



***JOINT STANDING COMMITTEE ON
THE ANTI-CORRUPTION
COMMISSION***

**REPORT ON HEARING WITH THE
ANTI-CORRUPTION COMMISSION
ON 7 APRIL 2003**

Report No. 4

2003

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Joint Standing Committee on the Anti-Corruption Commission

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Report No. 4

Presented by:
Hon Derrick Tomlinson, MLC
Mr John Hyde, MLA

Laid on the Table of the Legislative Assembly
on Thursday 17 April 2003

Laid on the Table of the Legislative Council
on the following Sitting Day (6 May 2003)

COMMITTEE MEMBERS

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	Ms J.A. Radisich, MLA Member for Swan Hills
	Hon Barbara Scott, MLC Member for South Metropolitan

COMMITTEE STAFF

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COMMITTEE'S FUNCTIONS AND POWERS

On 28 June 2001 the Legislative Assembly and the Legislative Council agreed to establish the Joint Standing Committee on the Anti-Corruption Commission. The Joint Standing Committee's functions and powers are set out in the Legislative Assembly Standing Orders 289, 290 and 264.

- 290 (1) It is the function of the Committee:
- (a) to monitor and review the performance of the functions of the Anti-Corruption Commission established under the *Anti-Corruption Commission Act 1988*;
 - (b) to consider and report to Parliament on issues affecting the prevention and detection of "corrupt conduct", "criminal conduct", "criminal involvement" and "serious improper conduct" as defined in section 3 of the *Anti-Corruption Commission Act 1988*. Conduct of any of these kinds is referred to in this Standing Order as "official corruption";
 - (c) to monitor the effectiveness or otherwise of official corruption prevention programs;
 - (d) to examine such annual and other reports as the Joint Standing Committee thinks fit of the Anti-Corruption Commission and all public sector offices, agencies and authorities for any matter which appears in, or arises out of, any such report and is relevant to the other functions of the Joint Standing Committee;
 - (e) in connection with the activities of the Anti-Corruption Commission and the official corruption prevention programs of all public sector offices, agencies and authorities, to consider and report to Parliament on means by which duplication of effort may be avoided and mutually beneficial co-operation between the Anti-Corruption Commission and those agencies and authorities may be encouraged;
 - (f) to assess the framework for public sector accountability from time to time in order to make recommendations to Parliament for the improvement of that framework for the purpose of reducing the likelihood of official corruption; and
 - (g) to report to Parliament as to whether any changes should be made to relevant legislation.

- (2) The Joint Standing Committee will not:
- (h) investigate a matter relating to particular information received by the Anti-Corruption Commission or particular conduct or involvement considered by the Anti-Corruption Commission;
 - (i) reconsider a decision made or action taken by the Anti-Corruption Commission in the performance of its functions in relation to particular information received or particular conduct or involvement considered by the Anti-Corruption Commission; or
 - (j) have access to detailed operational information or become involved in operational matters.

The Legislative Council has agreed to a resolution which has the same functions and powers as set out in the above Standing Orders of the Legislative Assembly.

The Standing Orders of the Assembly relating to standing and select committees are also followed as far as they can be applied.

CHAIRMAN'S SIGNATURE

HON DERRICK TOMLINSON, MLC
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

“JSCACC”	Joint Standing Committee on the Anti-Corruption Commission (WA)
“ACC”	Anti-Corruption Commission (WA)
“CCC”	Corruption and Crime Commission (WA)
“CMC”	Crime and Misconduct Commission (QLD)
“ICAC”	Independent Commission Against Corruption (NSW)

CHAPTER 1 INTRODUCTION

1.1 Background

Under its Terms of Reference, the Joint Standing Committee on the Anti-Corruption Commission (JSCACC) is required to monitor and review the performance of the Anti-Corruption Commission (ACC) and report to Parliament on issues affecting the prevention and detection of corruption. This includes any associated deficiencies in legislation. To ensure effective oversight, the Committee holds regular, usually quarterly, hearings with the Commissioners and the Chief Executive Officer of the Anti-Corruption Commission.

Consequently, the JSCACC convened a hearing on 7 April 2003. The ACC were required to present a report of the Commission's activities for that period as well as respond to a number of other matters raised by the JSCACC and presented as questions on notice to the Commission.

The following members of the ACC presented evidence at the Hearing:

Mr Terry O'Connor QC	Chairman
Mr Don Doig	Commissioner
Ms Moira Rayner	Commissioner
Mr Graeme Charlwood	Chief Executive Officer
Mr Terry Lewis	Executive Officer

1.2 ACC Quarterly Report

One of the difficulties faced by the Anti-Corruption Commission to date and highlighted by the current Royal Commission¹, has been how to keep both Parliament and the public adequately informed of its activities and the effectiveness of those activities without compromising the Commission's operational integrity. This has largely been related to certain legislative restrictions of the Anti-Corruption Commission Act 1988 or the interpretation of certain provisions relating to what constitutes "operational information"².

The Commission intends that its latest report (see Appendix 2) tabled at the 7 April 2003 hearing will provide Parliament and the public with a greater level of insight into the activities of the ACC and public sector agencies in fighting corruption.

¹ Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, Interim Report, December 2002.

² Sect 34 (2) *Anti-Corruption Commission Act 1988*

Information from the report, which covers the activities of the Commission from 1 July-31 December 2002 will be available on the Commission's website and will form part of its annual report.

The Commission, apart from conducting its own inquiries and investigations also oversights the conduct of investigations by other public sector agencies and has incorporated some of these statistics in this report. It should be noted that although outcomes for substantiated allegations are detailed, under the *Anti-Corruption Commission Act 1988*, the Commission is unable to make recommendations relating to administrative, disciplinary or criminal action³. This remains the responsibility of the appropriate authority or Department of Public Prosecutions.

1.3 Jurisdiction of the ACC over contracted prison officers in private prisons

The ACC wrote to the JSCACC on 13 March 2003 expressing concern about the Commission's lack of jurisdiction over certain contracted prison officers not deemed to be public officers (see Appendix 3). Under the *Anti-Corruption Commission Act 1988*, the ACC's jurisdiction is limited to public officers⁴. The Commission has approached the Attorney-General to request legislative amendment, however no amendment has occurred to date.

On 27 March 2003 the JSCACC sought the advice of the Independent Commission Against Corruption (ICAC) in New South Wales and the Crime and Misconduct Commission (CMC) in Queensland in relation to whether they had dealt with a similar issue.

The ICAC informed the Committee that prison officers within a private prison, although contracted, remain in the employ of the Department of Corrective Services, NSW, and are therefore considered "public officers" for the purposes of the *Independent Commission Against Corruption Act 1988*. (see Appendix 4)

The CMC informed the Committee that although a similar situation existed in Queensland, amendments to the *Corrective Services Act 2000* in 2001 conferred jurisdiction over private prisons on the former Criminal Justice Commission. These functions were later transferred to the CMC. (see Appendix 5)

³ Parker and Others v Miller and Others. Unreported decision of the Full Court, Supreme Court of Western Australia, delivered 8 May 1998, Lib. No 980249.

