



**Joint Standing Committee on the Corruption and Crime Commission**

**CCC review of misconduct risks  
associated with the deployment of  
undercover police officers**

**Report No. 14  
June 2014**

Parliament of Western Australia

## Committee Members

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Deputy Chairman	Mr Peter Watson, MLA Member for Albany (member from 11 February 2014)  Mr Paul Papalia CSC, MLA Member for Warnbro (member until 7 February 2014)
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# **Joint Standing Committee on the Corruption and Crime Commission**

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## **Corruption and Crime Commission review of misconduct risks associated with the deployment of undercover police officers**

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Report No. 14

Presented by

**Hon Nick Goiran, MLC and Mr Peter Watson, MLA**

Laid on the Table of the Legislative Assembly and Legislative Council  
on 26 June 2014



## Chairman's Foreword

This redacted report was provided to the Joint Standing Committee by the Corruption and Crime Commission (CCC). It results from an inquiry that led to the tabling in Parliament by the Joint Standing Committee on the Corruption and Crime Commission of the 38th Parliament (JSCCCC 38th) of its Report No. 15, *Corruption Risks of Controlled Operations and Informants*, on 16 June 2011.

The CCC had agreed to undertake this review in response to issues raised by the JSCCCC 38th during its inquiry. At a hearing on 23 February 2011, the CCC's Executive Director, Mr Mike Silverstone, acknowledged that over the previous seven years the Commission had not undertaken a specific review on the use by WA Police (WAPOL) of controlled operations conducted under the provisions of the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*.

In the first half of 2012 the CCC conducted its review of the misconduct risks associated with the deployment of undercover police officers pursuant to these two Acts. It provided its final, redacted, report of the review, *Report on the review of misconduct risks associated with the deployment of undercover police officers pursuant to the Prostitution Act 2000 and the Misuse of Drugs Act 1981* ('Redacted Report'), to the JSCCCC 38<sup>th</sup> on 6 November 2012.

The CCC had provided a draft copy of its report to the Commissioner of Police, Dr Karl O'Callaghan, on 17 August 2012 and invited him to make representations about it. The Police Commissioner responded to the CCC on 7 September 2012 and submitted that:

*the [r]eport contains material which is considered operationally sensitive and which, if released, would be detrimental to ... [Western Australia] Police, in particular to the business of the Undercover Policing Unit (UPU) ... [therefore it] is requested that such information be redacted from the [r]eport so that it does not become publicly known.<sup>1</sup>*

As a consequence of the Police Commissioner's request, a number of sections of the original report were redacted to prevent the identification of operationally sensitive WAPOL information, methodologies and strategies. The CCC, however, did not acceded to all the requests for redaction as it did not consider that some of them gave rise to any difficulties. In providing the Redacted Report to the JSCCCC 38<sup>th</sup>, the then-CCC

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1 Corruption and Crime Commission, *Report on the review of misconduct risks associated with the deployment of undercover police officers pursuant to the Prostitution Act 2000 and the Misuse of Drugs Act 1981*, Perth, 6 November 2012, p1.

Commissioner, Mr Roger Macknay QC, requested that the report should not be made public, even in its redacted form.

The JSCCCC 38<sup>th</sup> considered the Redacted Report and wrote to the Acting Parliamentary Inspector of the Corruption and Crime Commission, Mr Craig Colvin SC, seeking his comments, especially in respect to the question as to whether or not the redactions were appropriate and whether the report ought to be made public.

Mr Colvin replied to the JSCCCC 38<sup>th</sup> on the 30 November 2012 that he was “satisfied that the redactions have been made for appropriate reasons” but he did not address whether the report should be made public.

Hon Michael Murray QC was appointed Parliamentary Inspector of the Corruption and Crime Commission (PICCC) in January 2013. He wrote to the Committee in regard to the Redacted Report, following up the earlier letter by Mr Colvin. By this date, the WA Parliament had been prorogued in preparation for the State election on 9 March 2013. In his letter, the PICCC provided his view on whether the Redacted Report should be made public or not:

*On balance, even given the fact that some 18 months have passed since the date of the Committee’s Report of 16 June 2011, my inclination is that the redacted report of the Commission dated 6 November 2012 **could be published without appreciable risk that future police operations might be compromised.***

The PICCC’s letter in regard to the Redacted Report was not considered until the new Joint Standing Committee in the 39<sup>th</sup> Parliament first met on 22 May 2013. Since then, the Committee has:

- obtained four copies of the original unredacted report after approval was provided by the Commissioner of Police at a hearing on 21 October 2013;
- held two closed hearings with WAPOL over the redactions that it had requested; and
- held a closed hearing with the CCC over redactions that WAPOL had agreed could now be made public.

After its hearing with the CCC on 26 February 2014, the JSCCCC wrote to the CCC Commissioner requesting:

- a less redacted version of the original redacted report that included the material that WAPOL had agreed does not need to remain redacted; and

- a supplementary submission that outlines any updates including, for example, the progress WAPOL has made in implementing the recommendations contained in the Commission's original Redacted Report.

The CCC provided both of these documents to the Committee on 14 April 2014. The latest version of the Redacted Report is included in Appendix One while the CCC's supplementary submission is included in Appendix Two.

The Committee resolved on 7 May 2014 to make the latest version of the Redacted Report public as it provided an example of the work of the CCC in oversighting WAPOL's covert activities. It then provided both WAPOL and the CCC with a draft of its report for them to consider and make any additional comment. Both WAPOL and the CCC said that they had no further submissions to make to the Committee in regard to its draft report.

I would like to thank the Parliamentary Inspector, Hon Michael Murray QC; the Commissioner of Police, Dr Karl O'Callaghan; and the then-CCC Commissioner, Mr Roger Macknay QC, for assisting the Committee over the past year to produce a document that both protects the operations of WAPOL while providing the public an assurance that WAPOL's covert operations have been adequately audited by the CCC.

I would like to acknowledge the work on this report by my Committee colleagues: Deputy Chairmen Mr Paul Papalia CSC MLA, Member for Warnbro, (who resigned from the Committee on 7 February 2014) and Mr Peter Watson MLA, Member for Albany, (who joined the Committee on 11 February 2014), the Member for Churchlands, Mr Sean L'Estrange MLA, (who resigned from the Committee on 18 March 2014), the Member for Forrestfield, Mr Nathan Morton MLA, (who joined the Committee on 18 March 2014), and the Member for the South West Region, Hon Adele Farina MLC. Finally, I wish to thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts in completing this report.

A handwritten signature in blue ink, appearing to be 'N. Goiran', with a stylized flourish extending to the right.

**HON NICK GOIRAN, MLC**  
**CHAIRMAN**





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# Findings and Recommendations

## Finding 1

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The Committee resolved that the Corruption and Crime Commission's redacted report on the misconduct risks associated with the deployment of undercover police officers pursuant to the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981* be tabled in Parliament.



# Chapter 1

## CCC review of the deployment of undercover police officers

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At a hearing on 23 February 2011, the CCC acknowledged that over the previous seven years the Commission had not undertaken a specific review on the use by WAPOL of controlled operations conducted under the provisions of the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*.

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### Background to redacted report

The Joint Standing Committee on the Corruption and Crime Commission of the 38<sup>th</sup> Parliament (JSCCCC 38<sup>th</sup>) undertook an inquiry that culminated in the tabling of Report No. 15, *Corruption Risks of Controlled Operations and Informants*, on 16 June 2011. Findings 7 and 8 in the report noted that the Corruption and Crime Commission (CCC) had agreed to conduct a corruption prevention review of the operational activities, policies and processes of WA Police in relation to the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*, respectively.<sup>2</sup>

The CCC had agreed to undertake this review in response to issues raised by the JSCCCC 38<sup>th</sup> during its inquiry. At a hearing on 23 February 2011, the CCC's Executive Director, Mr Mike Silverstone, acknowledged that over the previous seven years the Commission had not undertaken a specific review on the use by WA Police (WAPOL) of controlled operations conducted under the provisions of these two Acts.<sup>3</sup> The JSCCCC 38<sup>th</sup> was strongly of the view that the CCC should be taking a more proactive approach to its role in overseeing the use of controlled operations by WA Police, in light of the risks associated with these activities.<sup>4</sup>

In the first half of 2012 the CCC conducted its review of the misconduct risks associated with the deployment of undercover police officers pursuant to these two Acts. It provided its final, redacted, report of the review to the JSCCCC 38<sup>th</sup>, *Report on the review of misconduct risks associated with the deployment of undercover police officers*

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2 Joint Standing Committee on the Corruption and Crime Commission, *Corruption Risks of Controlled Operations and Informants*, 16 June 2011. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/26855CC4837CB148482578B10008D738/\\$file/20110616+JSCCCC+38th+Parl+report+no+15+Corruption+risks+of+Controlled+Operations+and+Informants.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/26855CC4837CB148482578B10008D738/$file/20110616+JSCCCC+38th+Parl+report+no+15+Corruption+risks+of+Controlled+Operations+and+Informants.pdf). Accessed on 22 April 2014.

3 Ibid, p14.

4 Ibid, p17.

## Chapter 1

*pursuant to the Prostitution Act 2000 and the Misuse of Drugs Act 1981* ('Redacted Report'), on 6 November 2012.

### **Redaction of the original report**

The CCC acknowledged in its report that, pursuant to section 86 of the *Corruption and Crime Commission Act 2003* (CCC Act), before reporting any matters adverse to a person or body in a report under section 84 or 85, it must give them a reasonable opportunity to make representations to the Commission concerning those matters. Accordingly, it provided a draft copy of its report to the Commissioner of Police, Dr Karl O'Callaghan, on 17 August 2012 and invited him to make representations about it.

The Police Commissioner responded to the CCC on 7 September 2012.<sup>5</sup> In his response, the Commissioner of Police submitted that:

*the [r]eport contains material which is considered operationally sensitive and which, if released, would be detrimental to ... [Western Australia] Police, in particular to the business of the Undercover Policing Unit (UPU) ... [therefore it] is requested that such information be redacted from the [r]eport so that it does not become publicly known.*<sup>6</sup>

As a consequence of his request, a number of sections of the original report were redacted to prevent the identification of operationally sensitive WAPOL information, methodologies and strategies. The CCC, however, did not accede to all the requests for redaction made by the Commissioner of Police as it did not consider that some of them gave rise to any difficulties.

In providing the Redacted Report to the JSCCCC 38<sup>th</sup>, the then-CCC Commissioner, Mr Roger Macknay QC, while recognising that it was a matter for the Joint Standing Committee, requested that the report should not be made public, even in its redacted form.<sup>7</sup>

### **Actions of the JSCCCC 38<sup>th</sup>**

The JSCCCC 38<sup>th</sup> considered the Redacted Report and on 22 November 2012 wrote to the then-Acting Parliamentary Inspector of the Corruption and Crime Commission (Acting PICCC), Mr Craig Colvin SC. The JSCCCC 38<sup>th</sup> advised Mr Colvin that it had resolved to provide him with the report and to seek his comments, both in relation to the report in general and with respect to the question as to whether or not the report

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5 Corruption and Crime Commission, *Report on the review of misconduct risks associated with the deployment of undercover police officers pursuant to the Prostitution Act 2000 and the Misuse of Drugs Act 1981*, Perth, 6 November 2012, p1.

6 Ibid.

7 Ibid.

ought to be made public. In addition, as significant portions of the report had been redacted, the Committee requested the Acting PICCC to consider an un-redacted version of the report prior to providing any comments to it.

Mr Colvin replied to the JSCCCC 38<sup>th</sup> on the 30 November 2012 that:

*I am satisfied that the redactions have been made for appropriate reasons and concern operational information or information that may compromise the identity of persons involved in undercover police unit operations.*<sup>8</sup>

In regard to whether the Redacted Report ought to be made public, Mr Colvin said that he would “arrange for a response to be provided as to those matters as soon as possible.”<sup>9</sup>

### **Actions of the JSCCCC in the 39<sup>th</sup> Parliament**

Hon Michael Murray QC was appointed PICCC on 8 January 2013.<sup>10</sup> He wrote to the Committee on 5 February 2013 in regard to the Redacted Report following up the earlier letter by Mr Colvin. By this date, the WA Parliament had been prorogued in preparation for the State election on 9 March 2013. In his letter, the PICCC provided his view on whether the Redacted Report should be made public or not:

*On balance, even given the fact that some 18 months have passed since the date of the Committee’s Report of 16 June 2011, my inclination is that the redacted report of the Commission dated 6 November 2012 **could be published without appreciable risk that future police operations might be compromised.** Whether such publication would serve any useful public purpose additional to the Committee’s Report No. 15 is a matter for the Committee [emphasis added].*<sup>11</sup>

The PICCC’s letter in regard to the Redacted Report was not considered until the new Joint Standing Committee in the 39<sup>th</sup> Parliament first met on 22 May 2013.

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8 Mr Craig Colvin SC, Acting Parliamentary Inspector of the Corruption and Crime Commission, Letter, 30 November 2012.

9 Ibid.

10 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 1 July 2012 – 30 June 2013*, Perth, p2.

11 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 5 February 2013, p2.

## Chapter 1

Since then, the Committee has:

- obtained four copies of the original unredacted report after approval was provided by the Commissioner of Police at a hearing on 21 October 2013;
- held two closed hearings with WAPOL over the redactions that it had requested; and
- held a closed hearing with the CCC over redactions that WAPOL had agreed could now be made public.

Details of these three hearings are included in Appendix Four.

The four copies of the original unredacted report provided to the Committee by the CCC have been accessed by Committee members on just three occasions- at a deliberative meeting of the Committee, and at two closed hearings with WAPOL and the CCC. The copies of the unredacted report have been returned to the CCC.

After its hearing with the CCC on 26 February 2014, the JSCCCC wrote to the CCC Commissioner requesting:

- a less redacted version of the original redacted report that included the material that WAPOL had agreed does not need to remain redacted; and
- a supplementary submission that outlines any updates including, for example, the progress WAPOL has made in implementing the recommendations contained in the Commission's original Redacted Report.

