found not guilty on 1 x public officer making false entry charge and 1 x assault occasioning bodily harm charge.	Corruption and Crime Commission Department of Justice

Appendix 6

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 25	1 x Public Officer making a false entry in any record 4 x Disclosed Restricted Matter Contrary to Notation on Summons (CCM Act s 167(3) & (2)(a))	16 November 2020 24 November 2020 - 1 December 2020	Convicted and sentenced for making a false record (17 August 2021) 2 years' imprisonment, suspended for 18 months. Convicted and sentenced for disclosure charges (6 September 2021) \$6,000 fine.	Corruption and Crime Commission Department of Justice
Person 26	1 x Public Officer making a false entry in any record x Disclosed Restricted Matter Contrary to Notation on Summons (CCM Act s 167(3) & (2)(a))	17 November 2020 24 November 2020 - 1 December 2020	Found not guilty on 1 x public officer making false entry charge (21 June 2023) 2 x disclosed restricted matter charges discontinued.	Corruption and Crime Commission Department of Justice
Person 27	1 x Public Officer making a false entry in any record 2 7 x Disclosed Restricted Matter Contrary to Notation on Summons (CCM Act s 167(3) & (2)(a))	17 November 2020 24 November 2020 - 1 December 2020	Convicted and sentenced for making a false record (24 September 2021) 2 years and three months' imprisonment, suspended for 18 months. Convicted and sentenced for making a false record for disclosure charges (28 September 2021). \$5,000 fine.	Corruption and Crime Commission Department of Justice
Person 28	1 x Public Officer making a false entry in any record 1 x Disclosed Restricted Matter Contrary to Notation on Summons (CCM Act s 167(3) & (2)(a))	16 November 2020 24 November 2020 - 1 December 2020	Convicted and sentenced for making a false record (17 August 2021) 2 years' imprisonment, suspended for 18 months. Convicted and sentenced for disclosure charges (6 September 2021). \$5,000 fine	Corruption and Crime Commission Department of Justice

Prosecutions arising from commission investigations

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 29	4 x Disclosed Restricted Matter Contrary to Notation on Summons (CCM Act s 167(3) & (2)(a))	24 November 2020 - 1 December 2020	Convicted and sentenced (22 April 2021) 9 month Community Based Order.	Corruption and Crime Commission Department of Justice
Person 30	1 x engaged directly or indirectly in a transaction that involved any money or other property that is the proceeds of an offence	2 December 2020	Convicted and sentenced (26 April 2022) 13 months imprisonment, suspended for 18 months	Corruption and Crime Commission
Person 31	2 x Public Officer Acts Corruption in Performance/Discharge of Functions 1 x Cause a Detriment to a Person by Fraud	12 April 2021	All charges discontinued (11 February 2022)	Corruption and Crime Commission
Person 32	2 x Public Officer Acts Corruptly in Performance/Discharge of Functions	15 April 2020	All charges discontinued (7 July 2023)	Corruption and Crime Commission
Person 33	3 x Unauthorised disclosure of information by a public servant or government contractor 3 x Public Officer Acts Corruptly in Performance/Discharge of Functions	15 April 2020	Ongoing	Corruption and Crime Commission
Person 34	7 x Public Officer acts corruptly in performance/discharge of functions	13 December 2021	Sentenced and convicted (26 August 2023) 12 months immediate imprisonment on each count (7 x public officer acts corruptly). The sentence imposed on count 7 was ordered to be served cumulatively, so total sentence was 2 years.	Corruption and Crime Commission

Appendix 6

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 35	7 x Public Officer acts corruptly in performance/discharge of functions	13 December 2021	6 of 7 corruption charges discontinued (February 2023) Ongoing, 1 charge still before the courts.	Corruption and Crime Commission
Person 36	5 x Disclosing restricted matter contrary to notation under CCM Act s 99	April 2022	All charges discontinued (June 2022)	Corruption and Crime Commission
Person 37	4 x Disclosing restricted matter contrary to notation under CCM Act s 99 1 x Obstructing the Commission performing its functions	April 2022	Sentenced and convicted (5 December 2022) <ul style="list-style-type: none"> • In relation to the s 165 offence, imprisonment of 7 months suspended for 12 months; • In relation to 4 x 167 charges, a global fine for \$12,000. a costs order in favour of the prosecution of \$8,263.30.	Corruption and Crime Commission
Person 38	1 x Disclosing restricted matter contrary to notation under CCM Act s 99	April 2022	Ongoing	Corruption and Crime Commission

Prosecutions arising from commission investigations

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 39	1 x Disclosing restricted matter contrary to notation under CCM Act s 99 1 x giving false testimony to the Commission 1 x Destroying evidence 1 x Obstructing the Commission performing its functions	18 July 2022	1 x disclosing restricted matter charge and 1 x wilfully destroying evidence charge discontinued (December 2022). Convicted and sentenced (December 2022) Charge 1: CCM Act s 168: <ul style="list-style-type: none"> • 10 month term of imprisonment, suspended for 10 months • Fine of \$10,000 Costs of \$1,881.65 Charge 2: CCM Act s 165: <ul style="list-style-type: none"> • 10 month term of imprisonment, suspended for 10 months (concurrent with term for Charge 1) Fine of \$10,000.	Corruption and Crime Commission
Person 40	1 x Disclosing restricted matter contrary to notation under CCM Act s 99	18 July 2022	Convicted and sentenced (16 November 2022) Issued with a fine of \$3,800 and reduced costs in the amount of \$600	Corruption and Crime Commission
Person 41	1 x Gains benefit by fraud 31 x Bribery of a public officer	22 December 2022	Convicted and sentenced (2 August 2023) Immediate term of imprisonment for 16 months (14 months for count 1, and 2 months for count 2), Eligible for parole after 8 months.	Corruption and Crime Commission
Person 42	31 x Bribery of Public Officer 2 x Corruption (Criminal Code)	12 January 2023 18 April 2023	Ongoing	Corruption and Crime Commission