⁴ Sect 12 (1) (a) *Anti-Corruption Commission Act 1988*.

1.4 Future of Anti-Corruption Commission staff under the impending Corruption and Crime Commission Structure.

The ACC is concerned that no decision has been made by the Department of Premier and Cabinet in relation to the future of the Commission's staff under the impending Corruption and Crime Commission (CCC) structure.

The ACC advised Commission staff that on the basis of Government's directive in 2002 that all contract staff in the public sector be made permanent employees, they too would be moving to permanent employment.

The ACC states that it is currently investigating or oversighting investigation by other public sector agencies of approximately 600 matters. They believe that the transfer of staff from the ACC, to the CCC will result in a smooth transition given the shift in corporate knowledge.

The ACC argues that if the Government follows the guidelines which have been set in relation to Government agencies that have been abolished and reconstituted, then this transfer of staff should occur. The Commission has written to the Premier requesting that if these guidelines are not complied with then staff should be transferred and eligible to reapply for positions on merit.

The ACC has informed the Committee that Mr Justice Kennedy, Commissioner of the current Royal Commission,⁵ has also approached the Premier in relation to transfer of his staff to the new structure, arguing that this will result in a seamless transition. Both the Royal Commission and ACC have a similar complement of investigatory staff. The ACC is concerned that the majority of the matters dealt with by the Royal Commission will cease at the point of establishment of the CCC whilst the matters dealt with by the ACC will be ongoing. Further, the Royal Commission's jurisdiction extends only to Police whilst the ACC investigations relate to all public officers. It is the Commission's view that the argument therefore stands for the transfer of ACC staff.

The ACC is concerned that a delay in finalising these staffing issues will result in staff seeking employment elsewhere and a loss of valuable corporate knowledge.

⁵ Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers, Interim Report, December 2002.

APPENDIX ONE

HEARINGS

Date	Name	Position	Organisation
7 April 2003	Mr Terence O'Connor QC Mr Donald Doig Ms Moira Rayner Mr Graeme Charlwood Mr Terrence Lewis	Chairman Commissioner Commissioner Chief Executive Officer Executive Officer	Anti-Corruption Commission

APPENDIX TWO

ANTI-CORRUPTION COMMISSION REPORT TO THE JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION

1. Operations Overview 1 July to 31 December 2002

OPERATIONS	July – Dec 2002		2001/2002	
	NUMBER OF: Cases			
Active* Matters as at 30 June	(2002)	334	(2001)	385
New Matters Reported		270		499
		%		%
Source – mandatory (s.14)	241	(89)	403	(81)
voluntary (s.16)	19	(7)	86	(17)
own motion (s.13)	10	(4)	10	(2)
Public Office – Police Service	127	(47)	240	(48)
Government Department	86	(32)	162	(32)
Local Government	42	(16)	55	(11)
Other	15	(5)	42	(9)
Serious misconduct – Corrupt conduct	13	(5)	92	(18)
Criminal conduct	99	(36)	184	(33)
Serious improper conduct	145	(54)	162	(33)
Outside jurisdiction	13	(5)	61	(12)
Total Matters addressed in the period		604		884
Matters referred to other authorities for further action		127		215
Review (by ACC) of 'other authority' investigation reports ...		99		322
Audit (by ACC) of 'other authority' investigation reports		0		11
PRELIMINARY INQUIRIES				
Preliminary Inquiries (Part III) carried out by ACC		45		75
Preliminary Inquiries concluded		15		45
INVESTIGATIONS				
Investigations (Part IV) carried out by ACC		12		17
Investigations finalised		1		6

* Active cases are those subject to 'further action' by the ACC or another appropriate authority – from inquiry/investigation to consideration by the DPP (Director of Public Prosecutions), to court action – which have not been 'finalised' by the Commission.

OPERATIONS	July – Dec 02		2001/02	
	NUMBER OF:			
	warrants			
Telecommunications Interception (TI) Warrants obtained and executed by ACC ...	45		12	
Original Warrants issued to ACC.....	32			
Renewed Warrants issued to ACC..... (6 Named Person warrants)	13			
For Joint Operations (Police Royal Commission)	25			
For ACC specific operations	20			
	services			
Services (lines) intercepted under TI warrants executed by ACC...	50			
Named Person Warrants.....	24			
Service Warrants.....	26			
	warrants			
TI Warrants obtained by other authorities executed by ACC on their behalf ...	11			
West Australian Police Service.....	7			
SAPOL.....	4			
	calls			
Calls intercepted under TI warrants executed by ACC... (includes duplicate calls, mis-dials, unanswered calls)	61599			
	assign's	cases	assign's	cases
Physical Surveillance Assignments	31	13	59	18
Public Office – Police service	7	4	30	7
Other Public Administration	15	7	19	6
Police Royal Commission	9	2	8	3
	cases			
Matters with the DPP** (referred by the ACC).....	7		13	
Relating to:				
Police service	4		7	
Other Public Administration	3		6	
Matters finalised by the DPP	3		6	
Matters progressed to court	2		5	
Matters finalised by the Commission	275		574	
Outcomes				
Unsubstantiated Allegations	54		201	
All Other Outcomes	221		373	
Administrative action taken	8		20	
Disciplinary action taken	38		72	
Criminal charges laid	24		47	
Allegation(s) vexatious, not serious, or withdrawn	20		21	
Allegation(s) subject of prior investigation	13		18	
Prima Facie case exists - not able to proceed	6		22	
Insufficient evidence	16		38	
Matter outside Commission jurisdiction	25		68	
Other #	71		67	

**Director of Public Prosecutions

Includes cases that are: Inconclusive, Investigation not in public interest, Investigation not justified, Public officer deceased, and transferred

COMBATING CORRUPTION – November 1996 to 31 December 2002

The following report (prepared April 2003) is an overview of alleged corrupt, criminal and serious improper conduct in WA public administration (as reported to the ACC) since the ACC's operational inception in November 1996.

The figures provide (progressively more detailed) insights into the outcome of actions taken by the ACC and other authorities, not only in terms of direct responses to alleged serious misconduct, but also in respect of the discouragement or prevention of future serious misconduct.

1 November 1996 to 31 December 2002

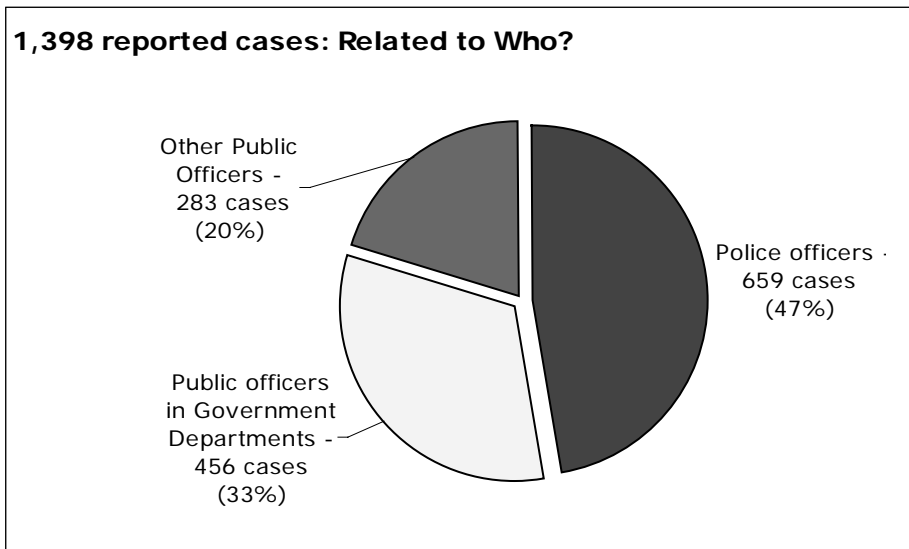
Cases addressed by the ACC: 2,812

In the period 1 November 1996 to 31 December 2002, the ACC addressed a total of 2,812 cases of alleged serious misconduct.