The CCC provided both of these documents to the Committee on 14 April 2014. The latest version of the Redacted Report is included in Appendix One while the CCC's supplementary submission is included in Appendix Two.

The CCC's supplementary submission provides WAPOL's response to the three recommendations in the original report, as well as WAPOL's investigations into two incidents that the CCC had identified when reviewing undercover operations undertaken pursuant to the *Prostitution Act*. The submission concludes:

*...[18] The Commission is of the view that WAPOL has satisfactorily addressed the misconduct risks identified during the Commission review associated with the deployment of undercover police officers pursuant to the Prostitution Act and the Misuse of Drugs Act.*

*[19] The Commission also considers that the procedural changes made by WAPOL, coupled with heightened risk awareness and amended*



*training scenarios, militates against the possibility that future incidents will not be detected at an earlier stage by WAPOL.*<sup>12</sup>

Since its review of the deployment by WAPOL of undercover police officers pursuant to the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*, the Parliament has enacted the *Criminal Investigation (Covert Powers) Act 2012*. This Act gives WAPOL the power to self-authorise some covert operations which would previously have fallen under the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*. The CCC audits WAPOL's use of these new powers and reports annually to Parliament on these activities. Its first such report to the Police Minister was tabled in November 2013.<sup>13</sup>

## Release of Redacted Report

The Committee resolved on 7 May 2014 to make the latest version of the Redacted Report public as it provided an example of the work of the CCC in oversighting WAPOL's covert activities.

### Finding 1

The Committee resolved that the Corruption and Crime Commission's redacted report on the misconduct risks associated with the deployment of undercover police officers pursuant to the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981* be tabled in Parliament.

## Final comments by WAPOL and CCC

The Committee provided both WAPOL and the CCC with a draft of its report for them to consider and make any additional comment.

The Commission replied on 23 May 2014 that it had no further submission to make in regards to the content of the Committee's report.<sup>14</sup> Similarly, the Police Commissioner responded on 9 June 2014 that WAPOL had nothing further to add to the report. Dr O'Callaghan noted that:

*the legislation referred to in the CCC report is no longer relied upon as since the enactment of the Criminal Investigation (Covert Powers) Act 2012 on 3 December 2012, all WA Police covert operations are now sanctioned under this contemporary statute with new governance procedures in place. The CCC review did constructively identify and/or endorse proactive measures to assist risk manage opportunities for*

12 Supplementary submission from the Corruption and Crime Commission, 14 April 2014, p5.

13 Corruption and Crime Commission, *Annual Compliance Report into the Criminal Investigation (Covert Powers) Act 2012 – Report for the Minister for Police*, November 2013. Available at: [www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3911488a6ea8f9723535962048257cad0026659f/\\$file/1488.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3911488a6ea8f9723535962048257cad0026659f/$file/1488.pdf). Accessed on 23 April 2014.

14 Mr Neil Douglas, Acting Commissioner, Corruption and Crime Commission, Letter, 23 May 2014.

## Chapter 1

*unlawful or perceived corrupt policing practices in covert operational situations under the old legislation.*<sup>15</sup>

The Police Commissioner concluded his letter by reporting that the relevant recommendations from the CCC stemming from the original unredacted report have been reflected in WAPOL's current operating requirements.<sup>16</sup>

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15 Dr Karl O'Callaghan, Commissioner, WA Police, Letter, 9 June 2014.

16 Ibid.

## Appendix One

CCC redacted report approved by the JSCCC on 18 June 2014 for public release

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# CORRUPTION AND CRIME COMMISSION

## **REPORT ON THE REVIEW OF MISCONDUCT RISKS ASSOCIATED WITH THE DEPLOYMENT OF UNDERCOVER POLICE OFFICERS PURSUANT TO THE *PROSTITUTION ACT 2000* AND THE *MISUSE OF DRUGS ACT 1981***

**6 November 2012**



## CORRUPTION AND CRIME COMMISSION

Hon. Nicolas Pierre Goiran, MLC

Chairman

Joint Standing Committee on the

Corruption and Crime Commission

Floor 1, 11 Harvest Terrace

WEST PERTH WA 6005

Dear Chairman

Pursuant to section 89 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”) the Corruption and Crime Commission (“the Commission”) presents its *Report on the Review of Misconduct Risks Associated with the Deployment of Undercover Police Officers Pursuant to the “Prostitution Act 2000” and the “Misuse of Drugs Act 1981”*.

The Commission considers it appropriate to make the report to you instead of laying it before each House of the Parliament of Western Australia (“the Parliament”) under section 84 or dealing with it under section 93 of the CCC Act as:

- the Commission undertook the review in response to issues raised by the Joint Standing Committee (JSC) on the Corruption and Crime Commission during its inquiry into corruption risks associated with controlled operations and informants by law enforcement and anti-corruption agencies, culminating in JSC Report No. 15 entitled *Corruption Risks of Controlled Operations and Informants*, tabled in the Parliament in June 2011.

In that report the JSC made a number of findings, including two that related to the Commission undertaking to review the operational activities, policies and procedures of Western Australia Police (WAPOL) pursuant to the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*. This is a report of that review.

The report, although redacted, contains information about WAPOL tactics, techniques and procedures that should be treated sensitively. While it is a matter for the JSC, in the opinion of the Commission, even in its redacted state, the report should not be made public.

The Commission intends providing a copy of the unredacted report to Dr Karl J O’Callaghan, APM, Commissioner of Police.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roger Macknay'.

Roger Macknay, QC

**COMMISSIONER**

6 November 2012

## ABBREVIATIONS AND ACRONYMS

("the CCC Act")	<i>Corruption and Crime Commission Act 2003</i>
("the Commission")	Corruption and Crime Commission
("the Committee")	Legislative Council of the Parliament of Western Australia Standing Committee on Uniform Legislation and Statutes Review
("the Covert Powers Bill")	<i>Criminal Investigation (Covert Powers) Bill 2011</i>
IAU	Internal Affairs Unit
("the Joint Working Group")	Commonwealth Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers
JSC	Joint Standing Committee on the Corruption and Crime Commission
("the Misuse of Drugs Act")	<i>Misuse of Drugs Act 1981</i>
OIC	Officer-in-Charge
("the Parliament")	Parliament of Western Australia
("the Prostitution Act")	<i>Prostitution Act 2000</i>
SOP	Standard Operating Procedure
T&CG	Tasking and Coordination Group
UCO	Undercover Officer
UPU	Undercover Police Unit
WAPOL	Western Australia Police



## GLOSSARY

**Assumed Identity** — a false identity that protects an Undercover Officer (UCO) engaged in investigating crimes and infiltrating organised crime groups.

[Redacted]

**Case Officer** — the officer responsible for the overarching criminal investigation that is utilising the services of the Undercover Police Unit (UPU).

**Commissioner of Police** — means the person appointed by the Governor to be Commissioner of Police pursuant to section 5 of the *Police Act 1892*, and who is “charged and vested with the general control and management of the Police Force ...”.

**Controlled Operation** — an undercover operation that authorises an undercover law enforcement officer to engage in unlawful conduct under controlled conditions to investigate serious offences.

**Controller** — the Officer-in-Charge (OIC) of an UCO during an undercover operation. The Controller is responsible for the safety and welfare of the UCO.

**Cover Story** — the fabricated story used by an UCO to conceal his/her true identity.

**Drug** — the term used to refer to drugs and plants pursuant to section 4 of the *Misuse of Drugs Act 1981*.

**Misconduct** (also refer **Serious Misconduct**) — as defined by section 4 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”).

*Misconduct occurs if –*

...

- (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;*
  - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
  - (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) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (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).*

**Prostitute** — as defined by section 4 of the *Prostitution Act 2000*.

**Public Officer** — as defined by section 3 of the CCC Act by reference to the definition in section 1 of *The Criminal Code*. The term “public officer” includes police officers.

**Reviewable Police Action** — as defined by section 3 of the CCC Act.

**[R]eviewable police action** means any action taken by a police officer or an employee of the Police Service of the Public Service, that –

- (a) *is contrary to law;*
- (b) *is unreasonable, unjust, oppressive, or improperly discriminatory;*
- (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;*
- (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 ...*

**Security Movement Envelope** — an envelope used to securely hold items of evidentiary value.

**Serious Misconduct** (refer also **Misconduct**) — as defined by section 3 of the CCC Act. Section 3 of the CCC Act defines serious misconduct as “misconduct of a kind described in section 4(a), (b) or (c)”. Misconduct is defined by section 4(d) of the CCC Act. Thus serious 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;*
- (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 ...*

**[Redacted]**

**State Intelligence** — the section of Western Australia Police (WAPOL) that includes UPU.

**Target** — the person(s) of interest, suspected to be involved in criminal, terrorist or subversive activities who are nominated by the Case Officer on the WAPOL State Intelligence *Tasking Request Form*.<sup>xvii</sup>

**Undercover Officer (UCO)** — a person whose identity or purpose is for the time being concealed for the purpose of detecting the commission of an offence, as per section 35(3) of the *Prostitution Act 2000* or section 31(8) of the *Misuse of Drugs Act 1981*.

*Although a person other than a police officer may be given the authority to act as an UCO, for the purpose of the review undertaken by the Commission reference to an UCO refers to a police officer acting as an UCO.*

**Undercover Police Unit (UPU)** — a specialist unit, within the State Intelligence section of WAPOL, whose mission statement is to “support strategic partners in the detection of illegal activities by providing a covert investigation service”.<sup>xviii</sup>

**Undercover Policing** — “a planned covert investigative process in which members of WAPOL and/or police officers from other jurisdictions are tasked with communicating with a suspect or suspects for the purpose of obtaining evidence or intelligence relating to their suspected criminal or terrorist activity”.<sup>xix</sup>

**Witness Identity Protection** — provides for the protection of the true identity of a covert operative and of other protected witnesses who give evidence in court.

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<sup>xvii</sup> Western Australia Police, *State Intelligence Undercover Police Unit Policy and Procedures 2011*, 13 Target/Offender.

<sup>xviii</sup> *Ibid*, Mission Statement.

<sup>xix</sup> *Ibid*, 2.1 Definition.



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## EXECUTIVE SUMMARY

### Reporting by the Commission

- [1] Pursuant to section 86 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”), before reporting any matters adverse to a person or body in a report under section 84 or 85, the Corruption and Crime Commission (“the Commission”) must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.
- [2] After being invited to do so, Dr Karl J O’Callaghan, APM, Commissioner of Police, made representations to the Commission. In those representations he submitted that “the [r]eport contains material which is considered operationally sensitive and which, if released, would be detrimental to ... [Western Australia] Police, in particular to the business of the Undercover Policing Unit (UPU) ... [therefore it] is requested that such information be redacted from the [r]eport so that it does not become publicly known”.
- [3] As a consequence, a number of parts of this report have been redacted to prevent identification of operationally sensitive information, methodologies and strategies. However, the Commission has not acceded to all requests for redaction made by the Commissioner of Police as it did not consider that some of them gave rise to difficulties. Nonetheless, even the redacted report, taken as a whole, contains information about Western Australia Police (WAPOL) tactics, techniques and procedures that should be treated sensitively. While it is a matter for the Joint Standing Committee (JSC) on the Corruption and Crime Commission, in the opinion of the Commission, even in its redacted state, the report should not be made public.

### Introduction

- [4] In the first half of 2012 the Commission conducted a review of the misconduct risks associated with the deployment of undercover police officers pursuant to the *Prostitution Act 2000* (“the Prostitution Act”) and the *Misuse of Drugs Act 1981* (“the Misuse of Drugs Act”).

- [5] The Commission undertook the review in response to issues raised by the JSC during its inquiry into corruption risks associated with controlled operations and informants by law enforcement and anti-corruption agencies, culminating in JSC Report No. 15 entitled *Corruption Risks of Controlled Operations and Informants*, tabled in the Parliament of Western Australia in June 2011.<sup>20</sup>
- [6] The review analysed the capacity of WAPOL to prevent, identify and deal with misconduct related to its undercover operations under the Prostitution Act and the Misuse of Drugs Act.
- [7] The review involved analysis of legislation, WAPOL policies and procedures, relevant operation files and Commission records, and a number of interviews, including interviews with current and former UPU officers. There were six stages to the review, as detailed below.
1. Review of the legal basis for undercover policing.
  2. Review of Undercover Police Unit (UPU) operating procedures.
  3. Review of UPU operations conducted under the Prostitution Act between 2004 and 2011.
  4. Review of a random sample of UPU operations conducted under the Misuse of Drugs Act. A minimum of 10 per cent of case files of operations conducted from 2004 until 2007 and 20 per cent of UPU case files of operations conducted from 2008 until 2012 were randomly selected and reviewed.
  5. Examination of the authorities to act as an Undercover Officer (UCO).
  6. Review of allegations made to the Commission relating to UPU.

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<sup>20</sup> It should be noted that neither the *Prostitution Act 2000* nor the *Misuse of Drugs Act 1981*, Acts which were the subject of the review, make any reference to “controlled operations” or “controlled activities”, nor ability to perform such operations. The only “controlled operations” currently performed by Western Australia Police are under the auspices of the *Corruption and Crime Commission Act 2003*, which require the approval of the Commissioner of the Corruption and Crime Commission.



