

# Reflections and Recommendations on Corruption

18 June 2025



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**The reason for this report on an administrative matter -  
*Corruption, Crime and Misconduct Act 2003 s 88***

I shall be retiring on the 30th of June 2025 after nine years in office as Corruption and Crime Commissioner.

A Joint Standing Committee on the Corruption and Crime Commission has recently been appointed. The Standing Committee members have not previously served.

The purpose of this policy Report is to give an account of the administration of the Commission over the past decade and, importantly, to provide an easily accessible guide for the Joint Standing Committee. The Report also makes recommendations for consideration.

The Commission has a Deputy Commissioner who acts whenever there is a vacancy in the office of the Commissioner. The Honourable Michael Corboy SC, a former Supreme Court Judge for 13 years, has been Deputy Commissioner for the past year and is eminently suited to act in the office of Commissioner.<sup>1</sup>

I am honoured to have been given the opportunity to serve the State as Commissioner.



The Honourable John McKechnie AO, KC

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<sup>1</sup> *Corruption, Crime and Misconduct Act 2003, s 13A(b)(a).*

## FOREWORD

- [1] November 2014. I was 64 years old and approaching the 16<sup>th</sup> anniversary of my appointment as a Judge of the Supreme Court of Western Australia. Life as a judge was busy and challenging. At that time, the court had fewer judges than its full complement and all of us were putting in effort to ensure delays in hearings did not blow out. This was especially so in the criminal jurisdiction where a person might be held in custody for months or years awaiting trial.
- [2] I had recently evaluated my life and decided to continue as a judge until what is colloquially known as 'statutory senility' - the age of 70 when a judge must retire.
- [3] I was enjoying judicial work. It may sound self-righteous, but judges genuinely do try to '*administer justice to all without fear or favour, affection or ill will*' to quote the oath every judge must take.
- [4] In the 9 years preceding my appointment as a judge I had been Director of Public Prosecutions (DPP), responsible, among many other things, for the administration of a busy public authority. As a judge I was responsible for only two people, my long-time associate and my orderly.
- [5] All that changed early one Saturday morning.
- [6] I opened the West Australian newspaper and sipped my tea as I read yet another public skirmish between the Corruption and Crime Commission and the Parliamentary Inspector of the Commission, Michael Murray AM, QC.
- [7] I had known Michael since 1976 when I joined the Crown Solicitor's Office and he was a young Chief Crown Prosecutor. Over the years we had become friends, and I had followed him in jobs culminating in my present role as Senior Judge of the General Division.
- [8] As a prosecutor and judge he was meticulous and logical. Gentle in mien, I had never heard him angry or raise his voice.
- [9] In November 2014, there were two Acting Commissioners. They were Christopher Shanahan SC, a barrister and, since January 2025, Chief Justice of Tasmania, and Neil Douglas, a solicitor and partner in a distinguished law firm.
- [10] To keep up with demands on their time, they became in effect FIFO Commissioners, turn and turnabout.
- [11] Roger Macknay had retired as Commissioner 7 months earlier on the 14th of April 2014, and the search for a full-time replacement was ongoing. The

nominations committee under the *Corruption, Crime and Misconduct Act* required three names to place before the Premier for consideration and was struggling to find even one. The Chair of the committee, Chief Justice Wayne Martin AC and I had approached many current and former judges and others. My sales pitch usually concluded with the individual saying "well if it is such a good job, why don't you take it".

- [12] But I was settled as a judge. Becoming Commissioner was an irrevocable step away from judicial life.
- [13] To return to November 2014. The Parliamentary Inspector of the Corruption and Crime Commission had published a report critical of the Commission on the 15th of October 2014. Acting Commissioner Douglas returned fire in a report dated 14 November 2014. It was this report that formed the basis of the West Australian's coverage.
- [14] I was distressed. As DPP I had personally prosecuted and overseen prosecutions stemming from alleged corruption of one form or another including matters arising from the collapse of the WA Teachers' Credit Society Ltd, Swan Building Society and Rothwells Ltd, and indictments against local government officials and politicians. This included three former Premiers, a former Deputy Premier, a member of Parliament, and local government councillors.
- [15] I knew firsthand that the State wanted a functioning effective corruption agency.
- [16] Yet here it was, in open dispute with its own watchdog. No wonder government and the Joint Standing Committee were frustrated.
- [17] All weekend I pondered whether I should put my name forward as a candidate. I was clear eyed about the challenges. The general feeling in the legal profession was the Commissioner's job was a poisoned chalice. (Lawyers are not very innovative when it comes to cliches).
- [18] I was reluctant to leave the Supreme Court bench, and I do not have a messianic complex. But I thought my years in the law and my general experience might help.
- [19] After discussing with Michael Murray who was about the only person I could, on Monday morning I rang the Chief Justice to advise that I would be applying for the role of Commissioner when it was next advertised.
- [20] And so began a journey that has lasted 10 years. I served five years but was not immediately reappointed. I commenced my second and final five-year term on the 28th of June 2021. The *Corruption, Crime and Misconduct Act* had been amended to provide for my appointment.

- [21] Inevitably there have been high points and low points. But I have never once regretted my decision to leave the bench and serve as Commissioner.
- [22] My first appointment as Commissioner, Corruption and Crime Commission was dated 1 April 2015, April Fool's Day, to take effect for a period of five years from 28 April 2015.
- [23] After being sworn in by the Chief Justice in the presence of the two Acting Commissioners, we walked back to the Commission's headquarters at 186 St George's Terrace, Perth. It was in a WA Inc building. Built and owned by FAI Insurances, who had been persuaded to back the Rothwell's rescue, it was agreed that the WA Government would tenant the whole building for a lengthy period.
- [24] It was a terrible building. It had windows only at each end. For the rest it was dark walls, jammed as it was between two other buildings. Because it was long and narrow with directorates on different floors, it encouraged a silo effect on staff and limited knowledge sharing. After 10 years, the furniture was getting shabby. An exception was the hearing room where examination of witnesses, privately and publicly, took place. I had firsthand experience, appearing in the Commission as a witness to be examined over my role as DPP in the Mallard prosecution. I gave evidence before Acting Commissioner Dunford, a learned former New South Wales Supreme Court Judge.
- [25] Still, the building was what we had. Best to make do and get productive.
- [26] I soon discovered that the Commission was far from a poisoned chalice. Some staff had been dismissed. Others had resigned or their contract of employment not renewed.
- [27] Those who remained continued their work without pause.
- [28] The Acting Commissioners had done an excellent job of refocusing the Commission.
- [29] All that was wanted was a full time Commissioner.
- [30] In 2018, the Commission moved to more appropriate premises. In Northbridge the Commission occupies a full floor and the silos have disappeared.
- [31] As my term was approaching its end in 2020, I considered whether to continue. I enjoyed the work and was in good health. On the other hand, there were other things I wanted to do. Eventually, I decided to put my name forward for consideration.

- [32] The process for appointment is convoluted. A nominating committee chaired by the Chief Justice must submit three names to the Premier. From those names, the Premier recommends the appointment of a person.
- [33] In 2020, the name of the person recommended by the Premier was required to be put to the Joint Standing Committee, who had to agree to the nomination by bipartisan majority.
- [34] Despite a letter in favour of my reappointment by the Leader of the Opposition, my nomination did not attract the 3 out of 4 bipartisan votes necessary for reappointment.
- [35] The Joint Standing Committee did not ever respond to a request seeking reasons for its decision.
- [36] So, on the 28<sup>th</sup> of April 2020, my term expired and yet again, an Acting Commissioner, this time Mr Scott Ellis, was thrust into running the Commission. The State is fortunate that he proved more than capable despite the severe imposition.
- [37] I settled into easy retirement and kept busy with other projects.
- [38] It coincided with the worst of the Covid pandemic, when all of the country to varying degrees was confined to their homes.
- [39] The Premier, Mark McGowan, was outraged at what had occurred, as was the Attorney General John Quigley.
- [40] Mr McGowan made the reappointment an election issue. WA Labor was returned to office in 2021 and he immediately set in train an amendment to the *Corruption, Crime and Misconduct Act* to validate my appointment. The amendment passed through Parliament.
- [41] On the 28<sup>th</sup> of June 2021, accompanied by Scott Ellis, I attended upon the Chief Justice and, for a second time, took the oath of office.
- [42] And so, to work again.

# Chapter One

## The Evil of Corruption

*The only thing necessary for the triumph of evil is for good people to do nothing.*

- [43] Whether Edmund Burke, an Irish statesman, actually said these precise words is disputed but he certainly did write:

*When bad men combine, the good must associate; else they will fall, one by one, an unpitied sacrifice in a contemptible struggle.*

- [44] He wrote these words at a time of great upheaval and danger with revolutions soon to come in America and France. Smallpox, cholera, tuberculosis were rampant diseases, their death tolls leaving Covid in their wake.

- [45] The minor prophet Micah, writing in about 700 BCE, nearly 3,000 years ago railed against the rulers who built Zion with blood and Jerusalem with wickedness. Its rulers give judgment for a bribe; its priests teach for a price; its prophets give oracles for money.<sup>2</sup> So bribery is not a modern issue.