Appendix 6

Accused person	Nature of charges	Date charged	Outcome	Commission investigation: independent or cooperative with agency
Person 43	2 x Corruption (Criminal Code s 83)	18 April 2023	Ongoing	Corruption and Crime Commission
Person 44	23 x Disclosed, or caused to be disclosed, restricted matter (CCM Act s 151) 2 x Disclosed restricted matter - person served with notice or summons (CCM Act s 167)	30 June 2023	Convicted and sentenced (4 August 2023) In relation to 1 x s 151 charge, a term of imprisonment of 7 months, suspended for 12 months. For the remaining 24 charges, a global fine of \$3,000.	Corruption and Crime Commission
Person 45	14 x Disclosed, or caused to be disclosed, restricted matter (CCM Act s 151) 2 x Disclosed restricted matter - person served with notice or summons (CCM Act s 167)	19 July 2023	Ongoing	Corruption and Crime Commission

Appendix 7

PSC Integrity Framework Maturity Self Assessment Tool

Public Sector Commission Integrity Framework Maturity Self Assessment Tool



Helping WA public authorities assess and improve their approach to integrity

Element 1: Clear expectations

The authority head clearly describes and communicates their integrity expectations

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. Integrity is not defined or well understood by staff. Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. What integrity means is becoming clearer to staff as the tone from the top is being communicated. Integrity actions and initiatives are being planned for and coordinated but not yet integrated. Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. Integrity is well communicated by leaders, understood by staff and integrated into business practices. Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
Characteristics			
<ul style="list-style-type: none"> Expectations, if documented, are only in the code of conduct. The authority head rarely communicates their expectations. Line managers check staff understanding of expectations only after an integrity breach. There are limited specific expectations communicated to external stakeholders (e.g. those who do business with the authority or use its services). 	<ul style="list-style-type: none"> Expectations are in the code of conduct, being documented in integrity policies and procedures, and included in job descriptions for some positions of trust when they are updated. The authority head occasionally reinforces their expectations (e.g. face to face, staff communications). Line managers explain expectations at induction. Some reinforce them during employment (e.g. through staff performance processes). Specific expectations for external stakeholders are being developed. 	<ul style="list-style-type: none"> The integrity framework, code of conduct, integrity policies and procedures, and most business processes reflect the authority head's expectations. The authority head frequently reinforces their expectations and there is clear "tone from the top". Line managers consistently model and reinforce the "tone from the top". This is demonstrated in part by staff understanding expectations and being able to explain what these are when asked. Expectations are communicated to external stakeholders (e.g. through a statement of business ethics). 	<ul style="list-style-type: none"> New policies and procedures are written consistently to reflect the authority head's expectations. The leadership group demonstrates the "tone from the top". It is visible and well known inside and outside the authority. Staff model and support the "tone from the top" which is assessed through staff performance processes. External stakeholders who do not meet communicated expectations are held to account (e.g. through appropriate legislative or contractual mechanisms).
Comments			
<p>Add your text here</p>			

Element 2: Roles and responsibilities

Roles and responsibilities are assigned to ensure a coordinated approach to managing integrity.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> • Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. • Integrity is not defined or well understood by staff. • Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. • Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> • Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. • What integrity means is becoming clearer to staff as the tone from the top is being communicated. • Integrity actions and initiatives are being planned for and coordinated but not yet integrated. • Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> • Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. • Integrity is well communicated by leaders and understood by staff and integrated into business practices. • Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. • Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> • Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. • Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. • Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. • Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
<p>Characteristics</p> <ul style="list-style-type: none"> <input type="checkbox"/> Some roles and responsibilities are assigned. These are documented to meet compliance obligations (e.g. role of the audit committee). <input type="checkbox"/> Some delegations are documented, these mainly relate to finance and human resources. <input type="checkbox"/> Information and data requests from external integrity bodies are responded to in an ad hoc way. <input type="checkbox"/> Staff think integrity is someone else's responsibility. Individual and shared responsibility is not well understood. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Roles and responsibilities are being assigned as the integrity framework is developed (e.g. to positions, teams, groups and committees) and in job descriptions when they are updated. <input type="checkbox"/> Delegations are being considered across functions and activities and being documented in an accessible schedule. <input type="checkbox"/> Responsibility has been assigned to a position or team to coordinate information and data requests and interactions with external integrity bodies. <input type="checkbox"/> Staff are becoming aware that integrity is everyone's responsibility. This is being communicated in the integrity framework, code of conduct, integrity policies and procedures. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Roles and responsibilities – including the authority head's accountability for integrity – are documented in the integrity framework. <input type="checkbox"/> Relevant roles and responsibilities (e.g. between the governing board chair or mayor/shire president, chancellor and authority head and staff) are clear and documented in the integrity framework. <input type="checkbox"/> Delegations for all legislative and high risk functions are covered (e.g. regulation, approvals, human resources, finance). <input type="checkbox"/> Requests from external integrity bodies are planned for and scheduled so they can be responded to in a timely and fulsome way. <input type="checkbox"/> Staff are aware that integrity is everyone's responsibility and can explain what this means when asked. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Leaders and staff with key assigned roles and responsibilities in the integrity framework regularly discuss challenges and identify opportunities to improve the framework. These improvements feed into self-analysis and review of the framework. <input type="checkbox"/> The delegations schedule is monitored and updated in real time. <input type="checkbox"/> A dedicated position, team or committee is tasked with engaging with external bodies, promoting integrity, and helping to prevent misconduct and corruption, and providing specialist advice to the leadership group on trends and improvement actions. <input type="checkbox"/> Staff are provided with a formal avenue to suggest changes to the integrity framework. 			