## **Findings**

- [8] The review did not identify any instances of possible misconduct by UPU officers.
- [9] However, four instances of possible misconduct by police officers external to UPU coming into contact with UCOs were identified. These instances involved:
- a uniformed police officer approaching an UCO posing as a street prostitute and possibly seeking sexual services;
  - a plain clothes police officer approaching an UCO posing as a street prostitute and warning her about police being in the area;
  - the target of a Misuse of Drugs Act undercover operation claiming that a police officer was working for him; and
  - the target of a Misuse of Drugs Act undercover operation claiming that he knew a police officer who was taking illicit drugs.
- [10] The first three incidents were not properly recorded, nor adequately dealt with at the time. The fourth incident was recorded, dealt with and adequately investigated at the time.
- [11] Commission inquiries into the first two incidents identified the uniformed officer, but not the plain clothes officer. Both incidents have been referred to the Internal Affairs Unit (IAU) and are currently the subject of police internal investigations.
- [12] As the third incident occurred over eight years ago and due to other considerations no reasonable avenue of investigation exists and, therefore, the Commission will take no further action in regard to this incident.
- [13] These incidents highlight weaknesses in UPU governance procedures with respect to how to deal with police officers external to UPU coming into contact with undercover operations.
- [14] The review also highlighted weaknesses in the authorisation procedure for some UCOs, who were authorised by officers without the delegated authority to sign, and thereby approve, an authority. In addition, procedures relating to handling and

storage of approved authorities were inconsistent and unclear, creating a security risk.

- [15] The review demonstrated that governance arrangements relating to undercover operations under the Prostitution Act and the Misuse of Drugs Act have evolved positively over time. At the current time, aside from the weaknesses highlighted above, comprehensive governance arrangements exist to ensure the integrity of undercover operations under the Prostitution Act and the Misuse of Drugs Act.
- [16] Governance weaknesses in relation to the authorisation of undercover operations and police officers external to UPU coming into contact with undercover operations were raised with UPU management during the course of the review. UPU management acknowledged the deficiencies and, accordingly, undertook the following actions:
- briefing UPU management team on the issues highlighted by the review;
  - addressing the risk of police officers (and other public officers) external to UPU coming into contact with an undercover operation is now part of the assessment of risks of each undercover operation;
  - reinforcing the need to maintain comprehensive records; and
  - reviewing UPU training with a view to incorporating an appropriate scenario to address the issue of officers external to UPU coming into contact with an undercover operation.
- [17] The review highlighted a gap between the authority to use assumed identities during undercover operations and the need to obtain and rely on **[Redacted]** supporting documentation **[Redacted]**.
- [18] If enacted the *Criminal Investigation (Covert Powers) Bill 2011* would resolve this issue. UPU is currently reviewing its procedures in the event that this occurs.

## Conclusion

- [19] Overall, the Commission concludes that, except for dealing with the risk of police officers external to UPU coming into contact with undercover operations, in particular instances, WAPOL appears to have reasonable capacity to prevent, identify and deal with misconduct relating to its undercover work under the Prostitution Act and the Misuse of Drugs Act.

## Recommendations

- [20] The Commission makes the following recommendations to address the deficiencies identified by the review.

[21]

### **Recommendation 1**

The Commission recommends that Western Australia Police continues to implement enhanced Undercover Police Unit (UPU) procedures to deal with police officers external to UPU coming into contact with undercover operations.

[22]

### **Recommendation 2**

The Commission recommends that Western Australia Police continues to ensure that Undercover Police Unit (UPU) operational risk assessments and risk matrices include identification of the risk of police officers external to UPU coming into contact with undercover operations.

[23]

### **Recommendation 3**

The Commission recommends that Western Australia Police amends procedures relevant to authorising Undercover Officers (UCOs) so that:

- (1) delegations to sign, and thereby approve, an UCO authority are explicit, understood and followed; and
- (2) security arrangements for approved authorities are explicit, understood and followed.



# CHAPTER ONE

## INTRODUCTION

### 1.1 Reporting by the Commission

- [1] Pursuant to section 86 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”), before reporting any matters adverse to a person or body in a report under section 84 or 85, the Corruption and Crime Commission (“the Commission”) must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters. Accordingly, Dr Karl J O’Callaghan, APM, Commissioner of Police, was provided with a draft copy of this report on Friday 17 August 2012 and invited to make representations, which were received by the Commission on Friday 7 September 2012.
- [2] In those representations the Commissioner of Police submitted that “the [r]eport contains material which is considered operationally sensitive and which, if released, would be detrimental to ... [Western Australia] Police, in particular to the business of the Undercover Policing Unit (UPU) ... [therefore it] is requested that such information be redacted from the [r]eport so that it does not become publicly known”.
- [3] As a consequence, a number of parts of this report have been redacted to prevent identification of operationally sensitive information, methodologies and strategies. However, the Commission has not acceded to all requests for redaction made by the Commissioner of Police as it did not consider that some of them gave rise to difficulties. Nonetheless, even the redacted report, taken as a whole, contains information about Western Australia Police (WAPOL) tactics, techniques and procedures that should be treated sensitively. While it is a matter for the Joint Standing Committee (JSC) on the Corruption and Crime Commission, in the opinion of the Commission, even in its redacted state, the report should not be made public.

### 1.2 Background

- [4] In the first half of 2012 the Commission conducted a review of the misconduct risks associated with the deployment of undercover police officers pursuant to the *Prostitution Act 2000* (“the Prostitution Act”) and the *Misuse of Drugs Act 1981* (“the Misuse of Drugs Act”).
- [5] The Commission undertook the review in response to issues raised by the JSC during its inquiry into corruption risks associated with controlled operations and informants by law enforcement and anti-corruption agencies. The inquiry culminated in Report No. 15 by the JSC entitled *Corruption Risks of Controlled Operations and Informants*, tabled in the Parliament of Western Australia in June 2011 (“the Parliament”).<sup>21</sup>

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<sup>21</sup> It should be noted that neither the *Prostitution Act 2000* nor the *Misuse of Drugs Act 1981*, Acts which were the subject of the review, make any reference to “controlled operations” or “controlled activities”, nor ability to perform such operations. The only “controlled operations” currently performed by Western Australia Police are under the auspices of the *Corruption and Crime Commission Act 2003*, which require the approval of the Commissioner of the Corruption and Crime Commission.

- [6] In that report the JSC made a number of findings, including two that related to the Commission undertaking to review the operational activities, policies and procedures of WAPOL pursuant to the Prostitution Act and the Misuse of Drugs Act. This is a report of that review.

### 1.3 Scope

- [7] One of the ways in which the Commission achieves its misconduct purpose is to assist the Commissioner of Police to meet his responsibility to prevent, identify and deal with misconduct within WAPOL. That the Commissioner of Police does so is something that is anticipated and required of him by the CCC Act.
- [8] The capacity of WAPOL to prevent misconduct, and identify and appropriately deal with misconduct when it does occur, is the underlying principle upon which the Commission's misconduct purpose, as outlined in the CCC Act and as it applies to WAPOL, is built.
- [9] Moreover, insofar as WAPOL is concerned, mandatory notification requirements, the Commission's statutory role in dealing with them, and the Commission's prevention and education function pursuant to section 17 of the CCC Act are centred on supporting and assisting WAPOL to develop its capacity to prevent misconduct, and identify and appropriately deal with misconduct when it does occur. Each of these, that is, to prevent misconduct, to identify misconduct, and to deal with misconduct, are interrelated aspects of the Commission's work. An elaboration on each aspect is provided below.

**Prevent Misconduct** — to support and assist public authorities, including WAPOL, to properly understand the behaviours which can occur within public authorities which amount to misconduct, understand the related risk factors and circumstances which are likely to give rise to those behaviours and to develop appropriate treatment strategies to minimise the risk of those behaviours occurring.

**Identify Misconduct** — to support and assist public authorities, including WAPOL, to properly understand misconduct and recognise misconduct behaviours when they arise.

**Deal with Misconduct** — to support and assist public authorities, including WAPOL, to officially respond to misconduct behaviours effectively and appropriately when they arise by:

- recording the behaviours in official organisational records as having occurred;
- notifying the Commission in accordance with section 28 and section 21A of the CCC Act;
- taking reasonable steps to stop the behaviours from continuing;
- forming reasonable opinions about the harm caused by the behaviours;
- rectifying the harm;

- taking appropriate criminal or disciplinary action, if necessary; and
- establishing appropriate measures to mitigate the risk of similar misconduct occurring again.

[10] Consistent with the above interrelated aspects of the Commission’s work, the corruption prevention review undertaken by the Commission analysed the capacity of WAPOL to prevent, identify and deal with misconduct relating to undercover operations under the Prostitution Act and the Misuse of Drugs Act.

## 1.4 Methodology

[11] There were six stages to the review undertaken by the Commission, as detailed below.

1. Review of the legal basis for undercover policing.
2. Review of UPU operating procedures.
3. Review of all UPU operations conducted under the Prostitution Act between 2004 and 2011. The relatively small number of operations conducted under the Prostitution Act enabled a review of all operations. The number of operations reviewed on a year-by-year basis is covered in Table One, below.

Year	2004	2005	2006	2007	2008	2009	2010	2011
<b>Reviewed</b>	1	4	2	0	1	0	1	3

**Table One: Review UPU Prostitution Act Operations 2004 – 2011**

4. Review of a random sample of UPU operations conducted under the Misuse of Drugs Act. The relatively large number of Misuse of Drugs Act operations meant that it was not feasible to review all operations. A minimum of 10 per cent of case files of operations conducted from 2004 until 2007 and 20 per cent of UPU case files of operations conducted from 2008 until 2012 were randomly selected and reviewed. The number of operations reviewed on a year-by-year basis is covered in Table Two, below.

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
<b>Total Operations</b>	23	33	27	28	18	18	15	26	1
<b>Reviewed</b>	4	4	3	3	4	4	4	6	1

**Table Two: Review of UPU Misuse of Drugs Act Operations 2004 – 2012**

5. Examination of the authorities to act as an Undercover Officer (UCO), issued pursuant to section 35 of the Prostitution Act or

section 31 of the Misuse of Drugs Act, for each operation reviewed.

6. Review of allegations made to the Commission relating to UPU.

## 1.5 Undercover Police Unit (UPU)

[12] All undercover operations conducted by WAPOL, under either the Prostitution Act or the Misuse of Drugs Act, are conducted by UPU.

[13] UPU is a specialist unit within the State Intelligence section of WAPOL. The mission of UPU is to “support strategic partners in the detection of illegal activities by providing a covert investigation service”.<sup>22</sup> That is, other parts of WAPOL request the services of UPU in order to utilise specialist covert skills and methodologies. In the cases reviewed by the Commission requests for UPU assistance came from various areas of WAPOL across the State.

[14] **[Redacted]**

[15] The purpose of undercover policing is to:

- determine the nature and extent of criminal or terrorist activity;
- identify the people involved;
- obtain intelligence and evidence;
- locate stolen property, drugs or other physical evidence; and
- determine suitable times for searching premises or places used by suspects.<sup>23</sup>

[16] The objectives of undercover policing are to combat:

- crimes against persons and property;
- offences relating to the distribution of illicit drugs; and
- terrorism or significant subversive activity involving the suspected commission of an offence.<sup>24</sup>

[17] WAPOL considers that there are a number of advantages to be gained by employing undercover policing techniques to support traditional investigation methods, which include those detailed below.<sup>25</sup>

- Undercover policing offers the investigation Case Officer an excellent means of obtaining evidence that would otherwise be unattainable by conventional investigative methods.

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<sup>22</sup> Western Australia Police, *State Intelligence Undercover Police Unit Policy and Procedures 2011*, Mission Statement.

<sup>23</sup> *Ibid*, 2.2 Purpose.

<sup>24</sup> *Ibid*, 3 Objectives.

<sup>25</sup> *Ibid*, 14 Target Profile/Target Summary.



- When compared to traditional policing methods, the use of covert investigation techniques can provide considerable savings in terms of human, physical and financial resources.
- UCOs can identify persons responsible for committing offences and provide current details of their activities.
- When an investigation involves the purchase of illegal commodities, an UCO can provide the nominated Case Officer with an opportunity to identify the “source of supply”.
- Direct evidence of drug purity and quantity becomes available.
- An offender’s course of conduct can be established.
- **[Redacted]**
- Evidence required by the Proceeds of Crime Squad with respect to asset forfeiture from criminals can be obtained through direct evidence.
- Evidence and intelligence regarding methods used in criminal activity can be established.
- **[Redacted]**
- When an UCO has achieved the required credibility and rapport with an offender, the capability of infiltrating criminal networks is enhanced and can provide the Case Officer with an opportunity to tackle root causes in the control of crime.
- **[Redacted]**

[18] Utilising the WAPOL definition, the term “undercover officer” or “undercover operative” means a person whose identity or purpose is for the time being concealed for the purpose of detecting the commission of an offence. The key role of an UCO is to “infiltrate a specified group or groups to obtain legally admissible evidence in a court of jurisdiction and/or to provide reliable intelligence on criminal, [t]errorist or significant subversive activities”.<sup>26</sup>

[19] The guiding principle of undercover policing is that the UCO is to play a role of “minimal activity”.<sup>27</sup> That is, an UCO must not deceive, lure or trick a person into committing an offence, and the target must be a person who is already suspected of being involved in illegal activity. An UCO must not make promises or offer an inducement to, or threaten, a target to commit an offence.

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<sup>26</sup> *Ibid*, 4.2 Role.

<sup>27</sup> *Ibid*, 32 Guiding Principles.



# **CHAPTER TWO**

## **STAGE ONE: REVIEW OF THE LEGAL BASIS FOR UNDERCOVER POLICING**

### **2.1 *Prostitution Act 2000 and Misuse of Drugs Act 1981***

- [20] The Prostitution Act and the Misuse of Drugs Act each provide the Commissioner of Police with the authority to authorise undercover operations and the use of UCOs.
- [21] A person may only conduct undercover operations pursuant to the Prostitution Act when specifically authorised to do so by the Commissioner of Police under section 35 of that Act. Section 36 of the Prostitution Act provides that the Commissioner of Police may, by instrument in writing, delegate this function. Section 35(4) effectively restricts that authority only to activities specified in the authorisation.
- [22] A person may only conduct undercover operations pursuant to the Misuse of Drugs Act when specifically authorised to do so by the Commissioner of Police under section 31 of that Act. Section 39 of the Misuse of Drugs Act provides that the Commissioner of Police may, by instrument in writing, delegate this function. Unlike section 35(4) of the Prostitution Act, the Misuse of Drugs Act does not appear to restrict the activities of an UCO, or other authorised person, to those within the authorisation.