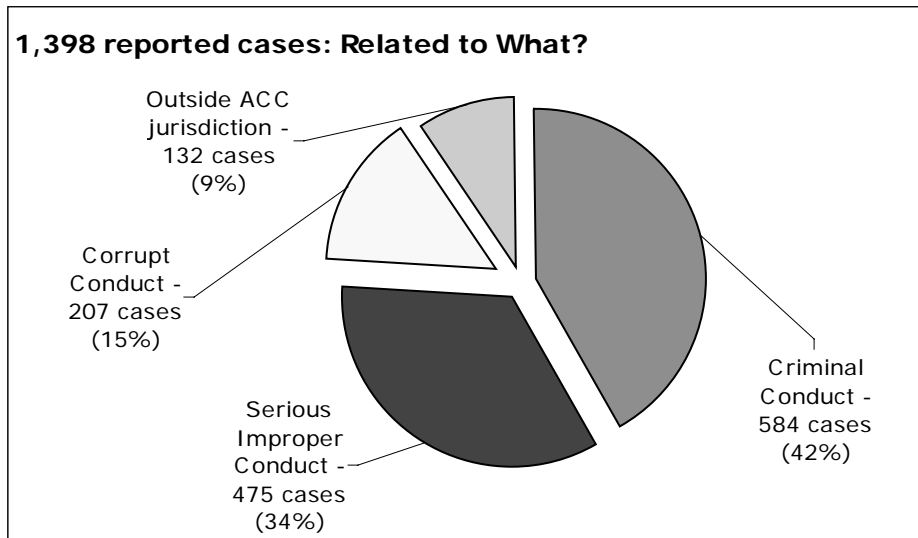
These cases involved in excess of 8,000 individual allegations and more than 4,000 public officers.

1999-2000 to 2001-02 (3 Years)

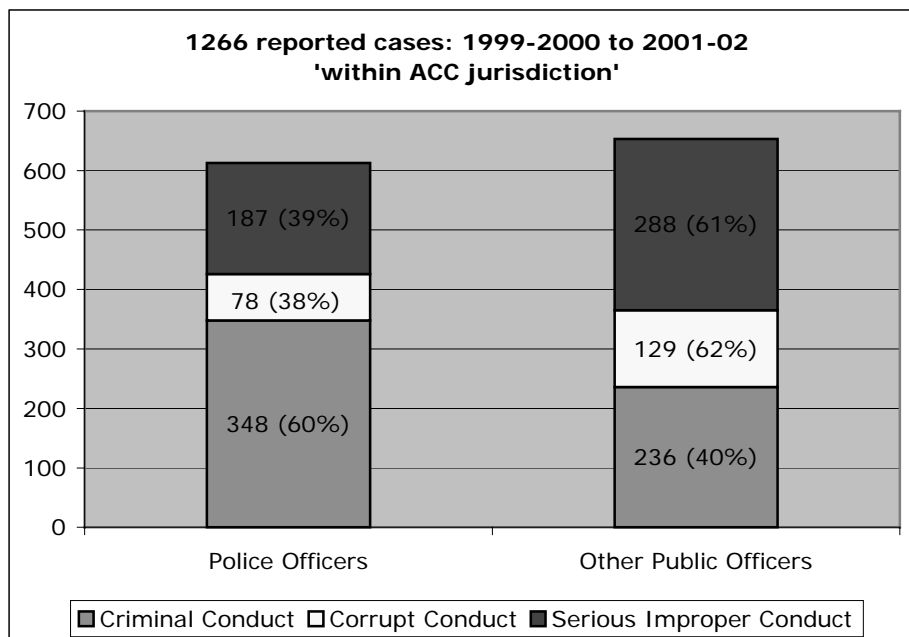
Cases addressed by the ACC: 1,398



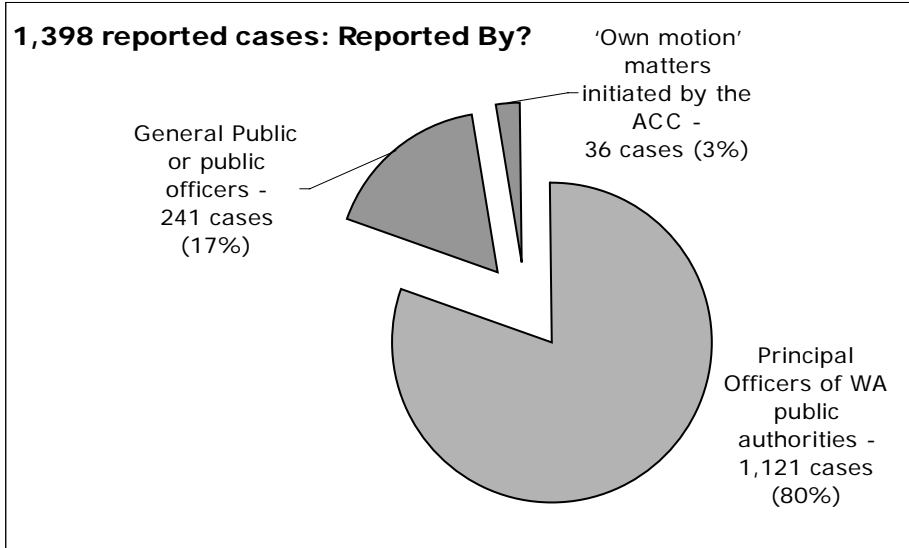
1999-2000 to 2001-02 (3 Years) (cont)



1,266 cases 'within ACC jurisdiction'