Comments

Add your text here

Element 3: Legislation and regulations

Legislation, regulations and external policy obligations are identified and accounted for.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. Integrity is not defined or well understood by staff. Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. What integrity means is becoming clearer to staff as the tone from the top is being communicated. Integrity actions and initiatives are being planned for and coordinated but not yet integrated. Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. Integrity is well communicated by leaders, understood by staff and integrated into business practices. Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
<p>Characteristics</p> <ul style="list-style-type: none"> Legislative, regulatory and external policy obligations (e.g. those required by enabling legislation and those set by central bodies) are not fully identified. Compliance gaps, if any, are mostly unknown. Staff understanding of their powers, functions and obligations – and how they apply these in practice – relies on their knowledge and capability. 			
<ul style="list-style-type: none"> Legislative, regulatory and external policy obligations are being identified. An accountability map or similar is being completed. Any compliance gaps identified are being addressed. Staff are becoming aware of the power, functions and obligations relevant to their role (e.g. acting in line with operating procedures). Line managers are taking a more active role in this. 			
<ul style="list-style-type: none"> All obligations are documented and accounted for (e.g. reflected in internal controls, roles and responsibilities, compliance calendars). Compliance gaps are addressed as identified. Staff understand the power, functions and obligations relevant to their role (e.g. delegations) and can explain how these apply in practice. Line managers support their staff to comply with obligations and oversight compliance. They demonstrate they have taken action on non-compliance (e.g. through staff performance and discipline processes). 			
<ul style="list-style-type: none"> All obligations are monitored to track changes to legislation, regulations and external policy. Changes are communicated and updates made (e.g. to internal controls). Proactive monitoring identifies compliance gaps. Passive and active monitoring is undertaken to check if staff are carrying out powers, functions and obligations as expected (e.g. discretionary powers are appropriately exercised and staff act in line with delegations). 			

Comments

Add your text here

Element 4: Risk analysis and planning for integrity

Integrity risks are identified and analysed, and plans are made to manage them.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. Integrity is not defined or well understood by staff. Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. What integrity means is becoming clearer to staff as the tone from the top is being communicated. Integrity actions and initiatives are being planned for and coordinated but not yet integrated. Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. Integrity is well communicated by leaders, understood by staff and integrated into business practices. Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
Characteristics			
<ul style="list-style-type: none"> Integrity risks are narrowly defined. Little consideration is given to functions and activities that give rise to integrity risks. The priority is material financial risk. There is limited agreement about the value of and approach to, managing integrity risks among the leadership group. Managing integrity risks associated with functions and activities relies on the judgement of line managers. There are limited methodologies, tools and guidance to assist them, other than processes to manage financial risks. Some but not all staff are able to explain the integrity risks associated with their work or the importance of managing them. 	<ul style="list-style-type: none"> Integrity risks, including those relating to high risk functions, activities and any outsourced programs and activities, are being identified, adequately defined, analysed and documented in risk registers. The authority head communicates the value of managing integrity risks to the leadership group. A shared understanding of risk management is being developed. Risk owners are being identified and assigned for high risk functions and activities. They are provided with methodologies, tools and guidance (e.g. risk management policies and procedures) to help analyse and manage risks. Staff are becoming familiar with the integrity risks associated with their work and what they need to do to manage them (e.g. comply with policies and procedures). 	<ul style="list-style-type: none"> Integrity risks from internal and external sources have been identified. Risk owners are assigned for all identified risks in risk registers. Integrity risks are reflected in broader planning processes (e.g. strategic, operational, project and business continuity). Integrity risks are regularly monitored, reviewed, updated and reported on, and take account of changes impacting the risk profile. The authority head regularly reinforces the value of managing integrity risks (e.g. face to face, in staff communications). Risk owners are provided with methodologies, tools and guidance that take into account better practice outlined in Australian Standards 31000-2018: Risk Management Guidelines and 8001-2021: Fraud and Corruption Control. Staff understand the integrity risks associated with their work and identified shared risks, and can explain how they manage these in practice. 	<ul style="list-style-type: none"> Assessment of integrity risk considers behavioural factors (e.g. what makes individuals more vulnerable to engaging in misconduct and corruption from internal and external sources). Advanced tools are used to monitor and report on integrity risks (e.g. automated dashboards and data analytics). They help inform decisions to improve risk management. The leadership group takes a positive and proactive approach to managing all risks including shared risk (e.g. inter-authority or multi-jurisdictional projects). Risk owners champion risk management. Staff consistently identify, analyse and manage integrity risks associated with their work. Where new and emerging risks are identified, they are raised via established pathways.
Comments			
<p>Add your text here</p>			