### **2.2 *Assumed Identities***

- [23] From time-to-time UCOs may need to use assumed identities. Often supporting documentation is needed to prevent the UCO from being compromised. Although the Prostitution Act and the Misuse of Drugs Act authorise the use of assumed identities, neither Act deals with the means by which such identities are acquired and/or proved. There is, therefore, a gap between the legislative powers to authorise undercover operations involving the use of assumed identities, and the supporting documentation needed to establish assumed identities to prevent UCOs from being compromised.
- [24] **[Redacted]**
- [25] **[Redacted]**

### **2.3 *Criminal Investigation (Covert Powers) Bill 2011***

- [26] In most cases public interest considerations and administrative arrangements mean that undercover police officers relying on supporting documentation will not be prosecuted for offences stemming from that reliance. However, this position is not definitive. The risk of prosecution and the possibility that evidence obtained through unlawful activities will

be excluded by the courts have provided the impetus for the *Criminal Investigation (Covert Powers) Bill 2011* (“the Covert Powers Bill”).

[27] This issue was considered by the Standing Committee on Uniform Legislation and Statutes Review (“the Committee”), Legislative Council of the Parliament, when it examined the Covert Powers Bill. It said that the impetus for legislation on assumed identities and controlled operations in Australia was the High Court case of Ridgeway v The Queen (1995) 184 CLR 19. The Committee said:<sup>28</sup>

*... The Court acknowledged that sometimes law enforcement officers need to engage in a range of activities, in some cases illegal, to uncover organised crime, and recommended that the problems relating to the conduct of controlled operations should be addressed by introducing regulating legislation.*

...

*Ridgeway v The Queen is a paradigmatic case in Australian law. It highlighted the High Court’s concern with administratively sanctioned unlawful conduct that led to a culture of inducing people to commit crimes which was then “normalised” by those active in law enforcement.*

[28] The Covert Powers Bill was introduced into the Parliament on 19 August 2011, emanating from a national project by the Commonwealth Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers (“the Joint Working Group”) to develop model laws. The Joint Working Group reported:<sup>29</sup>

- *During a controlled operation, it will often be necessary for the operative to commit offences in order to obtain evidence and to conceal their law enforcement role ...*
- ...
- *Although controlled operations have been used in law enforcement for many years, there was no legislation that comprehensively regulated their use in Australia until 1995. Up until that time, operatives who became involved in criminal activities as part of an operation were liable to be charged with criminal offences, but relied on other police and prosecutors to refrain from charging and prosecuting them with offences arising from their work.<sup>30</sup> When making this decision, the police or prosecutor would take into*

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<sup>28</sup> Parliament of Western Australia, Legislative Council Standing Committee on Uniform Legislation and Statutes Review (2012) *Report 69: Criminal Investigation (Covert Powers) Bill 2011*, p. 9.

<sup>29</sup> Leaders Summit on Terrorism and Multijurisdictional Crime, Commonwealth Standing Committee of Attorneys-General and Australasian Police Ministers Council Joint Working Group on National Investigation Powers, *Cross-Border Investigative Powers for Law Enforcement*, November 2003, pp. 1-3.

<sup>30</sup> See, for example, the “Victorian Prosecutorial Guidelines” published in the *Annual Report 2000-2001*, Director of Public Prosecutions.

*account all of the circumstances surrounding the offences and weigh up the public interest in pursuing a prosecution.*

- *Law enforcement agencies also relied on persuading the courts to allow the evidence gathered during the operation to be used in the trial against the accused person. However, this approach changed in 1995 following the High Court decision in Ridgeway v The Queen.*
- ...
- *The High Court decided that the importation of the heroin by law enforcement officers was illegal and therefore the evidence of that importation should have been excluded from the trial on the grounds of public policy.*
- *The Court explained that judges may decide to exclude evidence obtained during an illegal activity involving law enforcement officers. In deciding, the Court weighs up the public interest in discouraging unlawful conduct by law enforcement officers against the public interest in the conviction of wrongdoers. In this case, the Court took into account the nature and the degree of the law enforcement officers' unlawful conduct and the fact that the unlawful importation of the drug by the police created an element of the offence charged against Ridgeway (possession of a prohibited import) ...*
- ...
- ***The response to the Ridgeway decision***
- *As a result of the Ridgeway decision, four Australian jurisdictions enacted legislation providing for controlled operations.<sup>31</sup> These provisions set out a process for authorising illegal activities by or on behalf of law enforcement agencies.*
- *The other [s]tates and [t]erritories do not have comprehensive legislation regulating controlled operations. Instead, these jurisdictions rely on provisions in subject-specific statutes as well as internal administrative arrangements ... to deal with these activities.*

[29] It was acknowledged by the responsible Minister in the Legislative Council during the second reading speech of the Covert Powers Bill that there was no specific legislation in Western Australia dealing with covert powers.

*At the same time, police in this [S]tate have been hampered by a lack of broad statutory covert powers and presently rely on a patchwork of restrictive provisions in the "Corruption and Crime Commission Act 2004"[sic], "Prostitution Act 2000" and "Misuse of Drugs Act 1981" to conduct controlled operations, administrative arrangements to authorise assumed identities and the common law to regulate the protection of a law enforcement operative's identity in court. The [B]ill remedies this*

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<sup>31</sup> *Criminal Law (Undercover Operations) Act 1995 (SA), Crimes Act 1914 (Cwlth), Law Enforcement (Controlled Operations) Act 1997 (NSW) and Police Powers and Responsibilities Act 2000 (QLD).*

*situation by repealing the undercover provisions in the “Misuse of Drugs Act 1981” and “Prostitution Act 2000” and by adopting the model laws’ minimum standards for these three areas of law enforcement for use within this [S]tate, but with several significant modifications to provide our police with the necessary tools and flexibility to disrupt and frustrate contemporary organised crime groups.<sup>32</sup>*

- [30] Pending passage of the Covert Powers Bill WAPOL officers who currently undertake unlawful activity in the course of undercover operations are reliant upon public interest considerations reflected in prosecution policy to avoid criminality. In doing so they run the risk of the exclusion of crucial evidence as happened in Ridgeway v The Queen.

## **2.4 Criminal Investigation (Covert Powers) Bill 2011: Further Considerations**

- [31] In general terms, the Covert Powers Bill is part of a national project to develop model laws that aid criminal investigation across state and territory borders. The objective of the model laws is to enable seamless cross-border investigation of serious offences and address the emerging threat of organised crime.
- [32] Essentially this will provide WAPOL officers (and officers of the Department of Fisheries and the Australian Crime Commission) with the ability to continue their investigations in another state or territory under an authorisation issued in this State, instead of having to seek a fresh authorisation when entering each new jurisdiction.
- [33] There are three areas of policing addressed in the Covert Powers Bill, namely: controlled operations; assumed identities; and witness identity protection. Each of these areas is defined below.
- “Controlled operations” are undercover operations that authorise undercover law enforcement officers to engage in unlawful conduct under controlled conditions to investigate serious offences.
  - “Assumed identities” are false identities that protect UCOs engaged in investigating crimes and infiltrating organised crime groups.
  - “Witness identity protection” provides for the protection of the true identity of a covert operative and of other protected witnesses who give evidence in court.
- [34] Proposed amendments to the Covert Powers Bill are currently before the Legislative Council of the Parliament.
- [35] These amendments, if adopted, would impose a requirement on the Commission to oversee the law enforcement agencies that perform

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<sup>32</sup> Legislative Council, Parliament of Western Australia Hansard for Tuesday 1 November 2011, Website: [http://www.parliament.wa.gov.au/hansard/hansard.nsf/0/9F5A2E23018738CB4825794900106161/\\$FILE/C38%20S1%2020111101%20p8588a-8591a.pdf](http://www.parliament.wa.gov.au/hansard/hansard.nsf/0/9F5A2E23018738CB4825794900106161/$FILE/C38%20S1%2020111101%20p8588a-8591a.pdf), accessed October 2012.

activities pursuant to an enactment of the Covert Powers Bill and, at least once every twelve months, report on and inspect the records of these law enforcement agencies.

- [36] WAPOL has developed a training program in anticipation of the enactment of the Covert Powers Bill. Training would initially be delivered to crime portfolio officers, Sergeants and above, commencing with the Organised Crime Squad.
- [37] WAPOL State Intelligence has enhanced its operational policies and procedures to cater for the enactment of the Covert Powers Bill.
- [38] WAPOL State Intelligence is also implementing structural change to address additional administrative and management governance requirements that will be placed upon WAPOL following enactment of the Covert Powers Bill.

## **2.5 Conclusions about the Legal Basis for Undercover Policing**

- [39] Undercover policing under the Prostitution Act and the Misuse of Drugs Act is authorised by the Commissioner of Police or his/her delegate.
- [40] There is a legislative gap between the authority to conduct undercover policing under the Prostitution Act and the Misuse of Drugs Act and the **[Redacted]** supporting documentation used to establish assumed identities to prevent UCOs from being compromised.
- [41] This legislative gap will be addressed in the event that the Covert Powers Bill is enacted. WAPOL has developed a training program, enhanced operational policies and procedures and is implementing structural change in anticipation of enactment of the Covert Powers Bill.





# CHAPTER THREE

## STAGE TWO: REVIEW OF UPU OPERATING PROCEDURES

### 3.1 Introduction

- [42] UPU operating procedures have evolved over time. Procedures relevant to UPU operations reviewed for 2004 are different to procedures relevant to operations reviewed for 2012. These differences are evident in the case files.
- [43] Overall, UPU operating procedures have evolved by improving the governance of UPU operations.
- [44] Current UPU operating procedures are covered by the *State Intelligence Undercover Police Unit Policy and Procedures 2011*. Of particular relevance to the review were the following aspects of UPU procedures.

### 3.2 Integrity and Ethical Conduct

- [45] Although UPU officers are not recognisable as WAPOL officers due to the nature of their work, their responsibilities as sworn police officers remain. UPU operating procedures include a section entitled “Integrity and Ethical Conduct of Personnel” which specifically refers to the requirement for UCOs to abide by the WAPOL Code of Conduct.

*Personal behaviour of all UPU members is to be in accordance with the WAPOL “Code of Conduct”. Due to the nature of covert duties, personnel are not readily recognisable as members of WAPOL. This does not alleviate their responsibilities as sworn Police Officers, to act in accordance with all legislative requirements, the Commissioner’s Orders and Procedures and conduct themselves in a manner expected by the community.<sup>33</sup>*

- [46] UPU operating procedures state that:

*[t]here is an onus on each member of ... UPU to report any corrupt or suspected corrupt practice forthwith to the OIC–UPU or a Supervisor. Failure to do so will be viewed as a corrupt practice in itself and will be dealt with accordingly.<sup>34</sup>*

- [47] Information security is a priority for UPU. Members are required to sign an *Agreement to Confidentiality Form*. The procedures state that:

*[t]he confidentiality of all information associated with covert operations is paramount to the safety of UPU members and impacts upon the success or otherwise of covert operations. Members are*

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<sup>33</sup> Western Australia Police, *State Intelligence Undercover Police Unit Policy and Procedures 2011*, 42.1 Integrity and Ethical Conduct of Personnel.

<sup>34</sup> *Ibid.*

*reminded of their legal obligation to refrain from disclosing all matters relating to their duties at ... UPU.*

*It shall be the responsibility of the OIC–UPU to ensure that all personnel have signed an “Agreement to Confidentiality Form” and that they are fully conversant with the obligations placed upon them and understand the implications of their non-compliance with same.<sup>35</sup>*

- [48] It is stated on the *Agreement to Confidentially Form* that, under Regulation 607 of the *Police Force Regulations 1979*, officers must not disclose official information except in line with their duties. Further, it is stated that disclosing official information either during or post-UPU engagement makes the officer liable to be charged with offences under section 81 of the *Criminal Code*.

### **3.3 Undercover Officer (UCO) Requirements**

- [49] UPU employs rigorous criteria to select suitable applicants to become UCOs. These include:

- general police experience;
- covert investigation experience and knowledge;
- referee comments;
- life experiences (that is, employment, trades, hobbies, travel etc.);
- tertiary qualifications;
- special skills/qualifications/languages; and
- the availability to engage in undercover operations.<sup>36</sup>

- [50] Further considerations for selection may include:

- an independent, confident, secure and stable personality;
- maturity, motivation and commitment;
- a stable and secure police identity;
- sound work and life experience;
- the ability to participate within a group;
- a willingness to learn;
- significant personal problems, history of alcohol abuse or use of any illegal substance; and

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<sup>35</sup> *Ibid*, 42.1 Integrity and Ethical Conduct of Personnel.

<sup>36</sup> *Ibid*, 47.2 Applicant Suitability.

- a history of major trauma and previous medical or psychological problems.<sup>37</sup>

[51] The procedures further state that:

*[i]t is the responsibility of the Training Sergeant – Undercover Police Unit to ensure that the Professional Standards Portfolio is requested to conduct appropriate probity checks on all potential incoming operatives. The Training Sergeant is to ensure that the results of such checks are forwarded to the OIC–UPU who is to ensure that the results of the probity checks are confidentially filed at the UPU.*<sup>38</sup>

[52] In terms of psychological suitability, procedures note that:

*[t]he Undercover Police Program recognises the essential role conducted by psychologists in the selection and training process. The services provided by the Organisational Psychology Unit and Senior WAPOL Clinical Psychologist are employed by the Undercover Police Unit during the selection and training process to make recommendations regarding suitability of applicants/students to partake in undercover related tasks based upon their clinical observations and testing. The Undercover Policing Program recognises any psychologist involved in selection and training as an authority well placed to make recommendations on all applicants/students. These recommendations must be considered by the undercover policing program during the application and training stages.*<sup>39</sup>

### 3.4 Training

[53] The UPU has developed two training courses to meet the demands of UPU, being the *Undercover Officers Training and Assessment Course* (designed for the selection of full-time officers) and the *Street Operatives Training Course* (designed for the selection of part-time officers). The UPU is tasked with selecting the most appropriate candidates to undertake the training and related assessments. Selection also incorporates interviews and medical assessment. The standards are high and only a small percentage of applicants meet the requirements.<sup>40</sup>

[54] Prior to being deployed UCOs must undergo one of these two training courses. The first is a full-time “live-in” course which runs for 14 days. **[Redacted]**

[55] The second course addresses short-term undercover deployments. This is also a “live-in” course. It runs for 10 days. **[Redacted]**

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<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*, 48.3 Probity Checks.