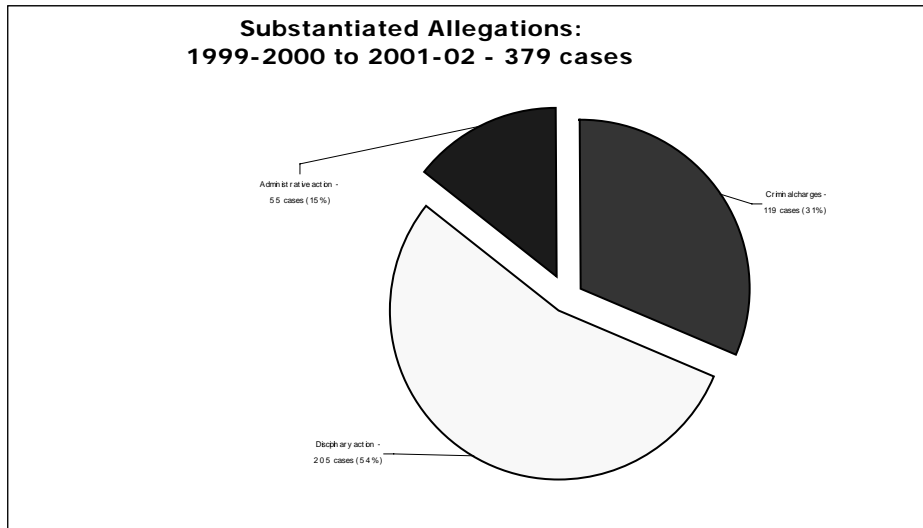


1999-2000 to 2001-02 (3 Years) (cont)



Cases finalised by the Commission: 1,393

Substantiated Allegations: 379 cases (27%)



Unsubstantiated Allegations: 509 cases (36%)

Other Outcomes: 505 cases (36%)

134 cases - 'outside ACC jurisdiction' (ie. dealt with by other authorities)

99 cases - 'insufficient evidence to make a determination'

272 cases – various other outcomes

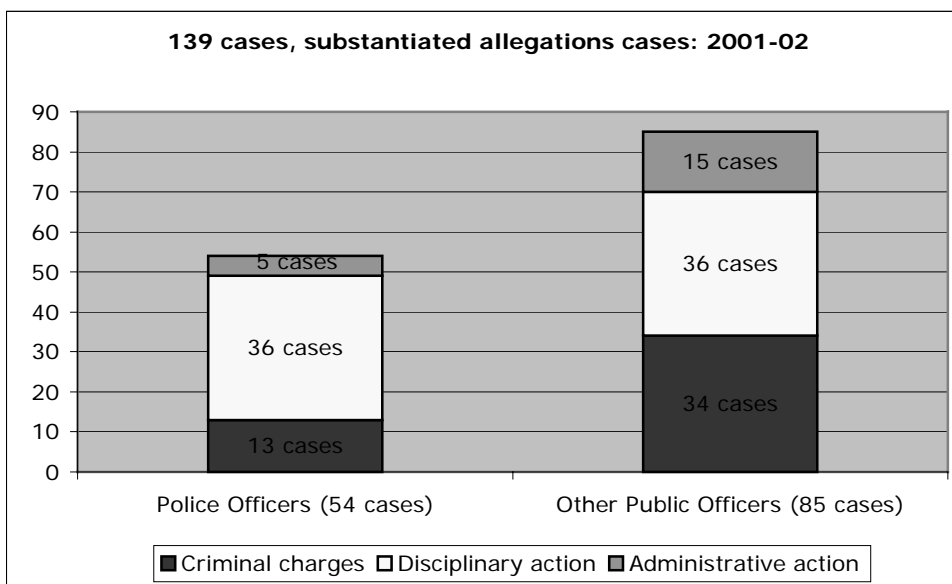
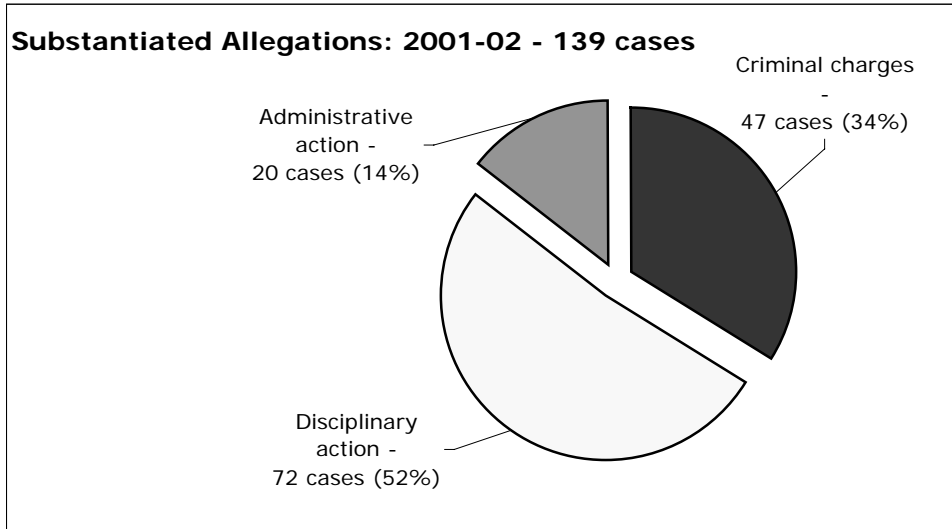
2001-02 (1 Year)

884

Cases addressed by the ACC:

Cases finalised by the Commission:

574



Substantiated Allegations: 139 cases (24%)

Unsubstantiated Allegations: 201 cases (35%)

Other Outcomes: 234 cases (40%)

- 68 cases - 'outside ACC jurisdiction' (dealt with by other authorities)
- 38 cases - 'insufficient evidence to make a determination'
- 128 cases - various other outcomes

1 July - 31 December 2002 (6 Months)

Allegations addressed by the ACC: 604 cases

New cases reported to the ACC: 270 cases (257 'in ACC jurisdiction')

Cases Reported to the ACC: 1 July to 31 December 2002					
Alleged Serious Misconduct x Public Office					
Alleged Serious Misconduct	Public Office - new cases*				Total
	Police	Gov. Dept.	Local Gov.	Other Public Auth.	
CORRUPT	3	7	3	0	13
Gifts and favours		2	1		3
Association leading to gifts and favours	2	1	2		5
Other	1	4			5
CRIMINAL	62	20	11	5	98
Attempt to obstruct, prevent, pervert or defeat the course of justice	4				4
Conspiring to pervert or defeat the course of justice	3				3
Corruption - abuse of public office for benefit	5				5
Disclosure of official secrets	6		2		8
Falsification of records by public officer	1	2	1		4
Fraud	3	4	2	1	10
Perjury	4			1	5
Stealing	12	5	5	2	24
Unlawful operation of a computer system	18	6			24
Other	6	3	1	1	11
SERIOUS IMPROPER	54	57	26	9	146
Assault		4		1	5
Conducting secondary employment	2				2
Disclosure of information	9		1	1	11
Drugs	17	5			22
Failure to disclose personal interest			13	2	15
Improper association	1				1
Improper conduct	19	33	4	2	58
Improper use of computers	3	5	1		9
Misuse of corporate credit cards		1	1		2
Misuse of government funds		2	2	1	5
Misuse of leave entitlements	2	3			5
Other	1	4	4	2	11
TOTAL	119	84	40	14	257

*Total of 270 new cases reported, 13 were 'outside ACC jurisdiction'

1 July – 31 December 2002 (6 months) (cont)

Cases finalised by the Commission: 275 cases (250 'in ACC jurisdiction')