Element 5: Internal controls, audit and governance

Integrity risks are managed through sound internal controls, and audit is used to evaluate the adequacy and effectiveness of controls.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. Integrity is not defined or well understood by staff. Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. What integrity means is becoming clearer to staff as the tone from the top is being communicated. Integrity actions and initiatives are being planned for and coordinated but not yet integrated. Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. Integrity is well communicated by leaders, understood by staff and integrated into business practices. Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
<p>Characteristics</p> <ul style="list-style-type: none"> Limited or basic internal controls (e.g. policies and procedures) are directed towards managing financial risks. Accuracy and currency of policies and procedures relies on individuals updating them. There is no assigned responsibility. Audit scopes and programs focus on the adequacy of financial controls rather than broader integrity issues (e.g. use of confidential information). The relationships between those with responsibility for audit are undefined. Applying internal controls associated with functions and activities relies on the line managers explaining to staff why internal controls exist and their importance. There is no standard approach; staff knowledge varies. Staff are unaware of the need to report unmanaged risks and internal control weaknesses. 			
<ul style="list-style-type: none"> Internal controls (e.g. core and complementary integrity policies and procedures) are being developed and implemented to manage identified integrity risks. A position or team has been assigned to develop a policy register to record what policies and procedures exist, who owns them and their currency. Integrity risks and the adequacy of internal controls are being included in the audit scopes and programs. The relationship between the internal audit function, audit committee and accountable authority and any external audit body is being defined and good practices are being developed (e.g. communication of reports and recommendations from external integrity bodies). Line managers are starting to understand and communicate the importance of applying internal controls consistently to manage integrity risks. Staff rely on managers informing them of how to report internal control weaknesses. 			
<ul style="list-style-type: none"> Internal controls (e.g. preventative, detective and corrective) are proportionate to specific integrity risks. A position or team manages the policy register to ensure policy owners are undertaking scheduled reviews. Different types of audits are used to explore integrity risks (e.g. random audits, focus area, forensic, compliance and quality audits). The importance of audit is well understood across the authority. Line managers readily accept and participate in audits. Recommendations for improvement from internal and external audits are assigned to ensure they are implemented. Line managers understand their supervision and monitoring role is an internal control. Staff understand the risks associated with their work and apply internal controls to manage these. Staff know how to report internal control weaknesses via established pathways. 			
<ul style="list-style-type: none"> Internal controls are monitored, reviewed (including pressure tested) and improved continuously. Internal controls keep pace with lessons learnt from integrity breaches, changing business processes, risks and other operating conditions and reduce vulnerabilities and unintended consequences. Risk owners raise, and internal audit records, changes to internal controls and treatment plans in risk registers. Advanced tools automatically update those who need to know of changes. Evaluation of the adequacy and effectiveness of internal controls to manage integrity risks is conducted in targeted integrity audits and integrity is included as part of most audit scopes. A combined assurance model (e.g. with activities that are coordinated and planned) is in place to ensure integrity is practiced, managed and accounted for. 			

Comments

Add your text here

Element 6: Fraud and corruption detection systems

Systems and activities are in place to detect events different to those considered standard, normal or expected.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> • Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. • Integrity is not defined or well understood by staff. • Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. • Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> • Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. • What integrity means is becoming clearer to staff as the tone from the top is being communicated. • Integrity actions and initiatives are being planned for and coordinated but not yet integrated. • Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> • Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. • Integrity is well communicated by leaders, understood by staff and integrated into business practices. • Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. • Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> • Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. • Integrity is modelled and reinforced by leaders and practised by staff who understand their obligations. • Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. • Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
<p>Characteristics</p> <ul style="list-style-type: none"> <input type="checkbox"/> Basic detection systems and activities are in place for internal threats (e.g. some financial activities) but relies heavily on the manual effort of individuals (e.g. manual checks, excel spreadsheets). <input type="checkbox"/> Detection systems and activities are directed towards managing internal threats. Some basic controls are in place to prevent external fraud and corruption threats (e.g. firewalls to prevent cyber-attacks). <input type="checkbox"/> Internal data holdings are unstructured and not easily analysed. <input type="checkbox"/> Beyond basic reporting, there is no or limited use of data for detection purposes. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Planning is underway to develop a detection strategy or plan; this is being supported by the leadership group. The plan considers internal and external threats (e.g. cyber security, third parties seeking to exploit individual officers), information and data holdings, people and capability requirements, tools for validation and reporting, and governance arrangements including data sharing and confidentiality. <input type="checkbox"/> Changes are being made to how existing data is captured, providing more structure for easier analysis. <input type="checkbox"/> Data is mainly used for reporting rather than responding to identified errors and irregularities. 			
<ul style="list-style-type: none"> <input type="checkbox"/> A detection strategy or plan is in place to help control internal and external threats. It takes into account better practice outlined in Australian Standards 31000-2018: Risk Management Guidelines and 8001-2021: Fraud and Corruption Control including speaking up and staff and contactor screening. <input type="checkbox"/> Data holdings to inform detection have been cleansed, are structured and can be analysed easily. <input type="checkbox"/> Fit for purpose data tests are in place and repeatable, usually with consistent results that provide useful insights. These are supported by procedures to respond to and address identified errors and irregularities, and escalate issues for investigation as appropriate. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Detection systems and activities inform the internal audit scopes and program; insights show areas for further examination. <input type="checkbox"/> Detection systems and activities support continuous improvement to strategic and operational planning and misconduct and corruption prevention approaches. <input type="checkbox"/> Internal and external data holdings, where they can be shared and are relevant, are leveraged to inform detection approaches. <input type="checkbox"/> Automated processes are in place to identify and escalate red flags. Processes for prompt escalation, investigation and resolution are in place. 			