<sup>39</sup> *Ibid.*, 47.4 Probity Checks.

<sup>40</sup> *Ibid.*, 47 Recruitment and Selection.

### 3.5 Approvals Required for Conducting Undercover Operations

[56] The procedures state that:

*[u]nless urgent/extraordinary/operational circumstances exist that preclude it an undercover investigation shall not be conducted by members of the Western Australia Undercover Police Unit without approval from the State T&CG [Tasking and Coordination Group], or the Director of Intelligence or their delegate.<sup>41</sup>*

[57] Undercover investigation applications are made by a Case Officer submitting a *Tasking Request Form*. The *Tasking Request Form* includes:

- information on a target;
- a description of the offence;
- summary information giving rise to the request for UPU involvement;
- reasons why undercover policing strategies are preferable to “traditional strategies”;
- feasibility and achievability;
- objectives (intelligence gathering, evidence or arrests);
- **[Redacted]**; and
- an operational plan.<sup>42</sup>

[58] On receipt of the request, the Officer-in-Charge (OIC)–UPU will determine if the application is supported. If it is, it is forwarded to the State Intelligence Covert Coordinator for consideration. If it is supported at that level, it is forwarded to the State T&CG.

[59] If the undercover operation is approved by the State T&CG, the OIC–UPU appoints a controller and operatives. The controller is then responsible for the following:

- meeting with the Case Officer to finalise details of the operation;
- conducting a risk assessment and completing the UPU *Risk Assessment Form*;
- providing the Case Officer with details of requirements relating to deployment and post-deployment responsibilities; and
- briefing the UCO on the appropriate cover story and strategy.

[60] Ongoing responsibilities of the controller include monitoring the safety and security of the UCO and ensuring that proper records are kept.<sup>43</sup>

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<sup>41</sup> *Ibid*, 14 Target Profile/Target Summary.

<sup>42</sup> *Ibid*.

### 3.6 **Financial Management Act 2006 and Enterprise Bargaining Agreements Regarding Finances**

- [61] The procedures state that UPU operational “costs for accommodation must comply with the Financial Management Act [2006]. The member shall be eligible to claim meal/incidental allowance and any other reasonable costs in accordance with the relevant Enterprise Bargaining Agreement”.<sup>44</sup>

### 3.7 **Agent Provocateur**

- [62] UCOs are not to act as an *Agent Provocateur* or unfairly obtain evidence. A target must not be induced to commit a crime they would not have otherwise committed.
- [63] The procedures state that:

*[a]s a general rule, if the police are facilitating criminal activity which was going to occur without police assistance, they would not be criticised. Although the statutory defence of “Agent Provocateur” and “Entrapment” do not exist in Western Australian legislation, the court does have the discretion to exclude evidence that has been unfairly or illegally obtained.*

...

*An “Agent Provocateur” has been defined as “a person who entices another to commit an express breach of the law which they would not otherwise have committed”.*<sup>45</sup>

...

*... an “Agent Provocateur” ... may be contrasted with the person who merely facilitates the opportunity to commit offences for those who are disposed to, and already have the intent to, commit them.*

*The activities of the ... [UCO] must be confined solely to the second of these scenarios, as the first provides an absolute defence to prosecution. Western Australian courts have recognised the need for undercover officers, particularly in the area of drug offences, as a highly effective method of obtaining evidence. The courts[,] however, have made it quite clear that they will view with disfavour the activities of an undercover officer who oversteps the mark.*

*Members are to acquaint themselves with the relevant case law in relation to “Agent Provocateurs” and “Entrapment” and the manner in which such evidence is viewed by the courts.*<sup>46</sup>

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<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*, 16 Travel Allowance Claims.

<sup>45</sup> *Ibid.*, 28.4 *Agent Provocateur* or Unfairly Obtaining Evidence.

<sup>46</sup> *Ibid.*, 31.2 *Agent Provocateur*.

### 3.8 Illegal Commodities

- [64] The UPU has strict controls on the purchasing and handling of illegal commodities (for example, drugs). The procedures state that:

**[Redacted]** *[t]hese items are to be treated as evidence and handed to the Case Officer at the earliest convenience. Where practicable these seizures are to be placed into a drug security bag to maintain continuity of exhibits.*<sup>47</sup>

...

**[Redacted]** *As soon as practical, the controller will hand the sealed [S]ecurity [M]ovement [E]nvelope to the Case Officer or his representative.*

*Controllers must ensure that illegal items or commodities seized during the course of the operation are documented by the ... [UCO] and Case Officer in the appropriate manner.*<sup>48</sup>

- [65] The procedures clarify that if immediately securing illegal commodities in a Security Movement Envelope is not practical, the “controller will deliver the illicit material direct to the Case Officer who will take responsibility for the security of the items”.<sup>49</sup>

### 3.9 Gambling

- [66] The UPU also has strict controls on UCOs engaging in gambling as part of undercover operations. However the procedures state that:

*[i]t may at times be necessary for ... [UCOs] to engage in gambling activities to secure evidence of offences, assist infiltration of criminal networks ... or enhance criminality.*

**[Redacted]**

**[Redacted]**

**[Redacted]**

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<sup>47</sup> *Ibid*, 28 Policy Guidelines for Controller.

<sup>48</sup> *Ibid*, 28.6 Exhibits.

<sup>49</sup> *Ibid*, 33.6 Controlled Purchases of Commodity.

### 3.10 Firearms and Other Weapons

[67] The procedures state that:

*[t]he carriage, use and storage of firearms, impact weapons and aerosol subject restraint (OC spray) shall be in accordance with legislation and comply with the Police Manual.*

***Personnel untrained in the use of a specific weapon shall not carry or use it.***<sup>50</sup>

...

*An operative/controller, upon submitting a request to the Superintendent, State Intelligence Division through the Officer-in-Charge, Undercover Police Unit may be permitted to permanently carry a police issued firearm ...*

...

*The Officer-in-Charge, Undercover Police Unit is responsible for ongoing assessment of the operative/controller's need to have a firearm issued on a 24 hour basis ...*<sup>51</sup>

### 3.11 Assumed Identities

[68] When assumed identities are approved for use alternate identification and supporting documentation must be created. The procedures state that alternate identity documents are to be used only for the purpose for which they were produced and in line with legislation, and that under “no circumstances are members to utilise or display an alternate identity document to any person, for any purpose other than where operational necessity exists”. For example, “[c]redit cards issued to undercover members in assumed names shall only be used upon approval by the OIC–UPU for official purposes and to assist the performance of official duty”.<sup>52</sup>

[69] The State Intelligence Resource Management Unit has responsibility for central storage of alternate identity related documents and for ensuring documents are available for audit.<sup>53</sup>

### 3.12 Use of UPU Vehicles

[70] [Redacted]

[71] [Redacted]

[72] [Redacted]

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<sup>50</sup> *Ibid*, 29.6 Use of Firearms and/or Other Weapons.

<sup>51</sup> *Ibid*, 35 Carriage of Firearms.

<sup>52</sup> *Ibid*, 33 Use of Alternate Identity Documents.

<sup>53</sup> *Ibid*, 32.4 Audit and Compliance.

- [73] The procedures list specific rules about after hours use of UPU vehicles by UCOs. The rules cover allowable travel distances from Perth and who can drive the vehicle or be a passenger in the vehicle.
- [74] Safe and secure parking requirements of the vehicle are also specified, and UPU vehicles cannot be used for any commercial/money-making activity (for example, if the officer has approved secondary employment).
- [75] Officers are responsible for any fines or infringements incurred while driving a UPU vehicle.<sup>54</sup>
- [76] UPU members must abide by administrative instructions, guidelines and/or procedures contained in the *Police Manual* in relation to use of WAPOL vehicles. However, specific rules relating to UPU vehicles are covered by UPU procedures. **[Redacted]**
- [77] **[Redacted]**

### 3.13 Prohibited Drugs

- [78] **[Redacted]**
- [79] **[Redacted]**
- [80] **[Redacted]**
- [81] **[Redacted]**
- [82] Covert officers undertake alcohol and/or drug tests outside the random and mandatory testing regime when:
- *the Police member/covert operative requests a test be undertaken;*
  - *the OIC or Divisional Officer believes a test is appropriate for the officer's health and safety or to protect the officer's credibility in any future court proceeding; or*
  - *the OIC or the Divisional Officer believes that the Police member/operative is impaired by alcohol or drugs and/or credible intelligence, information or evidence exists that the covert operative is or has been consuming alcohol while on duty and/or is or has been using an illicit drug or over prescribed medication on or off duty.*<sup>55</sup>
- [83] Procedures prevent the supply of drugs by UCOs:
- [l]egislation of Western Australia does not permit an operative to supply any type of drug to another person. This type of activity shall be avoided. Strategies shall be considered and put in place by*

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<sup>54</sup> *Ibid*, 36.3.12 After Hours Use of Vehicles.

<sup>55</sup> *Ibid*, 40 Drug and Alcohol Testing.



*controllers and operatives to ensure that the supply of drugs to other persons does not occur.*<sup>56</sup>

### **3.14 Security**

[84] Procedures outline the security requirements in relation to covert premises, information and specialist equipment

**[Redacted]**

[85] There are specific requirements relating to who can attend covert premises, how they are registered, and how UCOs are to behave in the area around the premises.

[86] Information security is of paramount importance in an undercover policing context. The procedures, therefore, refer to computer security, a clean desk policy and rules regarding the storage and destruction of material/equipment.<sup>57</sup>

[87] It is the responsibility of the OIC–UPU to ensure that all specialist electronic equipment allocated to UPU is recorded on a register. Specialist equipment must be stored in a “safe” or “strong-room” specifically designed for that purpose when not on issue or when premises are left unattended.<sup>58</sup> There are further rules about the issuing, maintenance and destruction of specialist equipment.

### **3.15 Police Officers External to UPU**

[88] One issue that became clear during the course of the review is that UPU procedures do not adequately address instances of possible misconduct when police officers external to UPU become involved in undercover operations.

[89] When this occurs UPU procedures focus on the UCO maintaining cover. The procedures do not address what should be done when this interaction includes the external officer possibly engaging in misconduct (for example, “kerb-crawling”<sup>59</sup>).

[90] UPU procedures rely on UCOs reporting such instances, in accordance with normal police procedure. In the opinion of the Commission a better approach would be to explicitly state a requirement to do so in the procedures.

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<sup>56</sup> *Ibid*, 41 Supply of Drugs.

<sup>57</sup> *Ibid*, 42.4 Security of Covert Premises.

<sup>58</sup> *Ibid*, 42.5 Specialist Equipment.

<sup>59</sup> “Kerb-crawling” refers to a person seeking the services of a street prostitute.

### 3.16 Risk Assessment

[91] Contemporary UPU procedures include risk assessment and risk management procedures. Relevantly, these procedures address the following:

- Operative becoming involved in criminal activity – the control measure being to adhere to UPU Standard Operating Procedures (SOPs) “at all times”.
- Legislative impact as a result of actions performed in accordance with their role – the control measure being “valid legislative authority to perform undercover role to be in existence”.
- Adverse or inappropriate publicity to the organisation or operation – the control measures being the “valid legislative authority” referred to above and the adherence to UPU SOPs as above.<sup>60</sup>

[92] A risk assessment matrix is also included. This addresses the consequences of not properly managing various risks. Relevant to misconduct, these consequences include allegations of, or actual:

- disciplinary offences;
- breaches of policy/procedures;
- corruption; and
- fraudulent activity.<sup>61</sup>

[93] Risks are managed by employing a range of strategies, including adherence to proper policy and procedure, and awareness of the risks by virtue of conducting a risk assessment on each operation.

[94] The current procedure for assessment and management of risk used by UPU is encapsulated in a complex document that addresses a number of elements of misconduct risk. However, at the time of the review it did not take into account the possibility of misconduct by officers external to UPU that may become apparent during an undercover operation. Examples of this occurring are described in the sections of this report entitled “Review of Prostitution Act Operations” and “Review of Misuse of Drugs Act Operations”.

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<sup>60</sup> Western Australia Police, *State Intelligence Undercover Police Unit Policy and Procedures 2011*, Operational Assessment and Risk Management Procedures.

<sup>61</sup> *Ibid.*

### **3.17 Conclusions about UPU Operating Procedures**

- [95] The UPU has a comprehensive set of operating procedures that give effect to current police powers to conduct undercover operations under the Prostitution Act and the Misuse of Drugs Act. In the opinion of the Commission, these procedures cover an extensive range of issues and comprehensively address UPU's foreseeable misconduct risks, with the exception of police officers external to UPU becoming involved in undercover operations. This exception was identified by the Commission during the review and as a consequence has been addressed by WAPOL.
- [96] The issue of police officers external to UPU becoming involved in undercover operations is particularly relevant to UPU's approach to risk assessment, and integrity and ethical conduct. Procedures in the two areas have been improved by specific reference to this issue.
- [97] Therefore, with the exception of police officers external to UPU becoming involved in undercover operations, as identified during the Commission review, UPU's procedures appear to be adequate to reasonably prevent, identify and deal with misconduct.
- [98] As discussed earlier, UPU is currently engaged in modifying its procedures to take account of the possibility of the enactment of the Covert Powers Bill.