- [46] Transparency International speaks of the effects of corruption:

*Corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis.*

## What is Corruption?

- [47] Corruption, as defined in the Oxford English Dictionary, has a number of meanings. In order to select the correct meaning, it is necessary to know the context in which it is used. In the *Corruption, Crime and Misconduct Act* and in the *Criminal Code* the most apt definition is "perversion of a person's integrity in the performance of (especially official or public) duty or work by bribery etc".

- [48] The Macquarie Dictionary defines corrupt as an adjective, "dishonest; without integrity; guilty of dishonesty, especially involving bribery".

- [49] There are three common forms of corruption.

- [50] The first is a bribe. Money or something else valuable is given to an official in return for a favour.

- [51] The second form of corruption is abuse of office. An office holder might be entitled to do something but instead acts from a dishonest motive.

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<sup>2</sup> Micah 3.11.

- [52] A third form is misusing information that came to the officer in the course of their duties.
- [53] A modern example of misusing information is from a Commission investigation some years ago. A woman employed by the Department of Transport was giving information about addresses to a drug dealer who needed to find out where people who owed him money were living.
- [54] Standard Australia's *AS 8001:2021 - Fraud and Corruption Control* [1.4.8] defines 'corruption' as:
- Dishonest activity in which a person associated with an organisation (eg director, manager, employee or contractor) acts contrary to the interests of the organisation and abuses their position of trust in order to achieve personal advantage or advantages for another person or organisation.*
- This can also involve corrupt conduct by the organisation or a person purporting to act on behalf of and in the interests of the organisation in order to procure some form of improper advantage for the organisation either directly or indirectly.*
- [55] Based on *AS 8001:2021* the Auditor General of Western Australia has published a Fraud Risk Management Better Practice Guide, which should be used by all public authorities.<sup>3</sup>
- [56] In Western Australia, bribery involving a public officer and corruption by a public officer are crimes punishable by imprisonment for 7 years.<sup>4</sup>
- [57] Bribery of a foreign official is an offence under the Commonwealth Criminal Code, punishable by imprisonment for 10 years.<sup>5</sup> If committed by a corporation, the punishment is 100,000 penalty units.<sup>6</sup>
- [58] In *Western Australia v Brian Thomas Burke [No 3] [2010] WASC 110 [74(3)]* Murray J observed:
- The word "corruptly" is not defined in the Code. It is to be given its ordinary meaning which, in my opinion, when one is concerned with the quality of the act or omission which is said to be corrupt, will involve the notion that there has been a dereliction of duty, an element of fault, some perversion of the proper performance of the duties of office.*
- [59] Judicial authority does not regard dishonesty as an element of a corruption offence. There is likely to be some deceptive conduct to camouflage a corrupt purpose. Such deception may lead to an inference of corruption.

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<sup>3</sup> <https://audit.wa.gov.au/reports-and-publications/reports/fraud-risk-management-better-practice-guide/> (accessed 10 June 2025).

<sup>4</sup> *Criminal Code* (WA) ss 82 - 83.

<sup>5</sup> *Criminal Code* (Cth) s 70.2(3).

<sup>6</sup> *Criminal Code* (Cth) s 70.2(4).

- [60] In the United Kingdom juries are directed that "corruptly" is a simple English adverb which does not mean dishonesty, but rather purposely doing an act which the law forbids as tending to corrupt: *R v Wellburn, R v Nurdin, R v Randel* (1979) 69 Cr App Rep 254.
- [61] The Wellburn direction has been criticised in *Broom v Police* [1994] 1 NZLR 680 at 688 as "open to the dual criticism of being both unhelpful and potentially circular". This criticism has substance.
- [62] In *DPP v Hogarth* (1995) 93 A Crim R 452 corruption is not to be equated with dishonesty and dishonesty does not necessarily connote corruption.

### **Illustrations from the cases**

- [63] The following illustrations demonstrate that the conduct which may be capable of being regarded as corrupt conduct is varied and diverse:
- Justices of the Peace refusing to grant licences to publicans who have voted against their recommendation of candidates for Members of Parliament.<sup>7</sup>
  - A senior civil servant in a corporate affairs office who had a personal interest in the outcome of negotiations that shares in a company are not delisted.<sup>8</sup>
  - A police officer stationing a breathalyser unit outside a hotel because the hotel had declined to employ his daughter.<sup>9</sup>
  - Police officers disclosing confidential information to friends or associates, private investigators and suspected offenders.<sup>10</sup>
  - Employees of public authorities assessing or disclosing confidential information for personal or other unauthorised purposes.<sup>11</sup>
  - A police officer using a database to obtain details of victims, witnesses or suspects for pursuing a sexual relationship.<sup>12</sup>
  - A police officer receiving sexual services in return for not taking action against a brothel.<sup>13</sup>

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<sup>7</sup> *R v Williams* (1762) 3 Burr 1317.

<sup>8</sup> *R v Campbell* [1967] 2 O.R. 1; [1967] 3 C.C.C. 250.

<sup>9</sup> *Willers v R* (1995) 81 A Crim R 219.

<sup>10</sup> *R v Woodall* [2003] EWCA Crim 2345; *DPP v Marks* [2005] VSCA 277.

<sup>11</sup> *R v Pike-Williams* [2004] EWCA Crim 2400.

<sup>12</sup> *R v Lewis* [2010] 2 Cr App R (S) 104.

<sup>13</sup> *R v Smith* [1993] 1 Qd. R. 541.

- A tax officer copying and taking home taxpayers' private data for personal purposes.<sup>14</sup>
- A public officer providing confidential information to a tenderer for a public contract.<sup>15</sup>
- A doctor at a public hospital copying patients' personal particulars to solicit business for his new private medical practice.<sup>16</sup>
- Public officers directing subordinates to perform more work and use public resources for the officers' personal purposes including directing them to engage in political activities or make political donations.<sup>17</sup>

## **Corruption is a global problem**

- [64] Corruption is a global problem. The United Nations Secretary General has estimated the annual cost of international corruption amounts to 5% of gross GDP, or \$3.6 trillion.
- [65] The United Nations has recognised the dangers of corruption. The millennial goals were replaced in 2016 by the sustainable development goals. Goal 16 is 'peace, justice and strong institutions'. Target number 5 under that goal is: substantially reduce corruption and bribery in all their forms.
- [66] Each year Transparency International publishes a Corruption Perception Index, listing 180 countries. New Zealand and Denmark rank equally as number 1 countries least perceived as corrupt. South Sudan and Somalia round out the list as the most likely to be corrupt.
- [67] In the 2024 Index, Australia with Ireland and Iceland rank equally as number 10, meaning that Australia is not perceived as particularly corrupt. This accords with the Commission's experience.
- [68] Although Australia is regarded as a low corruption risk, 'low' does not mean 'no'. Allegations reported to the Commission which have substance show that vigilance is necessary. Anyone can write good policies for corruption prevention. It is living them which is the challenge. In many matters notified to the Commission, the public authority had adequate procedures for corruption prevention. They were not enforced.

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<sup>14</sup> *HKSAR v Chu King Kwok* [2010] HKCFI 343.

<sup>15</sup> *R v Eckhel* (1982) 7 WCB 317.

<sup>16</sup> *Chan Tak Ming v HKSAR* [2011] 1 HKLRD 766.

<sup>17</sup> *State v Kollarik* (1956) 126 A.2d 875; *R v Sheets* [1971] SCR 614.

## Failing to Report Corruption

- [69] It is part of the Australian tradition that we are not 'dobbers'. It starts at school, where peer pressure is exerted to prevent students reporting poor conduct to teachers. The result of going against the group may be ostracism, bullying and generally unfair treatment. These attitudes can carry over into adulthood and have the potential to be prevalent amongst closed communities.
- [70] Although it is an Australian tradition, it is far from a fine tradition. Invariably, the only person who benefits from it is the law breaker or the corrupt public officer. In school, those who were innocent of the offending often were made to suffer, for example when a teacher imposed a group punishment on a class for the actions of one or two.
- [71] The innocent and the righteous do not need the protection afforded by the anti-dobbing tradition; only the law breakers do. So, it is a strange tradition and one which is wholly inimical to openness and accountability, two virtues in public administration.
- [72] It is not a culture tolerated by anyone with responsibilities for good governance or respect for the rule of law.
- [73] Many uniformed organisations consciously develop a spirit of camaraderie and esprit de corps which marks the members as special or different. Military forces and police forces are obvious examples but so also are prison officers, particularly those in specialist divisions. Department of Fire and Emergency Services employees or volunteers are another group. While the establishment of a spirit of group reliance and strong bonds has many positive effects, it can lead to an overly protective shield against reporting misconduct or dobbing someone in.
- [74] The *Corruption, Crime and Misconduct Act* makes reporting an allegation of misconduct mandatory for some officials.<sup>18</sup> This is a significant deterrent measure.
- [75] It is therefore harder for a public authority to sweep the alleged misconduct under the carpet, perhaps by moving suspected officers to another division or public authority.

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<sup>18</sup> *Corruption, Crime and Misconduct Act* ss 28 - 29.

## **Chapter Two**

### **Origins of the Corruption and Crime Commission**

- [76] The Corruption and Crime Commission is three Commissions in one. It is:
- A public sector misconduct commission;
  - A police misconduct commission; and
  - A crime commission.
- [77] Hong Kong established the first common law commission against corruption as long ago as 1974. Its particular target was corrupt police and public servants.
- [78] New South Wales established an Independent Commission Against Corruption (ICAC) in 1989, the first Commissioner Ian Temby AO, KC, a West Australian and a former Commonwealth DPP. There are now anti-corruption commissions in the Commonwealth and every state and territory.