Comments

Add your text here

Element 7: Values and standards

Values and standards (code of conduct) are in place and describe what acceptable workplace behaviour looks like in practice.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. Integrity is not defined or well understood by staff. Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. What integrity means is becoming clearer to staff as the tone from the top is being communicated. Integrity actions and initiatives are being planned for and coordinated but not yet integrated. Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. Integrity is well communicated by leaders, understood by staff and integrated into business practices. Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
<p>Characteristics</p> <ul style="list-style-type: none"> Values have been discussed by the leadership team but have not progressed beyond this. A code of conduct is in place to meet compliance obligations (e.g. legislative, external policy) but it is not widely promoted by the leadership group. Any discussions about the code of conduct relies on individual line managers. Monitoring of compliance with the code of conduct occurs ad hoc. Staff have limited awareness of the code of conduct. They are unsure where to find it, how it applies to them and their obligations under it. 			
<ul style="list-style-type: none"> Values and codes of conduct are regularly promoted to all stakeholders (e.g. published on the internet, in recruitment information) and there is a process for annual acknowledgment. The code of conduct has been developed taking into account the views of the authority's key external stakeholders. Values and the code of conduct are discussed at leadership meetings. Data around non-compliance is being used by this group to inform improvements to internal controls. Discussions and information feeds into self-analysis and review processes to continuously improve the integrity framework. Staff are confident holding each other to account for expectations set in the code of conduct (e.g. respectfully calling out behaviour that does not align, reporting unethical behaviour). 			
<ul style="list-style-type: none"> Values and codes of conduct focus on the behaviours expected to achieve objectives with relevant documents and processes (e.g. policies, strategic and operational plans, job advertisements and descriptions, recruitment processes). The code of conduct incorporates the views of key internal stakeholders and accounts for relevant obligations and identified risks. It provides guidance to support ethical decision making. Leaders and line managers consistently promote the code of conduct (e.g. during team meetings, 'integrity moments', standing item on the leadership group agenda) to support its implementation. Compliance with the code of conduct is monitored (e.g. through staff performance processes, analysis of discipline processes and complaints) and reasons for non-compliance addressed. Staff know about the code of conduct, understand its importance and can describe how it guides their behaviour. 			
<ul style="list-style-type: none"> Values and other direction setting statements (e.g. vision, mission and remit) are being developed and are consistent. A code of conduct exists but does not fully take account of relevant legislation, regulation and policy (e.g. internal and external) obligations or integrity risks specific to the operating context. Most leaders and line managers understand their role to promote the code of conduct, support its implementation and their role to monitor and support compliance with it. Strategies to monitor compliance with the code of conduct are being planned for as integrity policies and procedures are being developed. Most staff are aware of the code of conduct, can explain its purpose and know where to find it. 			

Comments

Add your text here

Element 8: Leadership and management attitude

Leaders are aware of and understand their role to model behaviours consistent with expectations, values and standards; and to take action addressing behaviour that is inconsistent with these.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
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Characteristics

- The leadership group's role to support integrity (e.g. to model, reinforce, promote, communicate and enforce) is informal; it relies on individual's views of what their role is.
- In the absence of any formal approach, it is left to individual leaders and line managers to interpret and model values and standards.
- The role of leaders to support and demonstrate integrity – and if this is reflected in recruitment practices and staff performance processes – relies on those undertaking those processes.
- There is little recognition that leadership roles are positions of trust. Employment screening processes (e.g. police clearances, verification of qualifications) are rarely, if ever, undertaken.
- Development of leaders and line managers occurs as a result of individual development discussions with those who conduct the process.
- A statement is being developed (e.g. terms of reference, charter) that explains the leadership group's role to support integrity.
- Some leaders and line managers can explain what integrity looks like, its importance, and their role to promote, reinforce it and take action when behaviours are inconsistent with obligations.
- The role of leaders to support and demonstrate integrity is being reflected in recruitment and performance documents and processes.
- There is a growing recognition that leadership roles are positions of trust. Employment screening is being implemented for these roles.
- Development of leaders and line managers includes building their skills to deal with integrity matters effectively (e.g. having difficult conversations about conduct).
- The leadership group has a shared understanding of its role to support integrity. The group consistently demonstrates and supports this through its actions.
- Leaders and line managers have a shared understanding and can explain how they shape culture, what integrity looks like, its importance, and their role to promote and reinforce it (e.g. taking action when behaviours are inconsistent with obligations).
- Integrity forms part of the recruitment and performance processes for leadership roles. Leaders demonstrate how they support integrity through their actions and decisions (e.g. in their performance processes).
- Leadership roles are identified positions of trust. Employment screening occurs for all new leadership roles.
- Development of leaders and line managers includes building their skills to support integrity and prevent misconduct and corruption (e.g. recognise red flags, address issues early and make proportionate decisions when issues occur).
- The leadership group's cohesive approach to integrity is recognised externally. The authority head and leadership group are often sought to provide advice to their peers on integrity matters as a result.
- Leaders and line managers have a good understanding of their role to uphold the reputation of their authority and the broader sector in which they work.
- Performance processes assess both what leaders achieve and how they achieve it (e.g. projects delivered effectively manage internal and external risks).
- Development of leaders and line managers incorporates mentorships and coaching designed to grow their personal capability, insights and skills to lead with integrity.

Comments

Add your text here

Element 9: Organisation culture

Integrity is part of organisation culture. It is actively managed to ensure integrity is sustained.

Maturity levels and their indicators: Each maturity level has 4 indicators that provide an overarching description of what the approach to integrity looks like at each level. Each level of maturity builds on the previous.