# CHAPTER FOUR

## STAGE THREE: REVIEW OF UPU OPERATIONS UNDER THE *PROSTITUTION ACT 2000*

### 4.1 Introduction

- [99] Police UCO deployment under the provisions of the Prostitution Act is limited to dealing with street prostitution. The primary methodology used is relatively simple and targets kerb-crawlers.<sup>62</sup>

### 4.2 Strategies

- [100] [Redacted]  
[101] [Redacted]  
[102] [Redacted]  
[103] [Redacted]  
[104] [Redacted]  
[105] [Redacted]  
[106] [Redacted]

### 4.3 Case Studies

- [107] Two case studies illustrating this method follow.

#### 4.3.1 Case Study One

- [108] A female UCO undertook a two-day assignment targeting kerb-crawlers. This operation was being run by the Perth City Detectives Street Prostitution Team and the UCO posed as a street prostitute.
- [109] The UCO engaged men who stopped and spoke with her without being solicited to do so. Once an agreement for sexual services was reached [Redacted] officers then attended and arrested the offender. In two deployments, the operation netted 12 arrests for seeking a prostitute in a public place.

#### 4.3.2 Case Study Two

- [110] A male UCO was deployed to undertake a single-day operation targeting street prostitutes. [Redacted]
- [111] The UCO made eye contact with a woman in a phone box from his vehicle. She waved and approached his vehicle. The woman entered the vehicle and an agreement for sexual services was reached. The woman then requested that they go to a location so that she could purchase heroin. The UCO agreed and asked if he too could buy drugs. She agreed.

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<sup>62</sup> “Kerb-crawlers” refers to persons seeking the services of a street prostitute.

[112] **[Redacted]**

[113] Once the drugs were purchased the UCO drove the street prostitute back towards another location on the understanding that the sexual services negotiated would be rendered. On the way, the UCO was stopped by an unmarked police vehicle.

[114] As a consequence [t]he street prostitute was arrested and charged with seeking a client and possessing heroin. The supplier of the drugs was charged with selling heroin, possessing cannabis and possessing a smoking implement.

#### 4.4 Review of the Prostitution Act Operations

[115] As noted above, Prostitution Act operations were reviewed according to the following table.

Year	2004	2005	2006	2007	2008	2009	2010	2011
Reviewed	1	4	2	0	1	0	1	3

Table One: Review of UPU Prostitution Act Operations 2004 – 2011

[116] The case files for these operations did not reveal any instances of misconduct, or possible misconduct, on the part of UPU officers.

[117] However, two incidents were identified that raised concerns about police officers external to UPU possibly engaging in misconduct. Both incidents related to one operation.

[118] This operation targeted kerb-crawlers. A female UCO was deployed to pose as a street prostitute.

##### 4.4.1 Incident One: Did a Police Officer Attempt to Engage a Street Prostitute?

[119] This incident involved a marked police vehicle driving past the UCO twice, and then stopping on a third occasion. A male uniformed police officer exited the vehicle and engaged the UCO in conversation, while his partner remained near the police vehicle, parked a short distance away.

[120] The **[Redacted]** recorded conversation transcribed below indicates that the uniformed police officer believed that the UCO was in fact a street prostitute.

TIME	SUBJECT	DIALOGUE
18:59:32	Uniform	What are you up to here?
18:59:32	UCO	Just waiting for a friend
18:59:33	Uniform	Are you?
18:59:33	UCO	Yep
18:59:34	Uniform	You sure?
18:59:34	UCO	Positive, what do you think I'm doin' here?
18:59:36	Uniform	I've no idea ... just um, this area here. We have a lot of [indistinct, possibly women?] working here
18:59:40	UCO	Oh really?
18:59:41	Uniform	Yes
18:59:41	UCO	Oh ... well I can assure you I'm not
18:59:44	Uniform	... because you're an attractive lady, and dressed as, such as you are ...
18:59:46	UCO	Yeah
18:59:48	Uniform	So I was looking for something
18:59:50	UCO	No, I'm just waiting for a friend

[121] What cannot be effectively represented in this transcript is that the uniformed police officer stated the words “so I was looking for something” when he spoke to the UCO (believing her to be a prostitute), and changed the tone and lowered the volume of his voice when he did so.

[122] Shortly after this phrase was spoken, the uniformed police officer became aware that an undercover operation was in progress.

#### **4.4.2 Commission Inquiries: Incident One**

[123] The Commission conducted a number of inquiries into this incident, including interviewing the UCO and other UPU officers, and reviewing associated WAPOL case files, documentation, policies and procedures.

[124] The UCO involved recalled the police vehicle stopping, being spoken to by the uniformed police officer and other events that occurred. However, she did not recall hearing the words “so I was looking for something” said to her by the uniformed officer.

[125] The UCO explained that it was possible she did not hear what was said because she was looking to remove herself from contact with the uniformed officer without declaring she was an UCO, as per UPU procedures. She, therefore, did not give the conversation full and proper attention.

- [126] Nevertheless, [redacted] when told what the uniformed police officer said, the UCO interpreted the phrase to mean that the uniformed police officer was looking “to have her sexual services”. The UCO went further and indicated that if she had realised at that time what the uniformed police officer had said, she would have tried to engage with him to see “where it would go”.
- [127] The UCO said that she did not bring this incident to the attention of her supervisors simply because she did not hear what the uniformed police officer had said at the time.
- [128] The other UCOs interviewed by the Commission about this incident (both were controllers for this operation) also said they did not hear the phrase used by the uniformed police officer. They could not provide any explanation for using the phrase “so I was looking for something”, and in the way it was said, in a normal policing context.
- [129] There was no record of the uniformed police officer’s interaction with the UCO, other than a handwritten note in the running sheet stating “marked police car” on the UPU case file.
- [130] The Commission also conducted inquiries with Perth City Detectives, responsible for running the operation.
- [131] A full review was conducted of the Perth City Detectives case file, including running sheets. No entry detailing the incident between the uniformed police officer and the UCO could be found on the running sheets.
- [132] The last document on the case file was a “write-off” memorandum authored by the Case Officer. This memorandum contained an entry detailing how a local resident had challenged the female UCO (believing her to be a street prostitute) and then hailed down a marked police vehicle. It was clear from other details recorded in this document that the entry related to the uniformed police officer who approached the UCO.
- [133] Attached to the memorandum was an email from a Sergeant at Perth Police Station who was, it would appear, the uniformed police officer involved in the incident with the UCO. The email details the Sergeant’s embarrassment about being flagged-down by a member of the public and potentially compromising an undercover operation, while attending a legitimately dispatched job. The Sergeant’s email provided suggestions on how such occurrences may be avoided in future.
- [134] The Commission wrote to WAPOL about this incident. WAPOL responded immediately by referring the incident to the Internal Affairs Unit (IAU). Subsequently, the Commission received a notification, pursuant to section 28 of the CCC Act, of suspected misconduct. The notification indicated that the matter would be investigated further by IAU.
- [135] The Commission also provided the information obtained during its inquiries to IAU. The IAU investigation into this incident remains active.



The Commission will review the adequacy of that investigation in due course.

#### 4.4.3 Incident Two: Did a Police Officer Fail in his Duty to Take Appropriate Action?

[136] Some hours after the above incident occurred the female UCO was again deployed and, on this occasion, was spoken to by a male driver of a vehicle. He appeared to be a plain clothes police officer. The plain clothes officer pulled up in his vehicle and initiated the conversation below.

TIME	SUBJECT	DIALOGUE
21:58:34	UCO	(To controller <b>[Redacted]</b> ) I'm sure this car's been past before <indistinct>
21:58:38	UCO	(To controller <b>[Redacted]</b> ) Stoppin'
21:58:40	Vehicle	Hi how're you going?
21:58:40	UCO	Hi how are you?
21:58:42	Vehicle	Hey, you waiting for someone are you?
21:58:43	UCO	Yep, I'm just waiting, waiting for a friend
21:58:45	Vehicle	<indistinct>
21:58:46	UCO	Sorry?
21:58:47	Vehicle	What you waiting for?
21:58:47	UCO	I'm waiting for a friend
21:58:49	Vehicle	Okay, alright then, there's a few cops around tonight so ...
21:58:51	UCO	Oh are there?
21:58:52	Vehicle	Yeah
21:58:53	UCO	Thanks for the warning!
21:58:53	Vehicle	Just so you know
21:58:54	UCO	Thank you! (Vehicle drives off) (To controller <b>[Redacted]</b> ) that was a copper, in a plain car with <indistinct> one male by himself, he just warned me there are a few coppers around here tonight <indistinct> that's the second time he's driven past.

[137] The **[Redacted]** conversation indicates that the plain clothes officer believed the UCO to be a street prostitute, and warned her about other police in the area. He did not identify himself. There would seem to be no valid reason for the officer to stop and speak with the UCO, and then provide the warning he did.

[138] Clearly the UCO immediately identified the male driver and/or vehicle as police **[Redacted]**. She says she was warned there were other police in the area.

[139] The conversation raises the following questions.

1. If the plain clothes officer believed the UCO was a street prostitute why did he not issue her with a "move-on notice" or take some other policing action available to him?
2. What did the UCO do about the plain clothes officer's behaviour?

#### 4.4.4 Commission Inquiries: Incident Two

- [140] The Commission conducted a number of inquiries into this incident, including interviewing the UCO and other UPU officers, and reviewing associated WAPOL case files, documentation, policies and procedures.
- [141] Each of the UCOs interviewed about this incident was asked about their recollection of this matter. The female UCO remembered the incident. She understood that one of her controllers would “have a word” with the plain clothes officer’s supervisor.
- [142] She also said that she was “kicking herself” afterwards and wished she had walked across the road to engage with the plain clothes officer stating:
- ... I was just so annoyed that a copper would do that, and I just, and that’s why I wished I had gone through and, maybe something would have happened ...*
- [143] One of her controllers said that he would have expected the UCO to report this incident to him, and he would have provided that information to the UPU Inspector. He saw reporting the matter as a shared responsibility between the UCO and the controller. Notwithstanding that, he was not surprised there was no record of this matter being reported, as he had no recollection of the event.
- [144] The UCO’s second controller said that he remembered her making reference to the unmarked police vehicle but had no recollection of any other conversation. He had no recollection of discussing the incident with the UCO or the first controller, saying he “possibly did, but I don’t remember. That’s four years ago or whatever it is, no I don’t [remember]”.
- [145] As with the first incident, the Commission’s review of the UPU case file found no record of the plain clothes officer’s interaction with the UCO. Utilising WAPOL and other systems available to it, the Commission could not find evidence of this matter ever having been reported or investigated by WAPOL.
- [146] Also, the Commission conducted additional inquiries with Perth City Detectives, responsible for running the operation, as with the first incident. A full review was conducted of the Perth City Detectives case file, including running sheets from both the Perth City Detectives and Covert Unit. No entry detailing the incident between the unmarked police vehicle and the UCO could be found on the running sheets.
- [147] The Commission wrote to WAPOL about this incident. WAPOL responded immediately by referring the incident to IAU. Subsequently, the Commission received a notification, pursuant to section 28 of the CCC Act, of suspected misconduct. The notification indicated that the matter would be investigated further by IAU.
- [148] The Commission also provided the information obtained during its inquiries to IAU. The IAU investigation into this incident remains active.

The Commission will review the adequacy of that investigation in due course.

#### 4.4.5 Analysis of Incidents One and Two

- [149] Clearly, if appropriate record keeping practices had been utilised by UPU referral of these two incidents to IAU by the Commission would not have been necessary, UPU would have done so itself at the relevant time.
- [150] This, in turn, would have enabled more timely investigations.
- [151] **[Redacted]**
- [152] It is clear from the Commission's review that the approach by UPU to record keeping has matured over the years. That is, record keeping on older files, in general, **[Redacted]**, is poorer overall. Recent files, by contrast, contain fulsome records.
- [153] In terms of misconduct and misconduct risk the routine nature of keeping detailed records means that the conduct of the operation is much more accountable and transparent, and any instances of (suspected) misconduct are more likely to be recorded and, therefore, reported.
- [154] UPU procedures state that the controller is responsible for ensuring the records contain accurate, relevant and up-to-date information, and that the operation file is indexed and easy to reference.<sup>63</sup> Again, more recent UPU files contained better records and were, therefore, easier to review than some of the older files.
- [155] The incidents also appear to highlight uncertainty about the obligations of UPU officers when such events occur. This uncertainty appears to exist despite explicit written requirements that UPU officers are obliged to adhere to the *WAPOL Code of Conduct*.
- [156] The Commission has taken these issues up with UPU and on 30 May 2012 received written advice from WAPOL State Intelligence that a critical review of UPU management practices in place at the time of Incidents One and Two, in order to consider vulnerabilities in relation to the prevention or detection of "improper or corrupt conduct", had been undertaken. The UPU review concluded that the level of supervisory oversight, recording and reporting during the operation was inadequate.
- [157] The following resultant actions were initiated in relation to all use of covert powers by the Operations Division of WAPOL State Intelligence:
- A briefing was conducted with the "management team" within the Operations Division to raise awareness of management issues highlighted by the Commission's review. The Detective Inspectors and each OIC were present, and acknowledged concerns in relation to the apparent lack of recording and supervisory review.

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<sup>63</sup> **[Redacted]**

- Vulnerabilities in relation to training and the level of awareness of risk relative to possible misconduct by officers external to UPU during the operation were discussed. The Operations Division is now required to include an appreciation of this risk for each operation.
- Comprehensive records are to be maintained, and reviewed and endorsed by supervisors. Whenever a public sector employee (not just an “external” police officer) comes into contact with an UCO, a specific note is to be recorded, and the supervisor is to review such contact with consideration of the risk of improper or corrupt conduct. In the event there is a suspicion of improper conduct, the supervisor is to advise the IAU on-call officer forthwith.