### **A Public Sector Misconduct Commission**

- [79] The Commission's predecessors grew out of the politics surrounding what has become known as the WA Inc era, the era of the Burke and Dowding governments from 1983 to 1991. Due to political pressure at the end of 1988, Parliament enacted an act to appoint an Official Corruption Commission. It was headed by a retired Supreme Court Judge, the Hon John Wickham, QC. Its basic functions were to receive information about corruption, consider whether the matter should be referred to a body empowered by law to investigate and take action, and consider any response from a body to which a matter was referred. It had jurisdiction over public officers including members of Parliament. There was only one member of staff, the Executive Officer.
- [80] To the cynical, it might be thought that the Official Corruption Commission was designed to deflect attention and had few powers of its own. It did little work of any value.
- [81] The Official Corruption Commission morphed into the Anti-Corruption Commission. The functions were expanded to give it power to carry out further action in relation to allegations itself and to furnish reports and make recommendations. By this time, the Royal Commission into commercial activities of government and other matters (known as the Royal Commission into WA Inc) had reported to Parliament and the strengthening of the Anti-Corruption Commission was one of a number of measures that took place as a result of both its recommendations and those of the

subsequent Commission on Government (the Gregor Commission). Another innovation arising from these Royal Commissions was the Public Sector Standards Commissioner.

## **A Police Misconduct Commission**

- [82] Continuing disquiet about the activities of the WA Police Force led to a 2001 Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian police officer (known as the Police Royal Commission), presided over by the same person who had been the Principal Royal Commissioner of WA Inc, the Hon Geoffrey Kennedy AO, QC. The Police Royal Commission found significant corruption within WA Police. It noted that WA Police did not even have a corruption prevention plan.
- [83] In its interim report, the Police Royal Commission recommended the establishment of a Corruption and Crime Commission. The government, and particularly the Attorney General the Hon Jim McGinty, acted promptly.
- [84] Parliament enacted what is now the *Corruption, Crime and Misconduct Act 2003*, which created the Corruption and Crime Commission to deal with serious misconduct within the WA Public Service and the WA Police Force. Its reach extends to elected officials, Ministers, Parliamentarians and local government Councillors, as well as traditional public servants.
- [85] The *Corruption, Crime and Misconduct Act* established a permanent Commission as a body corporate with perpetual succession.
- [86] Legal proceedings may be taken against the Commission in its corporate name. Functions in respect of serious misconduct, police misconduct, and unexplained wealth and criminal benefits are vested in the Commission.
- [87] The Commission is a chimera. It is a body corporate by law but an incorporeal entity in the real world. There is a Commissioner who, in the name of the Commission, performs the functions of the Commission.
- [88] There is also a Deputy Commissioner with similar powers to the Commissioner, and an Acting Commissioner.
- [89] It is overseen by the Parliamentary Inspector and the Joint Standing Committee on the Corruption and Crime Commission, a bi-partisan Committee comprising members of both Houses of Parliament.
- [90] There have been three full time Commissioners, each of great integrity. The inaugural Commissioner was Kevin Hammond AO, Chief Judge of the District Court. The second Commissioner was the Hon. Len Roberts-Smith RFD, KC, a Judge of the Court of Appeal. The third was a retired District Court Judge,

Roger Macknay KC. Each retired from office as Commissioner during their first term.

- [91] During the interregnum between Commissioners, Acting Commissioners led the organisation. This was unsung and meritorious service. All were practicing lawyers who had to juggle their practices with the demands of the Commission. Sometimes the gap between Commissioners exceeded one year.
- [92] The purpose of an Acting Commissioner is to act when the Commissioner had a conflict of interest in a particular matter or was busy with other matters. It was not envisaged they may have to act for more than 12 months and run the Commission. This has happened more than once. During the 14 months between Commissioners in 2020 to 2021, Mr Scott Ellis, Acting Commissioner, capably continued the work of the Commission despite the impact on his legal practice.

## **A Crime Commission**

- [93] At the beginning of the 21st century the threat of outlaw motorcycle gangs (OMCGs) was considered to be a challenge to law and order and Parliament enacted legislation designed to allow OMCG clubs to be de-fortified. The function of approving such an action was vested in the Commission.
- [94] Corruption, or to give it the technical name under the *Corruption, Crime and Misconduct Act*, serious misconduct, was not the only function entrusted to the Commission. Following *Ridgeway v R*<sup>19</sup>, governments throughout Australia scrambled to allow law enforcement officers to conduct controlled operations. These are operations where the officer is authorised to break the law in order to penetrate drug cartels and other criminal organisations. As a safeguard, approval was to be granted by an independent official. In Western Australia, the Commission was that official and could also grant assumed identities for law enforcement officers.
- [95] Legislative change in 2012 transferred approval for controlled operations and assumed identities to WA Police.
- [96] The Commission was given a role in the fight against organised crime. If certain conditions are met, the Commission can make an exceptional powers finding.
- [97] Such a finding unlocks a series of possible actions that could be taken by WA Police.

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<sup>19</sup> *Ridgeway v R* (1995) 184 CLR 19.

- [98] The perceived need to dismantle OMCG fortification has not apparently been matched by the actuality.
- [99] Apart from fortification removal, there now remains active only the power for WA Police to summon a person to give truthful evidence before the Commission under oath and under pain of penalty.
- [100] This power is to deal with witnesses who refuse to assist police or who are members of criminal organisations that has a so-called 'oath of silence'.
- [101] There have been very few applications for an exceptional powers finding, because of the high threshold required before an exceptional powers order can be made - a serious offence committed in the course of organised crime.<sup>20</sup>
- [102] On 3 October 2010, there was an incident at a Kwinana sporting venue. Two men were seriously injured. The Commission made an exceptional powers finding. WA Police examined several witnesses before the Commission. Some witnesses refused to cooperate and five were later sentenced to terms of imprisonment of two years or more.
- [103] In the last 10 years there has only been one exceptional powers finding and consequent examination of witnesses.
- [104] The power to examine reluctant potential witnesses on oath and under penalty is an important investigative tool.
- [105] Once a person is charged, reluctant witnesses may be summoned to make a deposition on oath. Before charge and while the matter is under investigation, there is no power to compel a witness other than an exceptional powers finding.
- [106] So, despite the name, the Commission was far more a Corruption than a Crime Commission. As a result of the changes and increase in powers to WA Police, by 2014 there was little for the Commission to do in the 'Crime' part of its title. That was to change in 2018 when Parliament legislated to give the Commission power to investigate unexplained wealth and criminal benefits.
- [107] From its functions in respect of unexplained wealth, the Commission is aware of the extent of alleged criminal activity by organised criminal entities. These are pervasive to the extent of being a risk to the sovereignty of the State.
- [108] Consumption of illicit drugs including fentanyl, methylamphetamine, ketamine, heroin and cocaine remains high as indicated in national

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<sup>20</sup> *Corruption, Crime and Misconduct Act* ss 5 and 46(1).

wastewater drug monitoring program reports published by the Australian Criminal Intelligence Commission. Western Australia leads the country in the consumption of methylamphetamines. The balance between privacy and the effect of organised crime needs attention and simplification.

## **RECOMMENDATION ONE**

- [109] It is timely to re-examine the exceptional powers Part of the *Corruption, Crime and Misconduct Act* and, if necessary, implement changes to make it fit for purpose to protect the State against organised crime and criminal cartels.

## Chapter Three

### A Public Sector Misconduct Commission

- [110] Until 1 July 2015, the Commission had responsibility for all forms of misconduct within the public sector and the WA Police Force. As the Commission also has an obligation to assess all notifications made to it,<sup>21</sup> this led to an increasing and largely unproductive workload.
- [111] Therefore, it was decided to free up the Commission to concentrate on serious misconduct by public officials, while the Public Sector Commissioner took over responsibility for minor misconduct. Minor misconduct is not all that minor, it being behaviour that might reasonably lead to termination of employment. The Commission retains jurisdiction over minor misconduct and reviewable police action by police officers.
- [112] Unfortunately, as part of the same amendment to the *Corruption, Crime and Misconduct Act*, the Commission entirely lost the corruption prevention and education function that was seen to be effective. It retains a prevention and education function to help prevent police misconduct but lacks resources to exercise this function to a meaningful extent.
- [113] A further outcome of the loss of the minor misconduct function is that elected local government councillors and elected members of Parliament are not subject to any minor misconduct opinion. Local government councillors may be subject to some sanctions imposed by the Local Government Standards Panel.
- [114] Serious misconduct occurs if:<sup>22</sup>
- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment; or*
  - (b) *a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; or*
  - (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment.*
- [115] The Commission's jurisdiction is limited to public officers. A 'public officer' is defined under s 3 of the *Corruption, Crime and Misconduct Act* by reference to the definition of 'public officer' from the *Criminal Code* s 1:
- [116] The term public officer means any of the following:

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<sup>21</sup> *Corruption, Crime and Misconduct Act* s 32.

<sup>22</sup> *Corruption, Crime and Misconduct Act* s 4.