Emerging	Developing	Embedded	Excelling
<ul style="list-style-type: none"> • Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. • Integrity is not defined or well understood by staff. • Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. • Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> • Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. • What integrity means is becoming clearer to staff as the tone from the top is being communicated. • Integrity actions and initiatives are being planned for and coordinated but not yet integrated. • Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> • Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. • Integrity is well communicated by leaders, understood by staff and integrated into business practices. • Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. • Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> • Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. • Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. • Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. • Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
<p>Characteristics</p> <ul style="list-style-type: none"> <input type="checkbox"/> There are few actions and initiatives (e.g. clear expectations, values, communication about integrity, integrity education) to build and sustain integrity. <input type="checkbox"/> There is little understanding about recruiting for integrity (e.g. values based recruitment). Staff employment screening (e.g. police clearances, previous disciplinary matters, verification of qualifications) is rarely, if ever, undertaken. <input type="checkbox"/> Reporting pathways exist to meet compliance obligations (e.g. public interest disclosure) but are not widely promoted and confidence in them is low. <input type="checkbox"/> Integrity communications only occur in response to a significant integrity breach. <input type="checkbox"/> Some staff can describe 'how we do things around here', but they are unable to link this to expectations or the code of conduct. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Actions and initiatives to build and sustain integrity are being developed. This includes evaluation activities (e.g. staff surveys to test reporting confidence). <input type="checkbox"/> Recruiting for integrity and the requirement for staff employment screening is being documented and promoted to recruiting managers. <input type="checkbox"/> Reporting pathways are being developed for staff and external stakeholders. These are clear and concise, include external avenues and strong statements about protection for those who speak up. <input type="checkbox"/> An integrity communications plan is being developed. Key integrity messages are communicated periodically (e.g. for International Anti-Corruption Day). <input type="checkbox"/> Most staff can describe 'how we do things around here' as it relates to their immediate work environment referencing the code of conduct, and policies and procedures relevant to their role. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Actions and initiatives to build and sustain integrity are in place. Evaluation activities are conducted regularly and improvements implemented. <input type="checkbox"/> Recruiting for integrity and staff employment screening occurs for all new staff. The type of screening is proportionate to the position and integrity risks. <input type="checkbox"/> Reporting pathways are in place and well known by staff. These provide for external stakeholders to also report integrity matters and for anonymous reporting. <input type="checkbox"/> An integrity communications plan is in place and messages are sent to staff regularly (e.g. dedicated web/intranet site, campaigns on integrity topics run throughout the year). <input type="checkbox"/> Staff can describe 'how we do things around here' from an authority wide perspective and can link this to expectations, values, standards and the need to follow policies and procedures. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Data and information that might indicate issues with integrity are identified, monitored and action taken (e.g. business units with high reports of integrity breaches are supported to make better decisions). <input type="checkbox"/> There is a process in place to ensure identified positions are rescreened periodically. <input type="checkbox"/> Data and information on the use of reporting pathways are analysed to inform continuous improvement (e.g. absence of reporting from certain teams or employment groups). <input type="checkbox"/> De-identified data from reporting is used to inform integrity communication messages. <input type="checkbox"/> Staff can consistently describe 'how we do things around here', referencing authority and sector wide expectations, values, standards, policies and procedures. 			

Comments

Add your text here

Element 10: Integrity education and capacity

Integrity education helps build staff capacity to act with integrity.

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<ul style="list-style-type: none"> • Authorities at this maturity level have an unclear approach to integrity, meaning it is partially or not documented and not fully compliant. • Integrity is not defined or well understood by staff. • Integrity actions and initiatives tend to be unplanned, inconsistent and reactive. • Accounting for integrity only relates to meeting compliance obligations. 	<ul style="list-style-type: none"> • Authorities at this maturity level are documenting their approach to integrity and it is mostly compliant. • What integrity means is becoming clearer to staff as the tone from the top is being communicated. • Integrity actions and initiatives are being planned for and coordinated but not yet integrated. • Accounting for integrity is moving beyond compliance obligations and more towards improvement initiatives. 	<ul style="list-style-type: none"> • Authorities at this maturity level have a clear approach to integrity, meaning it is fully documented and compliant. • Integrity is well communicated by leaders, understood by staff and integrated into business practices. • Integrity actions and initiatives are planned, fit-for-purpose, implemented and continuously refined. • Accounting for integrity is based on improvements being made from periodic assessments and supported by leadership commitment. 	<ul style="list-style-type: none"> • Authorities at this maturity level have an approach to integrity that is fully integrated into all decision making and planning. • Integrity is modelled and reinforced by leaders and practiced by staff who understand their obligations. • Integrity actions and initiatives are flexible enough to meet integrity challenges and respond to new and emerging risks. • Accounting for integrity is based on improvements being made from ongoing assessment. Improvements are prioritised and implementation is monitored as part of a continuous improvement approach.
Characteristics			
<ul style="list-style-type: none"> <input type="checkbox"/> Induction, if conducted, relies on the knowledge of individual line managers. <input type="checkbox"/> Some integrity education occurs beyond induction to meet compliance obligations. <input type="checkbox"/> Leaders and line managers rarely follow up if their staff have attended integrity education provided. <input type="checkbox"/> Whether other actions and initiatives (e.g. staff performance processes) to educate and reinforce integrity are undertaken relies on individual line managers. <input type="checkbox"/> Staff are unsure about who provides advice about integrity matters as it is not documented. If provided by individual line managers, the quality of advice relies on their knowledge. 	<ul style="list-style-type: none"> <input type="checkbox"/> An induction program is being developed to incorporate expectations, standards, policies and procedures and guide ethical decision making. <input type="checkbox"/> Integrity education is being developed to help manage key integrity risks (e.g. conflicts of interest, information management). The integrity education and training plan includes what is provided, to whom and when, which high risk positions need additional training, and how activities are evaluated (e.g. how participation is tracked). <input type="checkbox"/> Most leaders and line managers are active in attending any integrity education provided, encourage their staff to do the same and follow up with staff on mandatory education requirements. <input type="checkbox"/> Additional actions and initiatives to educate and reinforce integrity (e.g. staff performance processes and raising integrity consciousness) are being developed or reviewed. <input type="checkbox"/> Staff know that line managers and certain functional area leaders (e.g. finance, human resources) provide advice about integrity matters. Quality still relies on an individual's knowledge. 	<ul style="list-style-type: none"> <input type="checkbox"/> Induction is regularly updated to ensure it is contemporary, accounts for lessons learned from integrity breaches and reflects any changes to operating conditions (e.g. new policies, changed risks). <input type="checkbox"/> An integrity education and training plan is in place and includes specific education on individual and organisational factors (red flags) for those in high risk roles. Participation in and feedback from sessions are collected and analysed to inform improvements. <input type="checkbox"/> Leaders and line managers support and champion integrity education. They reinforce the importance of attending integrity education sessions. <input type="checkbox"/> Staff performance processes and actions and initiatives to raise integrity consciousness reinforce key integrity messages and support good decision making. <input type="checkbox"/> It is well documented in the code of conduct, policies and procedures who provides expert advice on integrity matters. Leaders and line managers understand their role to provide general advice and how to escalate matters as required. 	<ul style="list-style-type: none"> <input type="checkbox"/> Integrity education is, where relevant, also in place for external stakeholders (e.g. labour hire staff, contractors and suppliers). <input type="checkbox"/> Individuals are followed up (e.g. randomly and periodically) to determine if and how knowledge gained during integrity education is being applied in practice in the workplace. <input type="checkbox"/> Leaders and line managers support practitioners attending external learning opportunities. A process is in place to ensure this learning is shared with others with roles and responsibilities under the integrity framework. <input type="checkbox"/> Those who provide advice about integrity matters meet periodically to discuss advice being sought and provided, helping ensure a consistent approach with policies and procedures and advice from external integrity bodies.