Cases Finalised (by Commission): 1 July to 31 December 2002					
Alleged Serious Misconduct x Public Office					
Alleged Serious Misconduct	Public Office - cases finalised*				Total
	Police	Gov. Dept.	Local Gov.	Other Public Auth.	
CORRUPT	9	14	6	4	33
Gifts and favours	4	8	3		15
Association leading to gifts and favours	1	2	1		4
Other	4	4	2	4	14
CRIMINAL	55	17	10	7	89
Intent to pervert/defeat course of justice	6	1		1	8
Corruption - abuse of public office for benefit					0
Disclosure of official secrets	9	1	2		12
Falsification of records by public officer	3	2	1		6
Fraud	1	2	2	2	7
Perjury	4	1			5
Stealing	13	7	5	4	29
Unlawful operation of a computer system	10	2			12
Other	9	1			10
SERIOUS IMPROPER	46	48	28	6	128
Assault	1	1		1	3
Conducting secondary employment	1	1		1	3
Disclosure of information	3		1		4
Drugs	10	7			17
Failure to disclose personal interest	1		8	1	10
Improper association	4	1			5
Improper conduct	16	30	12		58
Improper use of computers	2	3	1	1	7
Misuse of corporate credit card/Government funds		2	2	1	5
Misuse of leave entitlements	3	2			5
Other	5	1	4	1	11
TOTAL	110	79	44	17	250

*Total of 275 cases finalised, 25 were "outside ACC jurisdiction"

Substantiated Allegations:	70 cases	(28%)
Unsubstantiated Allegations:	54 cases	(22%)
Other Outcomes	126 cases	(50%)

1 July – 31 December 2002 (6 months) (cont)

Substantiated allegations (70 cases) resulted in:

Criminal Charges being laid against public officers	24 cases
Disciplinary Action taken against public officers	38 cases
Administrative Action taken by public authorities	8 cases

The following table provides detailed information about the outcomes of the 70 cases where the allegations were substantiated, the related alleged serious misconduct and the broad area of public administration of the public officers' who were subject of the allegations.

Substantiated Allegations: Investigation outcomes

Case	Public Office	Alleged Serious Misconduct	Investigation Outcomes
Explanatory Notes:			
*	Cases investigated by the ACC	PO	Public Officer
GD	Government Department	CC	Corrupt Conduct
LG	Local Government	Cr C	Criminal Conduct
OPA	Other Public Authority	SIC	Serious Improper Conduct
The notations (CC; Cr C; SIC) in the column 'Alleged Serious Misconduct' identify the broad category of allegations reported.			
Outcome -Administrative Action Taken (8 cases)			
1*	Police	Association, leading to gifts and favours CC	Relevant procedures on conducting investigations amended.
2*	GD	Corrupt conduct (Improper administration of trust fund) CC	Fund administration process amended (Person who was the subject of the allegations no longer a PO).
3	GD	Corrupt Conduct (Contravention of tendering process) CC	PO counselled. Relevant financial management policy reviewed.
4*	GD	Fraud Cr C	'Contracts' Quality Assurance policy and guidelines developed; All employees advised of secondary employment policy; Relevant management responsibilities amended.
5	LG	Falsification of records Cr C	Tendering policy and procedures enhanced.
6	OPA	Corrupt Conduct (Inappropriate use of funds) CC	Debt being recovered from PO.
7	OPA	Stealing (Goods) Cr C	Agency security arrangements enhanced. All employees advised harassment is a breach of agency values and Code of Conduct.
8	OPA	Assault (Inappropriate strip searching) SIC	Strip searching policy and procedures revised.

Case	Public Office	Alleged Serious Misconduct	Investigation Outcomes
Outcome - Disciplinary Action Taken (38 cases)			
9	Police	Disclosure of official secrets Cr C	PO received unfavourable reports for breach of Police Service Regulations
10	Police	Disclosure of official secrets (Improper release of confidential information) Cr C	PO informally counselled, and receiving training in ethical standards, integrity and conflict of interest issues.
11	Police	Disclosure of official secrets (Improper release - 'personal' information) Cr C	PO informally counselled. Guidelines formulated to ensure correct procedures followed in future.
12	Police	Disclosure of official secrets (Improper release - personal information) Cr C	PO informally counselled.
13	Police	Disclosure of official secrets (Improper release – traffic records) Cr C	PO informally counselled, unfavourable report on personnel file.
14	Police	Unlawful operation of computer system (improper disclosure – protected witness information) Cr C	Unfavourable report included in PO personnel file. Crime Management Training Unit developing training strategies and procedures to protect the identity of informants throughout the production of 'briefs'.
15	Police	Unlawful operation of computer system (Improper access – criminal record information) Cr C	PO formally counselled.
16	Police	Stealing (Goods) Cr C	PO informally counselled, to face disciplinary charge.
17	Police	Stealing (Goods) Cr C	WAPS Internal Investigations Unit found charges against PO to be not proven.
18	Police	Stealing (Money) Cr C	PO subject to disciplinary action under <i>Public Sector Management Act 1994</i> .
19	Police	Stealing (Goods) Cr C	PO subject of s.8 <i>Police Act</i> notice, suspended, disciplined, re-instated.
20	Police	Drugs (Lost after being seized) Cr C	PO charged with neglect of duty, Police Service Reg 402; PO Charged with attempt to induce a member of the Service to commit a breach of discipline Reg 622.
21	Police	Intent to pervert/defeat course of justice Cr C	PO demoted to rank of Snr Const for 12 months.
22	Police	Falsification of records Cr C	PO charged under C'th <i>First Home Owner Grant Act 2000</i> , awaiting action, may progress to Criminal Charges.
23	Police	'Other' Criminal Conduct (Fabricating evidence) Cr C	PO closely supervised and subject to ongoing performance reports.

JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION

Case	Public Office	Alleged Serious Misconduct	Investigation Outcomes
24	Police	'Other' Criminal Conduct (False claims about threats received) Cr C	Unfavourable report on PO personnel file.
25	Police	Disclosure of information SIC	PO counselled.
26	Police	Improper conduct (Assault) SIC	PO to be given 'developmental training' PO charged with breach of Police Service Regs.
27	Police	Improper conduct (Acting against duty regulations) SIC	2 POs charged with breach of Police Service Regs; Informally counselled about inefficient execution of duties, received unfavourable reports, working under strict supervision for six months and subject to monthly performance reviews.
28	Police	Improper conduct (Relating to security of seized goods) SIC	POs informally counselled for failure to perform duties in a proper manner.
29	Police	Improper association (Associating with known criminals) SIC	PO charged, reduced to rank of Sergeant for 6 months, subject to bi-monthly performance reporting.
30	GD	Gifts and favours (Offering benefits for sexual favours) CC	PO issued with formal warning, report on personnel file.
31	GD	Disclosure of official secrets (Improper disclosure – confidential traffic information) Cr C	PO charged with 3 counts of unlawful operation of computer system, suspended without pay, admitted charges, dismissed.
32	GD	Falsification of records Cr C	PO charged, pleaded guilty, sentenced to 12 months (100 hours) community based work.
33	GD	Improper use of computers (Accessing/distributing pornography) SIC	6 POs fined, 4 POs resigned, 3 POs on suspension, 1 PO counselled.
34	GD	Improper association (Relationship with student) SIC	PO reprimanded for minor breach of discipline.
35	GD	Improper conduct (Child pornography) SIC	PO charged with 2 counts of 'possessing indecent article', pleaded guilty, fined \$1,500 plus costs.
36*	GD	Improper conduct SIC	2 POs issued with discipline letters
37	GD	Improper conduct (Unapproved secondary employment) SIC	PO issued with formal reprimand.
38	LG	Gifts and favours (Free alcohol for improper use of equipment) CC	Relevant staff received disciplinary letters, advised of agency Code of Conduct and process of registering gifts.
39	LG	Stealing (Money) Cr C	PO dismissed.