- (a) *a police officer;*
- (aa) *a Minister of the Crown;*
- (ab) *a Parliamentary Secretary appointed under section 44A of the Constitution Acts Amendment Act 1899;*
- (ac) *a member of either House of Parliament;*
- (ad) *a person exercising authority under a written law;*
- (b) *a person authorised under a written law to execute or serve any process of a court or tribunal;*
- (c) *a public service officer or employee within the meaning of the Public Sector Management Act 1994;*
- (ca) *a person who holds a permit to do high-level security work as defined in the Court Security and Custodial Services Act 1999;*
- (cb) *a person who holds a permit to do high-level security work as defined in the Prisons Act 1981;*
- (d) *a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law;*
- (e) *any other person holding office under, or employed by, the State of Western Australia, whether for remuneration or not;*

- [117] Issues arise from time to time as to whether a contractor under a particular contract is employed by the State of Western Australia. In a recent Commission operation involving bribes paid to two women who worked next to each other in a public authority, the Commission was able to form an opinion of serious misconduct for one woman who was a public servant, but unable to do so for the other woman because she was employed by a labour hire company on contract to the public authority to supply labour and so was outside the Commission's jurisdiction. An amendment to clarify the Commission's jurisdiction in such cases would be beneficial.
- [118] There is no good reason to exclude from investigation any contractor who is ultimately paid by the State and who is performing all the functions of a public officer.
- [119] Elsewhere in Australia, the jurisdiction granted to anti-corruption agencies in respect of public officers is extensive.
- [120] By way of example, in Victoria the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) provides:<sup>23</sup>

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<sup>23</sup> *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 6(1), definition of 'public officer' (y).

**Public officer** means, subject to this section -

*(y) a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);*

[121] In the Commonwealth context, the *National Anti-Corruption Commission Act 2022 (Cth)* provides:<sup>24</sup>

*13. Meaning of contracted service provider for a Commonwealth contract*

*(1) A contracted service provider for a Commonwealth contract is:*

*(a) a person (other than the Commonwealth or a Commonwealth agency) who:*

*(i) is a party to the Commonwealth contract; and*

*(ii) is responsible for the provision of goods or services (or both) under the Commonwealth contract; or*

*(b) a person who:*

*(i) is a party to a contract (the subcontract) with a person who is a contracted service provider for the Commonwealth contract under paragraph (a) (or under a previous application of this paragraph); and*

*(ii) is responsible under the subcontract for the provision of goods or services (or both) for the purposes (whether direct or indirect) of the Commonwealth contract.*

## **RECOMMENDATION TWO**

[122] Expand the definition of 'public officer' in the *Corruption, Crime and Misconduct Act* to cover all persons who do work for a public authority in whatever capacity, including persons and incorporated bodies that have contracts with government.

[123] Police misconduct includes those matters but also any action taken by a member of the Police Force, an employee of the Police Department or a person seconded to perform functions and services for, or duties in the service of, the Police Department that:<sup>25</sup>

*(a) is contrary to law; or*

*(b) is unreasonable, unjust, oppressive or improperly discriminatory; or*

*(c) is in accordance with a rule of law, or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory; or*

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<sup>24</sup> A 'commonwealth contract' defined in *National Anti-Corruption Commission Act 2022 (Cth)* s 13(2).

<sup>25</sup> *Corruption, Crime and Misconduct Act* s 3 definitions, 'reviewable police action'.

*(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.*

[124] This section was transferred to the *Corruption, Crime and Misconduct Act* from the *Parliamentary Commissioner Act 1971* without much thought as to how it would operate. To take an absurd but theoretically possible example, a police officer may commit police misconduct, by lawfully applying a law which the Commission regards as an unjust or oppressive law.

[125] There is a legislative tension in the *Corruption, Crime and Misconduct Act* between the definition of serious misconduct and s 217A which provides:

**217A. Findings and opinions of Commission or Public Sector Commissioner**

*(1) This section applies in relation to a finding made, or an opinion formed or expressed, by the Commission or the Public Sector Commissioner in the course of performing a function under this Act.*

*(2) The Commission or the Public Sector Commissioner must not publish or report a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.*

*(3) A finding or opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.*

[126] The *Corruption, Crime and Misconduct Act* ss 4(c) and 22 permit the Commission to form an opinion of misconduct if a public officer, while acting or purporting to act in his or her official capacity, commits an offence punishable by two or more years imprisonment.

[127] The seeming contradiction between *Corruption, Crime and Misconduct Act* ss 4 and 217A has been difficult to navigate.

[128] The *Corruption, Crime and Misconduct Act* s 217A is important. The Commission is an investigative, not an adjudicative, body. It exposes serious misconduct by public officers and applies a different and lesser standard of proof to a court which requires proof beyond reasonable doubt before a verdict of guilty can be returned.

[129] Former Chief Justice Martin has summarised the role of the Commission in the following terms:<sup>26</sup>

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<sup>26</sup> *Cox v Corruption and Crime Commission* [2008] WASCA 199 [45]. See also Peter M Hall, *Investigating Corruption and Misconduct in Public Office* (Thomson Reuters, 2<sup>nd</sup> ed, 2019) [14.70].

*The Commission does not perform the function of making binding adjudications or determinations of right. It is neither a court nor an administrative body or tribunal in the usual sense of those expressions. In the performance of the misconduct functions it is an investigative agency. After conducting investigations, its role is limited to making assessments, expressing opinions and putting forward recommendations as to the steps which should be taken by others. In characterising the findings made by the Commission as "assessments" and "opinions" it is clear that the legislature intended that the conclusions of the Commission should not be regarded as determinative or binding in any subsequent proceedings. So, if the Commission expresses an opinion that a member of the public service has been guilty of misconduct and that disciplinary proceedings are warranted, the question of whether or not a breach of discipline has been committed can only be authoritatively determined in the course of subsequent disciplinary proceedings instituted by the relevant employing authority, and not by the Commission.*

- [130] This passage highlights the difference between the roles of the Commission and a court or disciplinary body.
- [131] The public exposure of misconduct to Parliament and to the community is an important aspect of the Commission's functions.
- [132] In the last 10 years, the Commission has changed its policy in relation to 'stop notices', notices by the Commission to a public authority forbidding an agency from taking action on allegations of serious misconduct.<sup>27</sup> Previously the Commission would often stop a public authority from further investigating a matter or taking disciplinary action until the Commission had completed an assessment.
- [133] Public authorities are now encouraged to investigate suspected misconduct pending a decision by the Commission. As the most common outcome by the Commission is to return the allegation to the public authority for action, it makes sense for the public authority to be able to take immediate action if the allegation is well founded.

## **Minor Misconduct**

- [134] Section 4(d) of the *Corruption, Crime and Misconduct Act* provides that 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; or*

*(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial; or*

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<sup>27</sup> *Corruption, Crime and Misconduct Act* s 42.

*(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*

*(iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person, and constitutes or could constitute —*

*[(v) deleted]*

*(vi) a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

- [135] The transfer of minor misconduct to the Public Sector Commissioner has been smooth due to close cooperation between the Public Sector Commissioner and the Commission. If a public authority makes a notification to either Commission, liaison helps it reach the correct destination.
- [136] The transfer has also enabled public authorities to deal with minor misconduct more quickly.

## Chapter Four

### How Reports to the Commission are Dealt With

- [137] The Commission receives information about suspected misconduct in various ways.

### Its Own Motion

- [138] The Commission may make an assessment of serious misconduct based on information it has acquired.<sup>28</sup> Following an assessment, it may form a proposition about serious misconduct independent of any report of misconduct by a member of the public.

### Reports

- [139] A public officer or any other person may report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern serious misconduct. A report may be made orally or in writing.<sup>29</sup>

### Notifications

- [140] Certain officers, including heads of public authorities, must notify the Commission in writing of any matter which that person suspects on reasonable grounds may concern serious misconduct.<sup>30</sup> The duty to notify the Commission is paramount.

### What Happens Then?

- [141] The Commission receives approximately 3,000 reports of suspected serious misconduct each year.<sup>31</sup> An assessment is conducted for each report.
- [142] Before the Commission can take any action, information reported or notified to the Commission must reach a threshold of reasonable suspicion of serious misconduct. A person must actually suspect on grounds that are objectively reasonable that misconduct has occurred, is occurring or will occur. Only then does the information reach the status of an allegation.
- [143] An assessment of suspected serious misconduct involves more than considering the information provided. For each assessment, the Commission may conduct further enquiries including but not limited to:
- open-source research;

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<sup>28</sup> *Corruption, Crime and Misconduct Act* s 22.

<sup>29</sup> *Corruption, Crime and Misconduct Act* s 25(2).

<sup>30</sup> *Corruption, Crime and Misconduct Act* ss 28 - 29.

<sup>31</sup> Corruption and Crime Commission, 'CCC Annual Report 2023/2024', tabled on 7 January 2015.

- access to information held by public authorities with which the Commission has a protocol;
- review of body worn camera footage; and
- consideration of any relevant legislation, policy or procedures.

[144] In the 2023/2024 financial year, the Commission received 3197 reports and notifications. Approximately 46.3% of all reports received were from members of the public, 50.8% from the public sector and 2.9% from the Public Sector Commission.