[158] WAPOL State Intelligence also advised the Commission that consideration was being given to “current training content relative to awareness of risk of public sector improper or corrupt conduct”. It is anticipated that induction into UPU will include training “scenarios designed to highlight the potential for discovery of such conduct” and the expectations of UCOs and supervisors with regard to a “response to such observed behaviour”.

*At this time we are developing policy, procedure and practices in preparation for the implementation of the “Criminal Investigation (Covert Powers) Bill 2011”. The recognition of past vulnerabilities provides us opportunity to improve our risk management and enhance understanding of expectations for our people ...<sup>64</sup>*

## **4.5 Conclusions about Undercover Operations under the Prostitution Act 2000**

[159] All undercover operations conducted under the Prostitution Act between 2004 and 2011 were reviewed. This involved 12 operations. Undercover strategies employed under the Prostitution Act were relatively simple and targeted street prostitution.

[160] The review did not uncover any suspected misconduct by UPU officers. However, two police officers external to UPU did come into contact with one operation in ways that raise suspicions about possible misconduct by the two “external” officers.

[161] Notwithstanding the existence of adequate procedures about documentation, these two incidents were not properly documented. As a direct consequence of this they were not acted on at the time.

[162] Commission inquiries into the two incidents established the likely identity of one officer, but not the other. The incidents have since been referred to IAU, where they are currently under internal investigation.

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<sup>64</sup> Letter to Commissioner Roger Macknay, QC, of 30 May 2012 from Detective Superintendent Kim Papalia, Operations Division, State Intelligence [CCC 85235].

[163] These incidents highlight the deficiencies in UPU procedures relevant to officers external to UPU coming into contact with undercover operations as discussed in the previous chapter.

[164] The UPU has acknowledged that the two incidents were not properly handled at the time, and has responded by:

- briefing its management team;
- requiring this risk to be addressed in future undercover operations;  
and
- reinforcing the need to maintain comprehensive running sheets.



# CHAPTER FIVE

## STAGE FOUR: REVIEW OF UPU OPERATIONS UNDER THE *MISUSE OF DRUGS ACT 1981*

### 5.1 Introduction

[165] As with Prostitution Act undercover operations, Misuse of Drugs Act undercover operations are relatively low-level and use relatively simple methodologies. They primarily targeted street-level drug trafficking.

### 5.2 Strategies

[166] A range of methodologies are used when conducting undercover operations pursuant to the Misuse of Drugs Act. The objective of these methodologies is to purchase drugs so as to:

- collect evidence;
- collect intelligence; and
- assist in infiltration of organised criminal networks.

[167] **[Redacted]**

[168] **[Redacted]**

[169] **[Redacted]**

[170] **[Redacted]**

[171] **[Redacted]**

### 5.3 Record Keeping

[172] In all of the methodologies listed above, proper record keeping **[Redacted]** is critical to the successful gathering of evidence and/or intelligence, with a view to conducting further operations or investigations, or to the prosecution of targets.

### 5.4 Money

[173] Of course, money **[Redacted]** has to be given to UCOs in order to carry out undercover operations. **[Redacted]**

[174] There is obviously a risk **[Redacted]** that some cash may be handed over without gaining anything of evidentiary or intelligence value. **[Redacted]**

[175] Case Officers apply for **[Redacted]** money to the Assistant Commissioner (Specialist Crime).<sup>65</sup> If money is authorised, the Case Officer delivers it to the controller prior to deployment of the UCO. The controller then provides the money to the UCO. A record of the amount given to the UCO is recorded on the UPU *Operational Deployment Form*. Similarly, records are made of money spent and money returned to the controller at the conclusion of an UCO's deployment.

## 5.5 Purchased Drugs

[176] When illegal drugs are purchased (or other items of evidentiary value have been acquired), the controller arranges to meet with the UCO **[Redacted]** and provides a Security Movement Envelope. The UCO places the drugs (or other items) in a Security Movement Envelope and seals it. The controller then hands the Security Movement Envelope to the Case Officer or their representative.

[177] IAU procedures require that “[c]ontrollers must ensure that illegal items or commodities seized during the course of the operation are documented by the ... [UCO] and Case Officer in the appropriate manner”.<sup>66</sup> The “appropriate manner” appears to be, from the UCO's perspective, to record the Security Movement Envelope reference on the running sheet and *Operational Deployment Form*.

## 5.6 Case Studies

[178] Three examples of the above methods are illustrated below.

### 5.6.1 Case Study Three

[179] Detectives received reliable information about two drug distributors. Various WAPOL units and other agencies worked together on the operation. **[Redacted]**

[180] As a result of the operation, 27 people were charged with multiple offences. Drug-related charges included:

- Supply Prohibited Drug; Possess Prohibited Drug with Intent to Sell/Supply; and Conspiracy to Sell/Supply Prohibited Drug.

Other charges were also laid and included:

- Possess Stolen or Unlawfully Obtained Property; Conspiracy to Commit Indictable Offence; Steal Motor Vehicle; and Assault Occasioning Bodily Harm.

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<sup>65</sup> Western Australia Police, *State Intelligence Undercover Police Unit Policy and Procedures 2011*, 32.7 Authority to Purchase.

<sup>66</sup> *Ibid*, 28.6 Exhibits.



### 5.6.2 Case Study Four

- [181] Detectives received information that cannabis was being sold from a home address. **[Redacted]**
- [182] **[Redacted]** Investigators executed a search warrant at the address and located a significant amount of cannabis. The target was declared a drug trafficker as a result of the conviction secured from the operation.

### 5.6.3 Case Study Five

- [183] **[Redacted]** During the operation it became apparent that the target was involved in the sale and supply of illicit drugs.
- [184] **[Redacted]** In all, 22 people were charged with a total of 109 offences relating to stealing, fraud, burglary and drug-related matters.

## 5.7 Review of the Misuse of Drugs Act Operations

- [185] As noted above, Misuse of Drugs Act operations were reviewed according to the following table.

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total Operations	23	33	27	28	18	18	15	26	1
Reviewed	4	4	3	3	4	4	4	6	1

Table Two: Review of UPU Misuse of Drugs Act Operations 2004 - 2012

- [186] As with the review of Prostitution Act case files, the review of Misuse of Drugs Act case files did not reveal any misconduct, or possible misconduct, on the part of UPU officers.
- [187] However, two incidents that raised concerns about whether police officers external to UPU had, or may have, engaged in misconduct were identified. The two incidents are considered below.

### 5.7.1 Incident Three: Was a Police Officer Connected to a Drug Target?

- [188] Telecommunications intercepts revealed, as recorded on the UPU file, that the target made comments during telephone conversations that his “phone is bugged”, that he has a police officer “working for” him and that a person recently introduced to him was “definitely a cop”. The target also claimed to have a “list of informants”.
- [189] No record was made on the UPU file regarding those comments. The Commission, therefore, followed-up on the matter with a senior IAU officer.
- [190] Considering the age of the matter (over eight years old), the non-specific nature of the claims made by the target (no names or details were given) and the need to divulge the fact that telecommunications intercepts

occurred with respect to the target's telephone, it was determined by the Commission that there was no reasonable avenue of investigation to pursue.

- [191] Notwithstanding that this matter will not be progressed, it reinforces the need to clearly record allegations or suspicions of misconduct on UPU files, so that they can be properly managed by WAPOL using the existing misconduct management mechanism.

### **5.7.2 Incident Four: Was a Police Officer Connected to a Drug Target?**

- [192] Telecommunications intercepts, in relation to a target's telephone, revealed that during several telephone calls the target referred to a friend who was a police officer who engaged in taking illicit drugs.
- [193] A memo on the UPU file shows that a senior officer of the Telecommunications Interception Unit forwarded the information to IAU so that further action or investigation could be considered.
- [194] The matter was notified to the Commission under section 28 of the CCC Act, and was referred back to WAPOL for investigation by IAU. The allegation was investigated and not substantiated. The Commission reviewed the investigation pursuant to section 41 of the CCC Act and found the investigation to be appropriate, and no further action was required.

### **5.7.3 Record Keeping Related to Money**

- [195] The Commission also identified some issues regarding the recording of money provided to, spent by and returned by UCOs. For example, in one operation, the *Operational Deployment Form* indicated that the UCO was given \$2,000 [Redacted], of which \$1,300 was spent on drugs. The return of unused money was not recorded on the file.
- [196] It was recorded on another *Operational Deployment Form* for the same operation that amounts of \$18,000 and \$21,000 were given to an UCO with a view to purchasing methylamphetamine. Records show \$18,000 was spent on drugs and \$13,500 was returned, leaving an apparent short-fall of \$7,500.]
- [197] By reviewing the Organised Crime Unit case file and conducting a reconciliation of the Security Movement Envelopes containing cash monies against receipts for the issue and return of those monies, the Commission established there was no short-fall in funds. Logically it would seem that an incorrect amount had been recorded on the *Operational Deployment Form* and the error had never been detected or, if it had, rectified.
- [198] More recent files illustrate that the recording of money and drugs meets the requirements of UPU policy and procedures. That is, the amount given to, spent by and returned by an UCO is recorded on the *Operational Deployment Form*.

[199] Further, records of the amount are also made on the running sheet by the UCO [Redacted]. Similarly, the approximate amount and type of drug purchased (or what it is believed to be, prior to testing) is recorded on the *Operational Deployment Form* [Redacted], along with references to the relevant Security Movement Envelopes.

## **5.8 Conclusions about Undercover Operations under the *Misuse of Drugs Act 1981***

[200] One hundred and eighty nine operations were conducted under the Misuse of Drugs Act between 2004 and 2011. Undercover strategies employed under the Misuse of Drugs Act are relatively simple and seek to purchase drugs from drug sellers.

[201] The review did not uncover any suspected misconduct by UPU officers. However, in two undercover operations possible misconduct by officers external to UPU was identified.

[202] In one incident the possible misconduct was neither recorded nor acted on at the time. In the particular circumstances of that incident, in the opinion of the Commission, investigation is not warranted.

[203] The second incident was documented and acted on at the time. It was referred to IAU and notified to the Commission. The IAU investigation was subject to external review by the Commission and found to be adequate.

[204] The difference between the handling of these two incidents highlights the importance of UPU ensuring that its prescribed documentation process is followed.

[205] As with the two Prostitution Act incidents, the two Misuse of Drugs Act incidents highlight the deficiencies in UPU procedures relevant to officers external to UPU coming into contact with undercover operations.

[206] Record keeping issues in relation to the handling of cash during some older operations were also identified, but appear to have been addressed by contemporary procedures.



# CHAPTER SIX

## STAGE FIVE: EXAMINATION OF AUTHORITIES TO ACT AS AN UNDERCOVER OFFICER

### 6.1 Introduction

[207] The Commission identified a number of anomalies in relation to authorities granted to officers to undertake undercover work.

### 6.2 Authorities Issued Under the *Prostitution Act 2000*: Anomalies

[208] Notwithstanding that all covert operations conducted pursuant to the Prostitution Act reviewed by the Commission met the requirements for the issue of approved “Authority to Act As Undercover Officer” (“approved authority”), the following anomalies were detected.

1. Operation A – the approved authority was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.
2. Operation B – the approved authority was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.
3. Operation C – the approved authority was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.
4. Operation D – the approved authority was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.

### 6.3 Authorities Issued under the *Misuse of Drugs Act 1981*: Anomalies

[209] Notwithstanding that most of the covert operations conducted pursuant to the Misuse of Drugs Act reviewed by the Commission met the requirements for the issue of an approved authority to UCOs utilised during covert operations, the following anomalies were detected.

1. Operation E – the approved authority was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time and the approved authority contained a date-range error. In addition, the approved authority for one UCO was not included on the file.

2. Operation F – the approved authorities for two UCOs were signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.
3. Operation G – the approved authority for an UCO was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time, and the approved authority for another UCO was not on the file, although that UCO appeared to have been deployed on several occasions.
4. Operation H – the UCO was deployed two days prior to the date-range on the approved authority.
5. Operation I – the approved authority for an UCO was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.
6. Operation J – the approved authority for an UCO was signed **[Redacted]**. However, the position held by the signatory did not appear to have the delegated authority to do so at the time.

## 6.4 Security of Authorities

- [210] During the review the Commission found that there was no consistent or official approach to the manner in which approved authorities were handled or stored. There is an obvious high risk to the security and success of an operation, and an even higher risk to the welfare of an UCO, should the details of an operation be leaked or become common knowledge. In the opinion of the Commission it is imperative that those details be kept secret.
- [211] The Commander State Intelligence advised the Commission that he was of the opinion that original copies of all approved authorities should be kept by UPU, as it is the only unit within WAPOL that can conduct covert operations and, therefore, is “the one singular point of truth”.
- [212] Nevertheless, advice was provided to the Commission by UCOs that copies or duplicates of approved authorities existed, that is, either the original was photocopied or the approving officer signed two originals. In some instances, the original approved authority was kept by the approving officer and a copy given to UPU. However, in most cases where copies were made the original was given to UPU and a copy kept by the approving officer, as was the case with an approving officer who advised the Commission that he kept a copy of the approved authority in his personal safe.
- [213] The Commander’s opinion was echoed by Assistant Commissioner (Professional Standards). The Assistant Commissioner believed it is the responsibility of UPU to:

- fully brief the Assistant Commissioner (or Commander) approving the authority;
- manage the application; and,
- store all records.

[214] The Assistant Commissioner went further and indicated that making copies of approved authorities is an unacceptable risk. However, he did not consider that it was necessary to develop further policies or procedures in relation to this matter as officers at Commander and Assistant Commissioner level know how to deal appropriately with approved authorities.

[215] Notwithstanding that inconsistencies currently exist around the handling of approved authorities, this issue would be addressed by legislative changes proposed in the Covert Powers Bill currently before Parliament. Enactment of the Bill would require the keeping of a “General Register” to record precise and significant details of any application for an approved authority, plus its subsequent refusal, approval or variation.