Case	Public Office	Alleged Serious Misconduct	Investigation Outcomes
40	LG	Stealing (Goods) Cr C	PO dismissed, having admitted theft.
41	LG	Fraud Cr C	PO dismissed.
42	LG	Misuse of corporate credit card/Government funds SIC	PO served with formal written warning, money retrieved from PO.
43	LG	Misuse of corporate credit card/Government funds SIC	PO dismissed.
44	LG	Improper conduct (Discrimination) SIC	PO dismissed.
45	LG	Improper conduct (Favourable treatment) SIC	PO issued with written warning.
46	OPA	'Other' corrupt conduct CC	PO formally reprimanded, fined \$400, required to undertake management development course and course on Public Sector Code of Ethics and agency Code of Conduct.
Criminal Charges Laid (24 cases)			
47*	Police	Corruption – abuse of public office for benefit Cr C	2 POs – 18 months imprisonment (perjury, pervert course of justice), dismissed. 1 PO – 3 years imprisonment (perjury conspiracy to pervert course of justice), dismissed 2 POs – acquitted of conspiracy and perjury, 1PO resigned.
48	Police	Stealing (Money) Cr C	PO charged with 2 counts of stealing, retired on medical grounds.
49	Police	Unlawful operation of computer system, assault and damage Cr C	PO charged with Common Assault, Damage, Burglary and Commit Offence, and Stealing; pleaded guilty, sentenced to 12 month community based order; Spent convictions recorded against all charges.
50	Police	Drugs, Assault (Possession, intent to supply) SIC	PO pleaded guilty to assault occasioning bodily harm, fined \$1600, resigned.
51	Police	Misuse of leave entitlements SIC	PO pleaded guilty, fined \$500, ordered to pay restitution of \$180.92.
52	GD	Stealing (Money) Cr C	PO charged with 1 count of stealing, pleaded guilty, fined \$250, ordered to pay costs.
53	GD	Drugs (possession) SIC	PO charged, 1 count possession of prohibited substance, court action underway.
54	GD	Drugs (Supply) SIC	PO pleaded guilty to 1 count of supplying a prohibited drug, fined \$450.

JOINT STANDING COMMITTEE ON THE ANTI-CORRUPTION COMMISSION

Case	Public Office	Alleged Serious Misconduct	Investigation Outcomes
55*	GD	Drugs (Traffic & supply) SIC	PO charged (possession of prohibited drug, and implements, with intent to sell/supply), sentenced to 12 months imprisonment.
56	GD	Drugs (Cultivating, possessing cannabis) SIC	PO charged, spent conviction, PO ordered to pay fees and costs of \$128.
57	GD	Improper conduct (Sexual assault, indecent dealing) SIC	PO charged (sexual penetration, indecently dealing – child), charges dropped (witness not available), inquiries continuing.
58	GD	Improper conduct (Sexual assault) SIC	PO charged (1 count of sexual penetration), not proceeded with, PO resigned.
59	GD	Improper conduct (Sexual assault) SIC	PO charged (1 count of indecent assault), awaiting court action.
60	GD	Improper Conduct (Bodily harm) SIC	PO charged (common assault), charges subsequently withdrawn, NFA.
61	GD	Improper conduct (Indecent dealing) SIC	PO charged, convicted (3 counts of indecent dealing of a child under the age of 13), 12 months imprisonment converted to 24 months suspended sentence, PO resigned.
62	GD	Improper conduct (Indecent dealing) SIC	PO charged, convicted (sexual penetration/ indecent dealings – child) Contract not continued, file marked 'not for re-employment'.
63	GD	Improper conduct (Sexual assault) SIC	PO charged, convicted (sexual penetration/indecent dealings – child), suspended sentence 18 months, resigned.
64	GD	Improper conduct (Sexual assault) SIC	PO charged (8 counts of rape involving a minor, 5 counts of assault occasioning bodily harm, 1 count of deprivation of liberty and 1 count of indecent dealings of a minor under the age of 14 years), awaiting court action.
65	GD	Improper conduct (Sexual assault) SIC	PO charged with 1 count of indecent dealing and 1 count of sexual penetration. PO dismissed.
66	LG	Improper conduct (Sexual abuse) SIC	PO charged with sexual abuse against minors; imprisoned; PO resigned.
67	LG	Stealing (Goods) Cr C	PO charged with stealing as a public servant, PO dismissed.
68	OPA	Stealing (Money) Cr C	PO charged with 'stealing as a public servant' - found not guilty.
69	OPA	Stealing (Money) Cr C	2 POs convicted of 'stealing as a servant', dismissed. Revenue Supervisor demoted.
70	OPA	Improper use of computers (Possession of pornography) SIC	PO charged with possession of child pornography, awaiting court action.

The range of allegations addressed illustrates the extent of behaviour within the scope of corrupt, criminal and serious improper conduct.

In 27 cases the public officers involved were Police officers, and in 25 cases they were from government departments (GD). In 11 cases the public officers were engaged in Local Government (LG) and 7 were from other areas of public administration (OPA).

This information reveals that serious misconduct, when substantiated, is not tolerated by public authorities and that there are severe consequences for those public officers who are found to have breached certain ethical standards, acted dishonestly or engaged in criminal behaviour.

1 July – 31 December 2002 (6 months)

In summary, significant action taken against WA public officers included:

30 had serious Criminal Charges brought against them;

13 were subject to Disciplinary Charges, under the *Public Sector Management Act* or Police Service Regulations;

10 were formally or informally Counselling;

23 had their Employment Terminated, 13 being Dismissed and 10 Resigning;

4 were Suspended (some without pay);

12 were Fined; and

4 were Imprisoned, 2 for 18 months, 1 for 12 months and 1 for 3 years.

In at least 9 instances where investigations were carried out, changes aimed at preventing, or significantly diminishing opportunities for serious misconduct to occur, were made to public authority policies, systems and/or procedures.

In a number of other cases (involving a range of public authorities), although investigations did not result in allegations being substantiated, deficiencies in policies, systems and/or procedures were identified that warranted minor or substantial changes being made.

3. ROYAL COMMISSION:

The ACC continues to accord a high priority to supporting joint operations and other work with the Police Royal Commission (PRC). Substantial information has now been provided in respect of 366 ACC case files, most of it delivered to the Royal Commission on the same day as requested. The ACC staff assigned specifically to support the Royal Commission liaise closely with Commission staff on individual matters. Royal Commission staff also have unfettered access to any other ACC personnel who have more detailed knowledge of, and can provide assistance on, particular cases.