[145] Of the reports received from members of the public, more than 50% relate to allegations involving WA Police. This is expected, given high levels of engagement between WA Police officers and members of the public.

[146] Each year, approximately 65% of all allegations assessed by the Commission do not result in a reasonable suspicion of serious misconduct and accordingly, no further action can be taken. Of the remaining 35%, the Commission refers approximately 60% of the allegations back to public authorities for action and outcome.

[147] For the remainder, having considered the seriousness of the alleged conduct, the Commission's confidence in the public sector authority to take appropriate action or the public interest in the allocation of Commission resources, the Commission may conclude that no further action need be taken.

## **Monitoring an Allegation**

[148] When an allegation is referred to a public authority, the Commission monitors the action taken. Updates on the public authority's progress are requested every 6 months, and the public authority is legislatively obligated to provide the Commission with a detailed report of the action taken in response to the allegation referred, including any disciplinary outcomes reached.

[149] Upon receipt of the report, the Commission considers the action taken in detail to consider the appropriateness of action taken, taking into consideration the investigative lines of enquiry, evidence relied upon in the conclusions reached and procedural fairness. If any concerns are identified, the Commission may exercise its discretion to take further action. The type of action varies depending on the level of concern and may include meeting with the public authority to discuss the matter or deciding to conduct a review or investigation.

## **Reviewing the Public Authority's Investigation**

- [150] A review involves comprehensive analysis of all information considered as part of the investigation. To inform its review, the Commission considers all information relied upon, such as interviews with subject officers, policy and procedures and the decision maker's rationale for any disciplinary action. The review also seeks to understand any action taken by the public authority to mitigate future risk of serious misconduct.
- [151] At the conclusion of a review, the Commission commonly provides a detailed report to the public authority head. The report includes feedback on the effectiveness of the investigation and any identified areas of improvement in the public authority practices for dealing with serious misconduct. Reports such as these are one way the Commission performs its capacity development function by assisting public authorities to increase their capacity to prevent and combat misconduct.
- [152] The report can also be at times public, particularly if there are wider learnings for the sector and formal recommendations made.

## **Active Monitoring During a Review**

- [153] The Commission may decide to actively monitor and review a public authority's action into an allegation at the point of referral to that public authority by the Commission. This is reserved for more serious allegations, that may not necessarily warrant a full Commission operation but are of such a nature that close oversight by the Commission is necessary.
- [154] Active monitor and review is a more intense and collaborative process involving monthly meetings and updates between the Commission and the public authority to give advice and to assess the public authority's investigative capability. If serious concerns are identified, the Commission may exercise its discretion to conduct a Commission operation.
- [155] The Commission's oversight functions of monitor and review is to consider the appropriateness of action taken by a public authority. The Commission is not conducting its own investigation and is not empowered to assume the role of the decision maker. It cannot substitute its own outcomes over that made by the decision maker of the appropriate authority.

## **A Decision That is Open for the Agency to Make**

- [156] The review falls under the Commission's serious misconduct function<sup>32</sup> to ensure that an allegation involving serious misconduct is dealt with in an appropriate way.
- [157] A review will conclude either that the public authority's investigation was adequate or that it was inadequate. It will advise if an authority's findings were or were not open to be made.
- [158] The responsibility for misconduct prevention and discipline is a matter for the head of the public authority. The Commission will therefore very rarely comment on any sanction or lack of sanction imposed.

## **Was the Outcome Reasonably Open?**

- [159] There will often be a range of possible outcomes of a disciplinary nature following an investigation.
- [160] The principal responsibility for proven misconduct is for the principal officer. They are charged with the responsibility of administering their public authority.
- [161] In reviewing the investigation, the Commission follows legal principles about the exercise of discretion by an administrative body. There may be a range of possible findings, all reasonably open.
- [162] If the public authority selects one option, even if different to one the Commission would choose, the outcome is open.
- [163] If the outcome is unreasonable on any view, then the Commission's finding is the outcome is not open. This is often because the investigation was inadequate.
- [164] In an exceptional case, when an investigation is inadequate, the Commission may decide to carry out its own investigation.

## **Recommendations to Public Authorities**

- [165] After its own investigation, whether cooperative or not, or after a review, the Commission may make recommendations.<sup>33</sup> The Commission may review progress on the recommendations in twelve months. If a report has been tabled, the further review will also be tabled.

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<sup>32</sup> *Corruption, Crime and Misconduct Act* s 18.

<sup>33</sup> *Corruption, Crime and Misconduct Act* s 43.

- [166] Whether a public authority acts on or at least considers recommendations has been the subject of a useful paper tabled by the Joint Standing Committee on the Corruption and Crime Commission on 30 November 2023, titled "*What happens next? Beyond a finding of serious misconduct - examining the responses to a finding of serious misconduct and building integrity in public agencies*".

## **A Commission Investigation**

- [167] The Commission may commence an operation to fully investigate an allegation of serious misconduct.
- [168] The Commission has a suite of coercive powers that it exercises during an operation.
- [169] The most significant public power is to form an opinion of serious misconduct.
- [170] A finding or opinion that serious misconduct has occurred is not, and not to be taken as, a finding or opinion that a particular person is guilty of or has committed, is committing, or is about to commit a criminal offence or a disciplinary offence.<sup>34</sup>
- [171] The power to form an opinion of misconduct is controversial.
- [172] The ability to do so stems from powers given to Royal Commissions.
- [173] The late David Ipp AO, former Western Australian Supreme Court Judge, Judge of Appeal in NSW and NSW ICAC Commissioner, regarded it as essential, as do other Commissioners.
- [174] On the other hand, there is much to be said for stating facts and leaving the reader to form their own opinion.
- [175] A Commission opinion of serious misconduct has no legal significance. Obviously, it has huge reputational significance.
- [176] Conscious of the reputational effect, the Commission is cautious about forming or expressing an opinion.
- [177] The Commission always gives a person who is adversely named in a draft report, the opportunity to respond to the opinion.<sup>35</sup> The responses may change the contemplated outcome.

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<sup>34</sup> *Corruption, Crime and Misconduct Act* s 217A.

<sup>35</sup> *Corruption, Crime and Misconduct Act* s 86.

## **Investigative Tools**

- [178] The Commission employs experienced investigators, financial analysts and intelligence analysts. It has arrangements with many state and federal bodies for the supply of information.
- [179] Commission officers may apply for and be granted an assumed identity and undertake controlled operations including integrity testing.<sup>36</sup>
- [180] In the course of an investigation, the Commission will routinely seek documents from financial and other institutions under a Notice to Produce Documents and Other Things.<sup>37</sup>
- [181] The Commission may apply to the Supreme Court for a surveillance warrant or to a Federal Court for a telecommunication interception warrant.<sup>38</sup>
- [182] The Commission may apply to the Supreme Court for a search warrant in the course of its misconduct function.<sup>39</sup> It may also apply for a search warrant from a magistrate in the exercise of its unexplained wealth or criminal benefits function.

## **Examination of a Witness**

- [183] The Commission has a legal services directorate to provide advice and to assist the Commissioner in examinations.
- [184] Counsel assisting's role is quite different from counsel in a trial. A trial, whether civil or criminal, is adversarial in nature with the judge (or jury) as the umpire and decision maker.
- [185] Each party is represented by counsel who seek to persuade the judge (or jury) to a particular point of view and call evidence in support of their case.
- [186] By contrast, the Commission is an investigator and the Commissioner, the chief inquisitor. The purpose of an examination is to arrive at the truth and to establish the facts. The Commission is not bound by the rules of evidence and may inform itself as it thinks fit.
- [187] The role of counsel assisting the Commission is partly to take a proof of evidence, partly to examine the witness, partly to cross-examine and then re-examine the witness as necessary.

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<sup>36</sup> *Corruption, Crime and Misconduct Act* ss 103 and 123.

<sup>37</sup> *Corruption, Crime and Misconduct Act* s 95.

<sup>38</sup> *Corruption, Crime and Misconduct Act* s 155.

<sup>39</sup> *Corruption, Crime and Misconduct Act* s 101.

- [188] No doubt a summons to appear before the Commission for an examination sends a frisson of fear into the heart of a witness.
- [189] In fact, the fears are mostly groundless. The majority are witnesses called to provide information to the Commission. Being examined on oath or affirmation also brings with it legal protections.
- [190] A statement or disclosure by a witness in answer to a question that the Commissioner requires the witness to answer is not admissible in evidence against the person making the statement or disclosure in any criminal proceedings.<sup>40</sup>
- [191] The exemption for criminal proceedings is to preserve the fundamental principles of criminal law often bundled together under the rubric "right to silence".
- [192] There are some exceptions to the exemption of admissibility.
- [193] A witness does not have the protection in proceedings brought against them for contempt<sup>41</sup> or for an offence under the *Corruption, Crime and Misconduct Act*.<sup>42</sup>
- [194] There is also no protection for a witness in proceedings for disciplinary action brought against them.<sup>43</sup>
- [195] The protection also does not extend to any civil proceedings or any proceedings under the *Criminal Property Confiscation Act 2000*.<sup>44</sup>
- [196] A provision unique to Western Australia permits a witness to be asked about a statement or disclosure inconsistent with their present testimony.<sup>45</sup>
- [197] The witness may be represented by a lawyer<sup>46</sup> and is entitled to know the scope and purpose of the examination but there is a very limited role that lawyer is otherwise able to play. Because the Commission can inform itself as it thinks fit, questions of hearsay and opinion evidence do not arise. Questions of relevance might be the subject of objection, but a Commission's inquiry is often wide ranging and broad in scope.