Comments

Add your text here

Element 11: Response to integrity breaches

Integrity breaches are responded to in a timely and proportionate way to ensure integrity is sustained.

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Emerging	Developing	Embedded	Excelling
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<p>Characteristics</p> <ul style="list-style-type: none"> <input type="checkbox"/> If procedures exist, they are in place to meet compliance obligations; they provide insufficient guidance. <input type="checkbox"/> The quality of processes and decisions varies. Basic case information (e.g. number of processes started and completed) is used for reporting. <input type="checkbox"/> The use of data, lessons learnt from past cases and the findings of external bodies are rarely, if ever, considered. <input type="checkbox"/> Whether integrity breaches are responded to relies on the knowledge and skills of individual line managers. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Procedures and guidance on responding to breaches – including awareness raising resources to inform those responding to integrity breaches – are being developed to promote better quality processes and consistent decision making. <input type="checkbox"/> Central recording of case information is being developed to streamline reporting. <input type="checkbox"/> The use of data, lessons learnt from past cases and findings of external bodies are being considered as procedures are being developed. <input type="checkbox"/> Most line managers have an understanding of what a breach looks like and how to respond. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Procedures, guidance and awareness raising materials inform those involved in responding to integrity breaches, and support quality processes and consistent decision making. <input type="checkbox"/> A quality assurance process is in place to check for consistent application of procedures. <input type="checkbox"/> A central register captures detailed case information. It is used to monitor the progress of processes, analyse trends and outcomes, and for reporting. <input type="checkbox"/> The use of data, lessons learnt from past cases and findings of external bodies are used to inform process improvements. <input type="checkbox"/> Decision makers, line managers and staff conducting processes have the required knowledge and skills. They are confident to respond to, manage and escalate matters as needed. 			
<ul style="list-style-type: none"> <input type="checkbox"/> Procedures, guidance and awareness raising materials are updated regularly. This reflects results of the quality assurance process, compliance changes, contemporary practice and advice from external integrity bodies. <input type="checkbox"/> Detailed case information is captured in a central system with advanced features such as live analytics and dashboards. It provides useful intelligence to inform trend analysis and prevention strategies. <input type="checkbox"/> Individual (e.g. motivations) and organisational (e.g. control weaknesses) factors that might have contributed to a breach are analysed to help prevent future breaches. <input type="checkbox"/> Decision makers, line managers and staff conducting processes proactively build their own capacity where required (e.g. staying up to date with contemporary practice, industrial decisions). <input type="checkbox"/> Those who provide information as part of a process are followed up regarding their experience of the process and any suggestions for improvement. 			

Comments

Add your text here

Element 12: Self analysis and review

Analysis and review activities of actions to support integrity are undertaken as part of continuous improvement.