To date the focus of Royal Commission public hearings has been principally on matters that have been the subject of extensive ACC inquiry/investigations. These investigations have included issues concerning - Kalgoorlie Detectives, the Armed Robbery Squad, computer access, and current allegations involving (PRC) witness L5 (formerly ACC RI 41).

The ACC has worked closely with the PRC in the public hearings that have dealt with unauthorized access of Police computer information.

The ACC has also worked on joint operations with the PRC. In some, the ACC has deployed the full range of its technical resources, including investigation, intelligence and surveillance (both physical and electronic).

Whilst unable to provide specific information about current joint investigations, suffice it to say that ACC assistance involves all aspects of its operational capabilities and remains a significant focus for the Operations Area.

The ACC made submissions to, and attended, the round table conferences being conducted by the Royal Commission on the topics of 'civilian oversight of the WA Police Service' and, 'information management and security'. It will be represented at the forthcoming forums addressing 'corruption prevention strategies' and subsequently a range of aspects of the 'Professional Standards Portfolio of WAPS'.

4. JOINT/COLLABORATIVE ACTIVITIES:

As mentioned above, the primary focus of ACC 'joint task force' activities since July 2002 has been in relation to matters being addressed by the Police Royal Commission. But, 3 joint operations have been carried out with other agencies.

Recently concluded was the joint task force operation with the WA Police Service (IAU) which involved the charging of Tomkinson and two others on serious drugs and criminal offences. Two further joint operations with the IAU, involving allegations of serious criminal and serious improper conduct by serving officers that is believed to be on-going, are about to proceed. Additionally, there is involvement in a joint task force with the Department of Education addressing allegations of serious fraud against a public officer.

5. CO-OPERATIVE/ SUPPORT AGREEMENTS:

In the period July 2002 to March 2003 the only changes made in respect of the current Memoranda of Understanding were in relation to the (Queensland) Crime and Misconduct Commission whereby a new agreement (replacing that with the previous Crime and Justice Commission) was signed, and arrangements with the Royal Commission into the Building and Construction Industry lapsed following conclusion of that inquiry.

6. POLICIES AND PROCEDURES:

The ACC has concluded the major enhancement of its 'Investigation Standard Operating Guidelines' aimed at ensuring contemporary 'best practice' in the conduct of investigation/inquiry activities. Where relevant, practices were benchmarked against those in other like agencies.

The comprehensive policies, procedures, standards and audit controls relative to Telecommunications Interception and electronic surveillance that have been progressively implemented over the past 18 months have been, more recently, subject to further enhancement to ensure strict compliance with Commonwealth and State legislation and regulations relating to confidentiality, information integrity and privacy protection.

Collectively, these Operations policies and procedures provide a sound foundation for guiding, managing and evaluating the full range of investigation activities.

7. INFRASTRUCTURE DEVELOPMENTS:

Telecommunications Interception and Electronic Surveillance facilities –

Over the past 9 months these facilities have been operating 7 days per week, mostly from 7 am to 10 pm weekdays and 9 am to 5pm weekends. However a number of investigation activities have warranted TI operating over longer periods on occasions. The technical infrastructure and operating procedures have consistently delivered effective and efficient outcomes.

Around mid 2002 the Police Service approached the ACC with a proposal to share some of the technical infrastructure, as a cost beneficial alternative to complete replacement of their existing, and significantly dated, TI installation.

The Police Service has been particularly impressed with the capabilities of the ACC installation and is keen to have access to such a capability. It is possible to compartmentalise the system in order to isolate interception capabilities for two or more agencies, thereby maintaining operational (target) security and ensuring that individual agency objectives are in no way compromised.

Based on a careful evaluation, the Commission is satisfied that such an approach would be technically and operationally viable, and is attracted to the benefits of enhanced technical support (from the system supplier) which would inevitably result from a greater presence of the product in this State. It has been estimated that initial savings to the Police Service could be in the vicinity of \$800,000, and future savings would accrue to Government through the sharing of operating costs and system enhancements.

This proposal is to be put to Government in light of the pending establishment of the Corruption and Crime Commission.

Electronic Records and Document Management system –

Technical implementation of this system was completed, on schedule, by the end of December 2002. All staff have been trained, business rules have been established and from the start of March 2003 the system went 'live'. Progress to date has been very good with administrative files, documents and directories being progressively taken up into the system. User acceptance has been high. Further development will continue as more facets of the agency's records are transferred but, at this stage, the system is living up to expectations and will provide the benefits of enhanced document management.

Information and Technology Security -

The policy, practice, system and procedural changes recommended from the comprehensive security audit were implemented, on schedule and on budget, by the end of December 2002. The ACC technical and information environment is now in compliance with the relevant areas of AS/NZ standard 4444, ensuring agency confidence in being able to maintain the integrity, security and confidentiality of its sensitive information and systems. An ongoing audit regime has been put in place and an array of system reports are being evaluated to ensure effective security management.

8. COMMISSION MEETINGS:

In the 9 months from 1 July 2002 to 31 March 2003, the Commission met on 24 occasions, holding 8 special meetings to deal with specific priority matters and 16 regular meetings at which current operational and administrative matters were considered.

9. ADMINISTRATION:

ACC Budget -

Source of Expenditure	Budget Allocation 2002-03 (\$'000)	Expenditure and Commitments to 31 December 2002 (\$'000)
Salaries and Allowances	5,704	2,237
Other Expenditure -		
Executive	604	340
Operations	1,465	856
Business Services	3,116	1,211
IT	1,057	742
Police Royal Commission	-	11
Total	11,946	5,397

Human Resources –

Between 1 July 2002 and 31 March 2003 the ACC employed 19 new staff and 13 staff left the organisation.

The profile of the new appointees is:

Positions	No. of appointees	Gender	
		Male	Female
Investigator	8	1	7
Electronic Surv. Officer	2	2	
Surveillance Officer	2	1	1
Technical Officer	1	1	
Investigative Assistant	3		3
Admin. Assistant – Exec.	1		1
Supervisor ESU	1	1	
Director Operations	1	1	

As at 31 March 2003, 85 people were employed in the ACC:

Area	No. of personnel		
	Males	Females	Total
Commission	2	1	3
Executive	2	3	5
Operations -			
Investigations	13	19	32
Electronic Surveillance unit	9	1	10
Intelligence unit	3	3	6
Special Projects unit	8	3	11
Business Services	10	8	18
Total	47	38	85

Industrial Relations –

The matter of the workplace Improvement Notices issued by the WorkSafe Western Australia Commissioner in May 2002 has been concluded.

On 6 December 2002 the ACC CEO wrote to the WorkSafe Commissioner seeking a resolution, following a period of ongoing (personal and written) contact between the two organisations about the basis for and validity of the Notices. In that approach (6 December), apart from restating its concerns about the process leading to and the serving of the Notices, the ACC expressed a strong desire to avoid further discord, acknowledged that the issues raised by a number of staff had to be addressed, and outlined a range of actions that had been taken over the previous 2 years (both independently by management and, in response to particular issues raised) to enhance overall agency administration.