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<sup>40</sup> *Corruption, Crime and Misconduct Act* s 145(1)(a).

<sup>41</sup> *Corruption, Crime and Misconduct Act* s 145(1)(b)(i).

<sup>42</sup> *Corruption, Crime and Misconduct Act* ss 145(1)(a) and 145(1)(b)(ii).

<sup>43</sup> *Corruption, Crime and Misconduct Act* s 145(1)(b)(iii).

<sup>44</sup> *Corruption, Crime and Misconduct Act* s 145(1A).

<sup>45</sup> *Corruption, Crime and Misconduct Act* s 145(2).

<sup>46</sup> *Corruption, Crime and Misconduct Act* s 142.

## Chapter Five

### Dealing with a Serious Misconduct Allegation

- [198] It may be a surprise to learn that few allegations from members of the public or a public authority result in a Commission investigation.
- [199] The Commission receives reports about the behaviour of employees in private enterprise. These are beyond jurisdiction. The reporter is notified of the decision to take no action.
- [200] Allegations from members of the public are useful. Information gained from the public reporting can be helpful in discerning trends and is retained for intelligence. It can guide the Commission's approach to other allegations and help public authorities prevent serious misconduct.
- [201] Principal officers of a public authority are under a duty to notify the Commission of a matter that reaches the threshold of reasonable suspicion of serious misconduct. The Commission assesses each notification received from a public authority.
- [202] Most notifications by public authorities are usually dealt with other than by a Commission operation. The public authority often has commenced its own investigation which should continue to the end.

### No Action in Most Cases

- [203] So why do so few matters reach investigation and instead receive a Commission response that it will take no action?
- [204] It is a requirement under the *Corruption, Crime and Misconduct Act* that all allegations must be assessed.<sup>47</sup> If the report concerns a public officer, it is in the Commission's jurisdiction to that extent. Many reports are ruled out at the assessment stage because they do not reach the threshold of a reasonable suspicion of serious misconduct. In those cases, the Commission can take no further action.
- [205] As indicated, the Commission's jurisdiction in relation to public officers is serious corruption and abuse of power. Minor misconduct allegations such as bullying or industrial matters are outside the Commission's jurisdiction.

### What is Reasonable Suspicion?

- [206] Suspicion is a state of mind where proof is lacking. There must be some factual basis upon which suspicion is grounded. Suspicion is subjective and

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<sup>47</sup> *Corruption, Crime and Misconduct Act* s 32.

it must be objectively reasonable - more than imagination or conjecture. A suspicion has been judicially described as follows:<sup>48</sup>

*A suspicion that something exists is more than a mere idle wondering whether it exists or not; it is a positive feeling of actual apprehension or mistrust, amounting to a "slight opinion", but without sufficient evidence.*

- [207] It has also been observed that "[t]he suspicion that a person is likely to engage in conduct is satisfied if there is a real, and not merely remote possibility that he will do so".<sup>49</sup>
- [208] A reasonable suspicion is therefore different from reasonable belief. "The facts which can reasonably ground a suspicion may be quite insufficient reasonably to ground a belief".<sup>50</sup>
- [209] Poor behaviour, even maladministration, may not reach the standard of suspicion.
- [210] An allegation must have some factual basis without which it is difficult to assess the reasonableness of any suspicion.

## The Assessment Process

- [211] All reports and notifications are firstly triaged by the assessments and oversight directorate and then assessed. The triage process weeds out those reports from members of the public that do not meet the threshold of reasonable suspicion or concern persons who are not public officers. In such instances, the reporter must be advised that no further action will be taken.<sup>51</sup> Following assessment, the Commission may do one of four things:<sup>52</sup>

### *33. Decision on further action on allegation*

*(1) Subject to subsection (2), having made an assessment of an allegation the Commission may decide to —*

- (a) investigate or take action without the involvement of any other independent agency or appropriate authority; or*
- (b) investigate or take action in cooperation with an independent agency or appropriate authority; or*
- (c) refer the allegation to an independent agency or appropriate authority for action; or*
- (d) take no action.*

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<sup>48</sup> *Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266 at 303 (Kitto J).

<sup>49</sup> *Massey v Minister for Foreign Affairs* (2010) 115 ALD 154 [17].

<sup>50</sup> *George v Rockett* (1990) 170 CLR 104, 115.

<sup>51</sup> *Corruption, Crime and Misconduct Act* s 35.

<sup>52</sup> *Corruption, Crime and Misconduct Act* s 33.

## Actions Following Assessment

[212] If an allegation reaches the threshold but is nevertheless minor or has already been resolved, the Commission may decide that further action is not in the public interest or is not justified.

[213] In deciding whether further action is warranted, the *Corruption, Crime and Misconduct Act* s 18(3) provides guidance:

### **18. Serious misconduct function**

...

*(3) When the Commission is deciding whether further action for the purposes of this Act in relation to an allegation is warranted, the matters to which it may have regard include the following —*

*(a) the seriousness of the conduct or involvement to which the allegation relates;*

*(b) whether or not the allegation is frivolous or vexatious or is made in good faith;*

*(c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action otherwise than for the purposes of this Act;*

*(d) whether or not, in all the circumstances, the carrying out of further action for the purposes of this Act in relation to the allegation is justified or is in the public interest.*

[214] The assessment will also take account of the Commission's current areas of particular interest:

- police misconduct;
- people at risk;
- procurement and financial management;
- data and information;
- policy regulation and licensing; and
- use of force.

[215] Depending on the circumstances, the Commission is more likely to investigate and report on an allegation of misconduct that may have a wider lesson for the public sector, WA Police or the community. It might investigate if it lacks faith in the authority's ability to investigate misconduct. Some public authorities such as WA Police, and the Departments of Education and Justice, have sophisticated investigative divisions. Other

authorities may have little or no capacity and have to outsource to a contractor. Often the contractor will be an investigator familiar with human resources or industrial relations, but with little knowledge about conducting a serious misconduct investigation.

- [216] The assessments and oversight directorate refers matters that reach specified criteria to the Commission's Operations Committee.

## **The Operations Committee**

- [217] The Operations Committee comprises the Chief Executive and Directors. It considers the guidance outline above, the resources available, and whether an operation by the Commission is justified or in the public interest.
- [218] The Operations Committee will consider, among other matters, whether there is a need for public exposure if the allegation of serious misconduct is substantiated.
- [219] Some allegations of serious misconduct also involve suspected criminal conduct. The public interest might be best served by a direct referral to WA Police or a cooperative investigation between the Commission and WA Police.
- [220] An example of the cooperative approach was the investigation of the former Assistant Director General of the Department of Communities. It became clear that his corrupt activity was continuing with large sums of money being directed to his interests each month.
- [221] WA Police effected an arrest to end the fraud.
- [222] Occasionally, the Operations Committee may decide that an investigation was so inadequate it is necessary for the Commission to undertake its own investigation.
- [223] The Operations Committee also considers whether there is a need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.
- [224] The Operations Committee makes a recommendation to the Commissioner.
- [225] If the Commissioner approves an investigation, an operation name is chosen. Currently the Commission uses names of lighthouses - a solid structure that defies storms to shine light on dark places.
- [226] Once an investigation plan is approved, the whole panoply of investigative tools is available for deployment where appropriate.

- [227] The Commission has a number of special powers which it may exercise in addition to those previously set out.
- [228] The Commission has power to obtain information from public authorities by requiring an officer to produce a statement of information<sup>53</sup> or by requiring a person to attend before the Commission and produce records or other things.<sup>54</sup>

## **Resignation While Under Investigation**

- [229] A public officer or police officer under investigation resigns before the investigation has concluded.
- [230] What is the public authority to do? From a public authority's point of view, there may be little utility in finalising the investigation with the person having departed.
- [231] If the investigation is for serious misconduct the Commission might press for the investigation to continue to conclusion. The Commission may take over and continue the investigation.
- [232] By way of example, a senior police officer resigned shortly before any disciplinary action. The Commission continued the investigation and in due course made a public report.
- [233] Issues arise if a public officer resigns, and the public authority terminates its investigation.
- [234] For example, if the former public officer later tries to rejoin the public service, there is no adverse finding that the employing public authority could use to assess suitability.
- [235] The former public officer can answer honestly that he or she has not been subject to any sanctions.
- [236] They may have to give a different answer to a question "have you ever been subject to disciplinary proceedings?".
- [237] One partial solution is for the Public Sector Commissioner to keep a central record of the results of disciplinary proceedings and encourage public authorities to carry the proceedings through to a conclusion even though the officer has left.

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<sup>53</sup> *Corruption, Crime and Misconduct Act* s 94.

<sup>54</sup> *Corruption, Crime and Misconduct Act* s 95.