## **6.5 Conclusions about Authorities to Act as an Undercover Officer**

[216] In some cases, approved authorities were granted by officers without the delegated authority to do so.

[217] Security procedures relating to approved authorities are unclear. Consequently, different practices are followed. This issue would be addressed by legislative changes proposed in the Covert Powers Bill currently before Parliament. As aforementioned, enactment of the Bill would require the keeping of a “General Register”.





## **CHAPTER SEVEN**

### **STAGE SIX: REVIEW OF ALLEGATIONS MADE TO THE COMMISSION RELATING TO UPU**

- [218] The Commission examined its data holdings for records detailing any allegations of misconduct or reviewable police action by UPU officers. None were found.
- [219] This result is not surprising given the nature of the work conducted by such a secretive and specialised unit. Frontline uniformed officers are exposed to maximum public scrutiny. However, persons of interest who are the subject of undercover operations do not typically recognise that the individual they have interacted with is a police officer. This limits the likelihood of the public making complaints.



## CHAPTER EIGHT

# ANALYSIS AND CONCLUSIONS

### 8.1 Analysis

- [220] During this review the Commission identified that the approach by UPU to governance has matured. Recent operation case files are demonstrably more transparent, have a clearer governance focus, and assess the risk of operations and welfare of officers more effectively than older operation case files.
- [221] This maturity is also evident in the comprehensive body of procedures controlling and supporting undercover operations. Contemporary UPU governance procedures are, with the following exceptions, appropriate.
- [222] The main shortcoming in UPU governance relates to police officers external to UPU coming into contact with undercover operations.
- [223] The issue extends to a lack of adequate documentation relating to police officers external to UPU coming into contact with undercover operations. This is despite existing UPU requirements to maintain comprehensive running sheets. In three of the four incidents cited in this report, had they been properly documented, appropriate action to deal with them could have commenced at the time that the incidents occurred.
- [224] In the incident that was adequately documented, an internal investigation was conducted, the Commission was notified and the internal investigation was subjected to external review by the Commission.
- [225] This issue also extended to risk assessment matrices used by UPU when conducting undercover operations, as there was a need to incorporate a risk assessment of the occurrence of such incidents
- [226] The review identified deficiencies in the approach to authorising UCOs. In a number of cases, officers without the delegated power to do so authorised UCOs under both the Prostitution Act and the Misuse of Drugs Act.

- [227] Security of approved authorisations to conduct undercover operations was also identified by the review as an issue. Procedures around securing authorisations are unclear. Consequently, different practices exist.
- [228] Analysis of the legislative basis for undercover operations under the Prostitution Act and the Misuse of Drugs Act highlighted a gap between the authority to use assumed identities during undercover operations and the need to obtain and rely on **[Redacted]** supporting documentation, such as driving licences, to support these assumed identities.
- [229] The enactment of the Covert Powers Bill would resolve this issue.
- [230] The various issues discussed above were raised by the Commission with UPU during the course of the review. UPU management acknowledged the deficiencies and, accordingly, undertook the following actions:
- briefing UPU management team on the issues highlighted by the review;
  - addressing the risk of police officers (and other public officers) external to UPU coming into contact with an undercover operation is now part of the assessment of risks of each undercover operation;
  - reinforcing the need to maintain comprehensive records; and
  - reviewing UPU training with a view to incorporating an appropriate scenario to address the issue of officers external to UPU coming into contact with an undercover operation.
- [231] UPU is also currently reviewing its procedures in the event that the Covert Powers Bill is enacted.

## **8.2 Conclusion**

- [232] Overall, except for dealing with police officers external to UPU coming into contact with undercover operations, WAPOL appears to have reasonable capacity to prevent, identify and deal with misconduct related to its undercover work under the Prostitution Act and the Misuse of Drugs Act.

## 8.3 Recommendations

[233] The Commission makes the following recommendations to address the deficiencies identified in this report.

[234]

### **Recommendation 1**

The Commission recommends that Western Australia Police continues to implement enhanced Undercover Police Unit (UPU) procedures to deal with police officers external to UPU coming into contact with undercover operations.

[235]

### **Recommendation 2**

The Commission recommends that Western Australia Police continues to ensure that Undercover Police Unit (UPU) operational risk assessments and risk matrices include identification of the risk of police officers external to UPU coming into contact with undercover operations.

[236]

### **Recommendation 3**

The Commission recommends that Western Australia Police amends procedures relevant to authorising Undercover Officers (UCOs) so that:

- (3) delegations to sign, and thereby approve, an UCO authority are explicit, understood and followed; and
- (4) security arrangements for approved authorities are explicit, understood and followed.



# Appendix Two

## CCC's supplementary submission



### SUPPLEMENTARY SUBMISSION TO REPORT ON THE REVIEW OF MISCONDUCT RISKS ASSOCIATED WITH THE DEPLOYMENT OF UNDERCOVER POLICE OFFICERS PURSUANT TO THE PROSTITUTION ACT 2000 AND THE MISUSE OF DRUGS ACT 1981, 6 NOVEMBER 2012

#### Introduction

- [1] In the first half of 2012 the Corruption and Crime Commission ("the Commission") conducted a review of the misconduct risks associated with the deployment of undercover police officers pursuant to the *Prostitution Act 2000* ("the Prostitution Act") and the *Misuse of Drugs Act 1981* ("the Misuse of Drugs Act").
- [2] On 6 November 2012 the Commission provided a redacted report to the Joint Standing Committee (JSC) on the Corruption and Crime Commission entitled the *Report on the Review of Misconduct Risks Associated with the Deployment of Undercover Police Officers Pursuant to the "Prostitution Act 2000" and the "Misuse of Drugs Act 1981"* ("the Review Report").
- [3] The purpose of this Supplementary Submission is to provide the JSC with an update on the progress that Western Australia Police (WAPOL) has made in implementing the Review Report recommendations and to advise of the outcome of WAPOL internal investigations in relation to two incidents identified by the review.

#### Legislative Change

- [4] The Review Report makes reference to the pending passage of the *Criminal Investigation (Covert Powers) Bill 2011*. In December 2012 the *Criminal Investigation (Covert Powers) Act 2012* ("Covert Powers Act") was assented to and came into operation on 1 March 2013.
- [5] The proclamation of the Covert Powers Act repealed some sections of the Prostitution Act and the Misuse of Drugs Act. This has a consequence for some observations contained in the Review Report. For example, Chapter Six of the Review Report deals with anomalies surrounding the approval for an "Authority to Act As Undercover Officer". The Covert Powers Act now makes this redundant.

#### WAPOL Response to Recommendations

- [6] The Commission makes three recommendations in the Review Report to address identified deficiencies. On 4 June 2013 Dr Karl O'Callaghan, APM, Commissioner of Police, advised the Commission of specific measures in place with respect to each recommendation. Those measures are detailed below.

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**Recommendation 1**

The Commission recommends that Western Australia Police continues to implement enhanced Undercover Police Unit (UPU) procedures to deal with police officers external to UPU coming into contact with undercover operations.

**WAPOL Response**

*Invariably on occasions, operational police officers are going to come into contact with Under Cover Officers (UCOs) during deployments. Numerous steps have been taken in order for any contact with officers external to UPU to be properly recorded and any arising issues to be resolved.*

*The following procedures have been instigated:*

- *On 30 May 2012 a Standing Office Order was issued to all UPU personnel requiring that any contact whatsoever with police officers or government officials external to UPU is to be brought to the attention of the Officer in Charge (OIC) as soon as practicable in order for the necessary action to be taken.*
- *A section was added to Operational Deployment Form (Two), enabling any contact with a police officer or government official external to UPU to be recorded on the [F]orm with a brief explanation of the circumstances of the contact. The form further has a checkbox to confirm that the OIC has been advised of such contact and the list must be signed by the OIC. (Deployment [F]orms are completed for each and every deployment of a UCO regardless of the purpose of deployment. The documentation is then filed with the respective UPU case file).*
- *The case files are subject to independent review by a commissioned officer.*

**Recommendation 2**

The Commission recommends that Western Australia Police continues to ensure that Undercover Police Unit (UPU) operational risk assessments and risk matrices include identification of the risk of police officers external to UPU coming into contact with undercover operations.

**WAPOL Response**

*During May 2012 the UPU - Operation Risk Assessment [M]atrix was updated to include the risk associated with contact by an officer external to UPU with an operative.*

*The following control measures have been considered to be adequate to reduce any perceived risk:*



- Controller to record contact on Deployment Form 2;
- OIC to be notified of contact; and
- OIC/Controller to notify relevant authority to reduce the risk of misconduct or corruption.

*The Risk Assessment Matrix template is completed for each operation undertaken by UPU with the document filed with the UPU case file.*

### **Recommendation 3**

The Commission recommends that Western Australia Police amends procedures relevant to authorising Undercover Officers (UCOs) so that:

- (1) delegations to sign, and thereby approve, an UCO authority are explicit, understood and followed; and
- (2) security arrangements for approved authorities are explicit, understood and followed.

### **WAPOL Response**

*To introduce consistency in the process adopted to provide authorities for UCOs, in the normal course of business, all authorities are now signed by the Assistant Commissioner - Intelligence & Communications. The authorities are kept in a single indexed file in the Assistant Commissioner's safe. (Prior to refinement of this procedure, it was common practice to have the authority signed by whichever delegated Assistant Commissioner was available. There was some inconsistency in the resultant record keeping.)*

*I note that the "Criminal Investigation (Covert Powers) Act 2012" was proclaimed on 1 March 2013 and that the CCC is the oversight authority for the new legislation. Sections 39 and 40 of the Act relate to the keeping of documents connected with controlled operations. A general register is maintained by the Covert Applications Unit which includes all documents associated with controlled operations and may be inspected by the CCC.*

### **WAPOL Internal Investigations**

- [7] The Review Report makes references at paragraphs [134] and [147] to incidents that were identified during the review of undercover operations undertaken by WAPOL pursuant to the Prostitution Act. The details of the incidents were provided to WAPOL, for which notifications were subsequently received from WAPOL pursuant to section 28 of the *Corruption and Crime Commission Act 2003* ("the CCC Act").
- [8] Brief details of the those incidents are as follows:

- (i) an unknown subject officer approached a female UCO and, believing her to be a prostitute, attempted to engage her in an inappropriate way; and
- (ii) an unknown plain clothes officer called out to the same UCO and, believing her to be prostitute, warned her that there were police officers in the area.

#### **Incident One**

- [9] The police internal investigation established that a local resident challenged the UCO (believing her to be a street prostitute) and then hailed down a marked police vehicle. A sergeant (from the vehicle) approached and spoke with the UCO.
- [10] The identity of the sergeant involved was determined by the Commission during the review. Also identified was a memorandum from the sergeant to the case officer in which the sergeant disclosed that he had unintentionally involved himself in an undercover operation and that consideration should be given to making local police aware of any such operation so that it would not reoccur.
- [11] The WAPOL investigation concluded that there was little evidence to suggest that the sergeant had acted inappropriately and, therefore, took no action.
- [12] The Commission reviewed the investigation pursuant to section 41 of the CCC Act and found the investigation to be appropriate, and that no further action was required. In reaching this view, and in light of the additional information obtained, it was considered that the sergeant's conversation with the UCO appears to have been a genuine, albeit awkward, attempt to engage the UCO to confirm whether or not she was a street prostitute.

#### **Incident Two**

- [13] The police internal investigation established that the driver of the unmarked police vehicle involved was a detective from the Western Suburbs Detectives Office.
- [14] Data from the vehicle's Automatic Vehicle Locator established that the detective only drove through the intersection once. This is contrary to the comment made by the UCO to her controller that; "I'm sure this car's been passed before".
- [15] At interview the detective had little recollection of the incident. This is not considered unusual given that the interaction with the UCO lasted no longer than 15 seconds. Based on his limited recollection the detective stated that he believed he made brief comments to the UCO as a "matter of concern for her welfare". He denied any inappropriateness or misconduct.
- [16] WAPOL concluded that there was no evidence to suggest the detective's version was incorrect and no further action was taken. The investigation

determined that the detective was "concerned for her welfare" and "encourage[d] her to move on".

- [17] The Commission reviewed the investigation pursuant to section 41 of the CCC Act and accepted the conclusion reached by WAPOL, and that no further action was required. In reaching this view, the Commission also informed WAPOL that a more appropriate response would have been for the detective to issue a "move-on notice" and to record and advise local police of the interaction.

### **Conclusion**

- [18] The Commission is of the view that WAPOL has satisfactorily addressed the misconduct risks identified during the Commission review associated with the deployment of undercover police officers pursuant to the Prostitution Act and the Misuse of Drugs Act.
- [19] The Commission also considers that the procedural changes made by WAPOL, coupled with heightened risk awareness and amended training scenarios, militates against the possibility that future incidents will not be detected at an earlier stage by WAPOL.



Roger Macknay, QC  
**COMMISSIONER**

14 April 2014



# Appendix Three

## Committee's functions and powers

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On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

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

It is the function of the Joint Standing Committee to -

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

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



## Appendix Four

### Hearings

Date	Name	Position	Organisation
21 October 2013	Dr Karl O'Callaghan	Commissioner of Police	Western Australia Police
	Mr Dominic Staltari	Assistant Commissioner, Professional Standards	
	Mr Duane Bell	Assistant Commissioner	
9 December 2013	Dr Karl O'Callaghan	Commissioner of Police	Western Australia Police
	Mr Christopher Dawson	Deputy Commissioner	
	Mr Dominic Staltari	Assistant Commissioner, Professional Standards	
	Mr Duane Bell	Assistant Commissioner	
26 February 2014	Mr Roger Macknay, QC	Commissioner	Corruption and Crime Commission
	Mr Paul O'Connor	Director, Legal Services	
	Mr Roger Watson	Director, Corruption Prevention	
	Mr Michael Silverstone	Executive Director	