The WorkSafe Commissioner's response (19 March 2003) acknowledged the improvements that had been implemented and agreed that no further action needed to be taken in respect of the Notices.

APPENDIX THREE

LETTER FROM ANTI-CORRUPTION COMMISSION

Our Ref: #27636 3233/2002

ANTI-CORRUPTION COMMISSION

13 March 2003

The Hon D Tomlinson MLC
Chairman
Joint Standing Committee on the Anti-Corruption Commission
Parliament House
WEST PERTH WA 6005

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Perth, Western Australia 6000
Telephone: (08) 9213 4300
Facsimile: (08) 9322 4329
Freecall: 1800 653 622
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All Correspondence to:
PO Box Z5068
St George's Terrace, Perth
Western Australia 6831
ABN 18 449 403 096

Dear Mr Tomlinson

Re: Jurisdiction of Anti-Corruption Commission

The Commission has recently been considering certain matters relating to Acacia Prison. During the course of its inquiries it was discovered that certain officers, employed by the contractor at the prison, were not public officers.

Under the *Prisons Act* persons, who hold permits issued under that Act to engage in high security work, are deemed to be public officers. The jurisdiction of the Commission, under *the Anti-Corruption Commission Act 1988*, extends only to officers who are public officers. The consequence is that there are officers who work in the prison who do not come within the jurisdiction. This seems an anomalous situation given that allegations against prison officers, in other prisons, doing equivalent jobs are within the jurisdiction of the Commission. Similarly, other officers at Acacia, who happen to hold the relevant permit, are within the jurisdiction of the Commission.

The result of this interpretation is that a small group of contract employees working within a private prison escape the jurisdiction of this Commission while all prison officers in State prisons and all permit holders in private prisons do not.

The Commission has written to the Attorney to consider whether some change to the law is necessary. The Attorney has indicated that it has been determined no change will be made.

The Commission believes it is highly desirable that it have jurisdiction over all officers in Acacia Prison as many of the officers who do not have high level clearances work in areas where there is a higher than usual risk of compromise.

Yours sincerely

T E O'Connor QC
CHAIRMAN

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APPENDIX FOUR

LETTER FROM ICAC

ICAC

INDEPENDENT COMMISSION AGAINST CORRUPTION

31 March 2003

The Hon Derrick Tomlinson MLC
Chairman
Joint Standing Committee on the Anti-Corruption Commission
Parliament of Western Australia
Parliament House
PERTH WA 6000

Dear Mr Tomlinson

Re; Jurisdiction over prison officers

I refer to your letter of 27 March 2003 regarding the jurisdiction of the ACC over officers who work within the private prison system but who do not come within the ACC's jurisdiction.

Your letter indicates that you would be seeking the advice of interstate anti-corruption agencies such as the ICAC to ascertain whether they have faced similar issues~

There is currently in NSW one private operated and managed correctional facility in being the Junee Correctional Centre located in south western NSW.

While a privately managed facility, Australasian Correctional Management (ACM), which won the contract to operate the facility, remains responsible to the Commissioner of Corrective Services for the security, supervision, custody and welfare of inmates of the Junee Correctional Centre. Prison officers stationed at the centre remain in the employ of the Department of Corrective Services and as such are "public officials" for the purposes of the *Independent Commission Against Corruption Act 1988* ("the Act").

In this respect section 3 of the Act provides as follows;

"public official" means an individual having public official functions or acting in a public official capacity, and includes any of the following:

- (a) the Governor (whether or not acting with the advice of the Executive Council),
- (b) a person appointed to an office by the Governor,

- (c) *a Minister of the Crown, a member of the Executive Council or a Parliamentary Secretary,*
- (d) *a member of the Legislative Council or of the Legislative Assembly,*
- (e) *a person employed by the President of the Legislative Council or the Speaker of the Legislative Assembly or both,*
- (f) *a judge, a magistrate or the holder of any other judicial office (whether exercising judicial, ministerial or other functions),*
- (g) *an officer or temporary employee of the Public Service or a Teaching Service,*
- (h) *an individual who constitutes or is a member of a public authority,*
- (i) *a person in the service of the Crown or of a public authority,*
- (j) *an individual entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (d) of the definition of “**public authority**” is kept, of attending meetings or carrying out the business of any body constituted by an Act,*
- (k) *a member of the Police Force,*
- (k1) *an accredited certifier within the meaning of the Environmental Planning and Assessment Act 1979,*
- (l) *the holder of an office declared by the regulations to be an office within this definition,*
- * (m) *an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of a public authority or any person or body described in any of the foregoing paragraphs.*

Applying the factual circumstances as outlined in your letter to NSW. in light of the definition of public official” as set above, the ICAC would regard such persons as exercising “public official functions” and therefore within its jurisdiction.

I trust this information is of assistance to your Committee when it meets to discuss this issue further.

Yours faithfully

John Pritchard
Solicitor to the Commission

APPENDIX FIVE

LETTER FROM CRIME AND MISCONDUCT COMMISSION

CRIME AND MISCONDUCT COMMISSION

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Our Reference: JAFR

31 March 2003

The Honourable Derrick Tomlinson MLC
Chairman
Joint Standing Committee on the Anti-Corruption Commission
Parliament of Western Australia
Parliament House
PERTH WA 6000

Dear Mr Tomlinson

I refer to your letter of 27 March 2003 concerning the lack of jurisdiction of the Anti-Corruption Commission (ACC) in relation to officers employed by a contractor at a private prison.

You seek the Crime and Misconduct Commission's (CMC) advices in relation to the issue.

The situation that pertains in Western Australia existed in Queensland until 2001. In that year there were amendments to the *Corrective Services Act 2000* to confer jurisdiction on the then Criminal Justice Commission (CJC) in relation to private prisons.

When the CJC merged with the Queensland Crime Commission to form the CMC on 1 January 2002, the jurisdiction over private prisons was maintained.

Under section 196 of the *Corrective Services Act 2000* the Chief Executive Officer of the Department of Corrective Services is empowered to engage service providers. This enables the Department to engage service providers to operate private prisons, and a number have been engaged. By virtue of the provisions of section 197(2) of the *Corrective Services Act 2000* jurisdiction is conferred on the CMC in relation to those providers who are prescribed by regulation. A number of providers who operate private prisons have been prescribed by regulation.

I will set out section 197(2) in full:

- 197 Acts applying to engaged service providers
- (2) *The Crime and Misconduct Act 2001* applies to an engaged service provider, prescribed under a regulation, as if—
- (a) the provider were a unit of public administration; and
- (b) the holder of a specified office, prescribed under a regulation of the provider were the principal officer; and
- (c) a person employed by the provider were a person holding an appointment in a unit of public administration.

The effect of these statutory provisions is that the CMC has jurisdiction to investigate allegations of official misconduct in relation to a person employed by an engaged service provider as if that person had held an appointment within the public sector (unit of public administration).

I trust this is of assistance to you.

Yours sincerely

BRENDAN BUTLER SC
Chairperson