- [238] The Joint Standing Committee on the Corruption and Crime Commission has made a similar recommendation in their paper "*What Happens Next? Beyond a Finding of Serious Misconduct*":<sup>55</sup>

*Recommendation 22: That the Public Sector Commissioner, working with the Government, establish a centralised public employment register with appropriate safeguards that records public officers who have:*

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

*The register should cover all employees employed by agencies within the remit of the Corruption and Crime Commission including local government.*

## **Misconduct Prevention Plans**

- [239] It is sometimes thought that the principal anti-corruption agency in Western Australia is the Commission.
- [240] That is not so.
- [241] The Commission should not be expected to be a substitute for a public authority.
- [242] The principal officer of a public authority is responsible for corruption prevention within their organisation. This should involve taking active measures to design anti-corruption opportunities where possible. One measure is enforcing policies to ensure due process is followed, especially in procurement.
- [243] Most public authorities have adequate policies and codes of conduct. However, there is a variation between public authorities that regularly reinforce policies and authorities that don't.
- [244] Some public authorities are of a size to have an integrity team including trained investigators.
- [245] The *Work Health and Safety Act 2020* requires a CEO to eliminate risks to health and safety so far as reasonably possible, and if it is not possible, to minimise those risks as far as is reasonably possible.<sup>56</sup>
- [246] The *Financial Management Act 2006* requires a CEO to maintain an effective internal audit function.<sup>57</sup>

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<sup>55</sup> Joint Standing Committee on the Corruption and Crime Commission, "*What Happens Next? Beyond a Finding of Serious Misconduct*", tabled 30 November 2023.

<sup>56</sup> *Work Health and Safety Act 2020* s 17.

<sup>57</sup> *Financial Management Act 2006* s 53(d).

- [247] Corruption is a risk and should be managed by a principal officer as any other risk. Public authorities should implement *AS 8001 - Fraud and Corruption Control*.
- [248] Every public authority should have a fraud and corruption prevention plan to manage the risk.
- [249] Managing risk comes at a cost. Every accountable measure has a cost. It is for a public authority to determine its appetite for a particular risk and to make financial provision for the risk and for effective misconduct prevention strategies.
- [250] Apart from possible financial cost, there is often a significant reputational cost if misconduct is exposed. A Commission investigation with its requirements of secrecy may have as an unfortunate consequence, a loss of trust and a suspicion about colleagues.

## Chapter Six

### A Police Misconduct Commission

- [254] The Commission has a wider remit over police misconduct than public sector misconduct. In addition to serious misconduct under *Corruption, Crime and Misconduct Act* ss 4(a) - (c), the Commission may consider allegations of misconduct that fall under s 4(d). The Commission may also consider conduct that may constitute reviewable police action.<sup>58</sup>
- [255] The Commission receives constant notifications of suspected misconduct or reviewable police action by WA Police as required by *Corruption, Crime and Misconduct Act* s 28.
- [256] Police misconduct is also a major source of reports from members of the public. The Aboriginal Legal Services (ALS) also reports to the Commission conduct that may amount to misconduct.
- [257] Occasionally there is a considerable lapse of time between the alleged misconduct and a notification by the ALS. The ALS will often wait for the results of a court trial before reporting to the Commission an allegation that may be then years old. This may limit investigative opportunities.
- [258] Because of its broader jurisdiction over the WA Police Force and the significant powers bestowed on police officers, the Commission is more likely to monitor and review the outcome of a WA Police investigation into police misconduct than other matters.

### The Process for Dealing with Reports of Police Misconduct

- [259] WA Police have 2 units for managing/investigating police misconduct:
1. Internal Affairs Unit; and
  2. Ethical Standards Division.
- [260] These combined Police resources are greater than the whole of the Commission's resources spread across its three major responsibilities.
- [261] Even with these resources, these units cannot investigate every allegation of breach of policy, breach of discipline and minor misconduct. Many allegations are referred back to and investigated by the district office to which the police officer is attached. This is hardly satisfactory for obvious reasons.

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<sup>58</sup> *Corruption, Crime and Misconduct Act* ss 22 and 3 (definitions of 'serious misconduct', 'police misconduct' and 'reviewable police action').

- [262] Geography plays a part; Western Australia is a huge police jurisdiction.
- [263] Ideally, all serious allegations of police misconduct would be investigated by the Commission.
- [264] That is not practically possible. For the foreseeable future the Commission must rely on WA Police to investigate many allegations of suspected misconduct.
- [265] The Commission does monitor many WA Police investigations of misconduct and will often review the outcome.
- [266] It is assisted by a comprehensive protocol between the Commissioner of Police and the Commission for access to information.
- [267] As an example, if the Commission is assessing a police misconduct allegation of use of excessive force, the assessor may access the body worn camera footage from each officer to obtain a full picture of what happened. If the Commission is monitoring the police investigation, there may be access to documentary material such as statements, running sheets, interviews and the like.
- [268] The Commission may enter into an arrangement with WA Police for a cooperative investigation, especially if criminal activity is suspected.
- [269] These measures, short of a full Commission operation, are routine.
- [270] Some allegations, by their seriousness, require a Commission operation.
- [271] If the Commission profoundly disagrees with an outcome of a WA Police disciplinary investigation, the Commission may commence its own operation.
- [272] For example, the Commission returned an allegation to WA Police that a police officer had wrongly used a taser on a driver during a routine traffic stop. The subsequent WA Police investigation exonerated the officer. The Commission disagreed and commenced an operation into the allegation. At the conclusion of the investigation, the Commission formed an opinion of misconduct. Subsequently the officer pleaded guilty to a charge of assault.

## Chapter Seven

### A Crime Commission

#### Unexplained Wealth and Criminal Benefits

- [273] In 2018 Parliament amended the *Corruption, Crime and Misconduct Act 2003* to empower the Commission to disrupt crime and pursue unexplained wealth and criminal benefits. The concept of unexplained wealth originated in Hong Kong. It enabled the Hong Kong ICAC (Independent Commission on Against Corruption) to investigate and remove public servants whose mode of living far exceeded their modest public service salary. No conviction was necessary to be proven.
- [274] From the Hong Kong experience, the unexplained wealth power sits comfortably with the Commission's functions in relation to serious misconduct. It can be deployed as part of the misconduct function or part of the crime commission function.
- [275] The newly acquired powers were used in relation to former Assistant Director General of the Department of Communities, Paul Whyte who pleaded guilty to charges involving defalcation of nearly \$22 million. The Commission seized and sold two properties and took the proceeds of his superannuation fund exceeding \$7.4 million.
- [276] WA Police and the DPP have been able to exercise these powers since the enactment of the *Criminal Property Confiscation Act* in 2000. However, the unexplained wealth powers had not been exercised. This is no reflection of those agencies. Unexplained wealth does not depend on a crime or conviction, so it is not the DPP's core business.
- [277] WA Police are adept at seizing crime used property or proceeds and seeking confiscation. Investigating unexplained wealth is substantially different from the usual police function of investigating alleged offences. There may be no identified crime in unexplained wealth.
- [278] The Commission is well equipped to take on functions over unexplained wealth which gives meaning to the word 'crime' in its statutory title. It has investigators, intelligence analysts, financial analysts and forensic accountants, covert operatives and lawyers.
- [279] Unexplained wealth is defined in the *Criminal Property Confiscation Act* s 144:

**144. Term used: unexplained wealth**

*(1) For the purposes of this Act, a person has unexplained wealth if the value of the person's wealth under subsection (2) is greater than the value of the person's lawfully acquired wealth under subsection (3).*

*(2) The value of the person's wealth is the amount equal to the sum of the values of all the items of property, and all the services, advantages and benefits, that together constitute the person's wealth.*

*(3) The value of the person's lawfully acquired wealth is the amount equal to the sum of the values of each item of property, and each service, advantage and benefit, that both is a constituent of the person's wealth and was lawfully acquired.*

[280] A criminal benefit is defined in the *Criminal Property Confiscation Act 2000* s 145:

**Term used: criminal benefit**

*(1) For the purposes of this Act, a person has acquired a criminal benefit if —*

*(a) any property, service, advantage or benefit that is a constituent of the person's wealth was directly or indirectly acquired as a result of the person's involvement in the commission of a confiscation offence, whether or not the property, service, advantage or benefit was lawfully acquired; or*

*(b) the person has been involved in the commission of a confiscation offence, and any property, service, advantage or benefit that is a constituent of the person's wealth was not lawfully acquired, whether or not the property, service, advantage or benefit was acquired as a result of the person's involvement in the commission of the offence.*

*(2) Without limiting subsection (1), the person has acquired a criminal benefit —*

*(a) whether the property, service, advantage or benefit was acquired before, during or after the confiscation offence was or is likely to have been committed; and*

*(b) whether or not the property, service, advantage or benefit was acquired before or after the commencement of this Act; and*

*(c) whether or not the confiscation offence was committed before or after the commencement of this Act.*

[281] The name 'unexplained wealth' is a misnomer. Wealth can be explained but it may be the case that if it is explained it will be seen to come from illegal activity or crime. Perhaps a better label is 'unlawfully acquired wealth'. No matter.

[282] A person may accumulate unexplained wealth through a number of unlawful means such as:

- corruption;

- bribery, collusion or kickbacks;
- money laundering;
- stealing or fraud;
- blackmail or extortion;
- tax evasion; or
- trafficking in illegal material such as prohibited drugs.

[283] The standard of proof for unexplained wealth is not the criminal standard of proof of beyond reasonable doubt but the lower civil standard,<sup>59</sup> proof on the balance of probabilities.