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Characteristics			
<ul style="list-style-type: none"> <input type="checkbox"/> Analysis and review activities of actions to support integrity rarely occurs unless it relates to compliance. <input type="checkbox"/> Little thought has been given to whether there is value in sourcing external help with analysis and review activities. <input type="checkbox"/> Where analysis and review activities are conducted, findings and recommendations are not always implemented. 	<ul style="list-style-type: none"> <input type="checkbox"/> Analysis and review activities of actions to support integrity are sometimes undertaken beyond compliance. Available tools are used (e.g. snapshot tool and maturity self-assessment tool). <input type="checkbox"/> Further consideration of requirements – including the value of sourcing external help with analysis and review – are being developed as part of the integrity framework. <input type="checkbox"/> Processes for coordinating the implementation of findings from self-analysis and reviews, and recommendations from the reviews of external integrity bodies are being developed. This considers how monitoring and follow up occur. 	<ul style="list-style-type: none"> <input type="checkbox"/> Review of the integrity framework is scheduled. Analysis and review activities are aligned to or part of risk analysis and audit processes. Analysis is undertaken to recommend improvements to the framework considering changes in legislative and operating conditions (e.g. structural and legislative). <input type="checkbox"/> External assistance to undertake a review is sought where needed (e.g. where a greater level of expertise and objectivity is required). <input type="checkbox"/> A position or team is assigned to coordinate implementation of findings and recommendations from self-analysis and reviews, and recommendations from the reviews of external integrity bodies (related to the authority or not of the integrity framework (and its component parts)). Progress is reported to the leadership group. 	<ul style="list-style-type: none"> <input type="checkbox"/> Analysis and review of the integrity framework and reporting on implementation of improvement actions align with strategic and operational planning and budget cycles. <input type="checkbox"/> Results from self-analysis and review, and recommendations from the reviews of external integrity bodies (related to the authority or not) inform improvements to the integrity framework (and its component parts). Revisions (where relevant) are shared with the workforce. <input type="checkbox"/> Benchmarking of the integrity framework and sharing of ideas occurs (where relevant and possible) with similar types of authorities to identify whether any further improvements can be made.
Comments			
<p>Add your text here</p>			

Element 13: Oversight

Oversight is about providing the authority head assurance that the authority's approach to integrity is working as intended.

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Characteristics

- The authority head relies on informal reports about how integrity is being practiced, managed and accounted for (approach to integrity).
- Monitoring of the approach to integrity relies on members of the leadership group ensuring it is undertaken in their respective areas, rather than any formal process.
- As required, the audit committee assures finance processes and reports are sent to the authority head.
- Any oversight activities are ad hoc and focussed internally.
- The authority head is directing the development of processes and structures to obtain the information needed for oversight of the approach to integrity. This is being documented in an integrity framework.
- The leadership group understands their role to monitor the approach to integrity in their respective areas and provide data on request to support assurance and oversight.
- As the integrity framework is being developed, the collection and provision of information (beyond that required for compliance) to the authority head for assurance, is being identified and documented.
- Internally focused oversight activities are routinely performed and documented.
- Processes and structures are in place to provide the authority head with information to assist their oversight of the approach to integrity (e.g. reports).
- The leadership group are aware of their assurance and oversight obligations for their respective areas and are well prepared to provide updates at leadership group meetings.
- A committee has been established (or the role of an existing committee has been expanded) with specific responsibilities to oversight the integrity framework (and its component parts) and report to the authority head.
- Oversight activities associated with outsourced programs and services are being identified and documented.
- The authority head can provide assurance to external integrity bodies and other stakeholders (e.g. board, council, minister) that the approach to integrity is sound.
- The leadership group is well versed in assurance and oversight. Members are able to provide information and insights about the authority's approach to integrity and can discuss how this compares to other similar authorities (if benchmarking has been conducted).
- A committee provides the authority head with regular and fulsome reports about the integrity framework (and its component parts).
- Oversight extends to outsourced programs and services to ensure they are adequately controlled and reported on.

Comments

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Appendix 8

Glossary

Term	Meaning
Agency/public agencies	In this report, the term 'agency' is used to describe any agency (public authority) who employs a 'public officer' whose conduct falls within the remit of the commission. The commission's remit includes the 'public sector' (departments etc.), and government agencies/entities outside the 'public sector' including government trading enterprises (GTEs), local governments and WA Police. In this report, the term 'public agencies' refers to all agencies under the remit of the commission.
Auditor General	The Auditor General of Western Australia, currently Caroline Spencer
CPSU/CSA	Community and Public Sector Union/Civil Service Association of WA
Commission	Corruption and Crime Commission (Western Australia)
Commissioner McKechnie	The Hon John McKechnie KC, Commissioner of the Corruption and Crime Commission (Western Australia)
Committee	Parliament of Western Australia, Joint Standing Committee on the Corruption and Crime Commission
CCM Act	<i>Corruption, Crime and Misconduct Act 2003</i>
DPP	Either Robert Owen, the Director of Public Prosecutions, or the Office of the Director of Public Prosecutions
Former committee	A former Parliament of Western Australia, Joint Standing Committee on the Corruption and Crime Commission
IBAC	Independent Broad-based Anti-corruption Commission (Victoria)
ICAC	Independent Commission Against Corruption (New South Wales)
Integrity agency/agencies	Integrity agencies in Western Australia – the commission, Public Sector Commission, and Office of the Auditor General
Minor misconduct	Misconduct defined in section 3 of the <i>Corruption, Crime and Misconduct Act 2003</i> (see appendix 5)
NACC	Australian Government, National Anti-Corruption Commission
NMHS	North Metropolitan Health Service
OAG	Office of the Auditor General
PSC	Public Sector Commission
PSM Act	<i>Public Sector Management Act 1994</i>
Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission, currently Matthew Zilko SC.
Public officer	A public officer defined in section 3 of the <i>Corruption, Crime and Misconduct Act 2003</i> (see appendix 5)
Serious misconduct	Misconduct defined in section 3 of the <i>Corruption, Crime and Misconduct Act 2003</i> (see appendix 5)
WA Police	Western Australia Police Force



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