[284] If the Commission is satisfied there may be unexplained wealth, it can apply to the Supreme Court for an unexplained wealth declaration<sup>60</sup> and a confiscable property declaration<sup>61</sup> with respect to property to the value of the unexplained wealth. It has already done so on several occasions.

### **Why is it important?**

[285] Confiscating a person's unexplained wealth removes the incentive for criminal behaviour. It strikes directly at the acquisition of wealth from illegal sources.

[286] A person with unexplained wealth will rarely have disclosed it to the Australian Tax Office, presenting yet another obstacle for the person.

[287] Police may have observed activity but lack sufficient evidence to mount a successful prosecution. A person may flaunt their wealth to others and provide an illusion that crime can pay.

[288] It may be disheartening for a person to see years of dodging law enforcement and building up an array of pretty toys only to lose all in a confiscation order. Flash cars, jet skis, McMansions, designer clothes and handbags - all gone. Then starting over, knowing the law is on to your every move.

[289] The Commission has an abundance of possible targets supplied by agencies such as WA Police. A fruitful source of information is the ordinary hard working tax paying citizen who observes someone in the street with no visible means of support or line of work, yet possesses boats, cars and other expensive belongings.

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<sup>59</sup> *Criminal Property Confiscation Act* s 102.

<sup>60</sup> *Criminal Property Confiscation Act* s 11.

<sup>61</sup> *Criminal Property Confiscation Act* s 27.

- [290] The Commission picks targets that will have the most disruptive effect.
- [291] If the Commission, after rigorous process, makes an examination order,<sup>62</sup> the Commission may apply to a court for freezing orders over property<sup>63</sup> preventing the suspect, or any other person, from dealing with or otherwise disposing of the frozen property usually until proceedings in court are finalised.<sup>64</sup>
- [292] It is important to emphasise that the principal purpose of the Commission's pursuit of unexplained wealth is not fundraising. It is to disrupt crime.
- [293] There are, broadly speaking, two motivations for crime. The first is impulsivity. Many crimes, especially crimes of violence are committed in the heat of the moment without thought of possible consequences. Impulsivity control can be taught.
- [294] Apart from noting it, impulsivity has no relevance to unexplained wealth or criminal benefits. Impulsivity is not a feature of the creation of unexplained wealth. It may be a feature of subsequent purchases using the wealth.
- [295] The second motivation for crime is gratification. It may be, for example, sexual gratification. It may be a deliberate attempt to inflict violence for a reason sufficient to take the risk of punishment.
- [296] But the motivation for much criminal activity is material - to gain a benefit, usually in money or money's worth. Offenders steal or commit fraud to acquire money and wealth.
- [297] Traffickers sell or supply prohibited drugs or illegally obtained tobacco to make a profit. It is crimes for gain that are likely to generate unexplained wealth and to make the offender a target for a Commission operation.
- [298] When the Commission is dealing with historic unexplained wealth, there is a risk that the wealth might have dissipated before a court makes a confiscation order.
- [299] A benefit acquired as a result of a person's involvement in a defined 'confiscation offence'<sup>65</sup> is a criminal benefit and liable for confiscation even if the property was acquired lawfully.
- [300] The Western Australian community is a heavy user of methylamphetamine and other illicit drugs. Vast profits are made in trafficking these drugs. Sales

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<sup>62</sup> *Criminal Property Confiscation Act* s 58.

<sup>63</sup> *Criminal Property Confiscation Act* ss 41, 43(1)(c).

<sup>64</sup> *Criminal Property Confiscation Act* ss 48 - 50.

<sup>65</sup> *Criminal Property Confiscation Act* s 141.

of unlawfully acquired tobacco products now exceed the sales of lawful tobacco products and give rise to criminal opportunities for profits.

- [301] Australia has strict anti-money laundering laws but there are still opportunities for criminals to try and avoid the consequences.
- [302] The increasing acceptance of cashless transactions provides a means of discouraging money laundering, at least those involving large cash transactions. However, some drug dealers now use 'touch and go' payment devices disguised as a legitimate business.
- [303] The strength of the Commission's examination power lies in the ability to summon a person who has played some part in the acquisition of wealth. They are not themselves criminal, but wittingly or unwittingly they have enabled the target to obtain wealth. Accountants, financial advisors, lawyers, real estate agents and motor vehicle dealers are just some professionals who may be summoned to give evidence.
- [304] They may not be inclined to lie to the Commission when under oath or affirmation as the penalty for doing so may include imprisonment.
- [305] Another advantage of the Commission's examination power is secrecy. A person summoned to give evidence before the Commission is forbidden to discuss that fact or their evidence with anyone but a legal advisor. The target remains unaware of the Commission's operation.
- [306] The Commission's functions in unexplained wealth are to make Western Australia a safer State by disrupting organised crime by taking away the benefits of illegal activity.

## Chapter Eight

### The Commission and the Public Interest

- [307] Every government decision, whoever the decision maker, should be made in the public interest.
- [308] Even prosecutions in a court for serious offences must be informed by the public interest as to whether an indictment should be filed or the matter discontinued.
- [309] The Commission is given explicit guidance in the *Corruption, Crime and Misconduct Act* s 18(3) when deciding whether further action is warranted in the public interest.
- [310] So, what is the public interest?
- [311] Public interest is a concept easily stated but much misunderstood. In essence, a decision by the Commission must be to advance the peace, order and good government of the state and its citizens.
- [312] A decision maker must take into account various components of the public interest, both for and against a course of action. There is no mathematical formula to decide where the public interest lies in a particular case.
- [313] One matter that necessarily will feature is the Commission's workload. Will it have to pause or abandon other operations? Will the matter absorb all the Commission's resources? In terms of public authorities, the Commission is a small agency with a budget of currently about \$30 million. Therefore, it must be selective in its approach.
- [314] A matter not in the public interest is the personal predilections or idiosyncratic views of the decision maker. Conduct may be perceived as outrageous but of itself that is insufficient to justify proceeding in the public interest.
- [315] Public interest is not a fact to be ascertained by a court on legal proof. Nor is it a reflection of the community expressed through the media.
- [316] What decision will be in the best interests of the public, as opposed to private interests? The answer can only be reached after considering all factors and reaching a conclusion.
- [317] Some have immoderately criticised the Commission for a decision not to proceed to an investigation in the public interest, perhaps forgetting that reasonable minds may differ and that in evaluating the public interest, there is rarely a 'right' or 'wrong' answer.

[318] In *A v Corruption and Crime Commissioner* [2013] WASCA 288 [129], the plurality (Martin CJ and Murphy JA) observed:

[129] *...because the public interest is likely to be multifaceted and because the assessment of the public interest will very likely involve the evaluation of competing considerations, the evaluation of which is vested in the Commission and not the court, it will be a rare case in which such a process of evaluation and assessment could be said to lack an evident or intelligible justification.*

[319] Decisions in the public interest and whether further action is justified are for the Commission alone. Unless a court rules that the decision was affected by legal error, the Commission's decision is determinative.

[320] It is natural that many people who in good faith have taken the trouble to report to the Commission suspected serious misconduct will feel let down by a decision to take no action. They will not have information on the range of factors that leads the Commission to that decision.

### **The Commission is not a complaints authority**

[321] Many reports to the Commission come from a person who has experienced some unfairness or illegal conduct, thereby disadvantaging them.

[322] A person may lose a bid for a government contract and suspect that the process was corrupt.

[323] Someone may be dealt with forcefully by a police officer. Perhaps excessive force was said to be used in an arrest.

[324] Another person might be horrified to discover that supposedly confidential information has been disseminated to others who have no right to it.

[325] These examples have something in common. The assertion is also a complaint about conduct. A personal right has been infringed.

[326] There are avenues to deal with complaints when a citizen's rights may have been affected.

[327] The Parliamentary Commissioner for Administrative Investigations, better known as the Ombudsman, has express jurisdiction to deal with complaints about an administrative matter. The Information Commissioner may rule on freedom of information requests.

[328] A public authority may advertise a method of communication for persons with a complaint. This may be a website or hotline.

[329] A Commission reporter should not expect any action to resolve their 'complaint'.

- [330] The Commission has a different focus.
- [331] The main purposes of the *Corruption, Crime and Misconduct Act* are set out in s 7A:
- (a) *to combat and reduce the incidence of organised crime; and*
  - (b) *to improve continuously the integrity of and to reduce the incidence of misconduct in the public sector; and*
  - (c) *to facilitate the exercise of the Commission's functions under the Criminal Property Confiscation Act 2000.*
- [332] In selecting matters for investigation, whether for serious misconduct of public officers or police misconduct, the Commission will generally look to see if there are systemic misconduct risks. It will consider if there are wider lessons to be learned by the public sector.
- [333] While the effect on an individual the subject of alleged misconduct will always be a factor in considering the public interest, it will rarely be a decisive factor.
- [334] A person who informs the Commission of a matter reasonably suspected to be serious misconduct has a right to be informed if the Commission decides to take no action.<sup>66</sup>
- [335] Though not obligated, the Commission will generally supply brief reasons for its decision.
- [336] The informant may feel aggrieved by the decision to take no action, unaware of actions the Commission may have taken but cannot by law disclose.
- [337] For example, if the notification is about the use of excessive force by a police officer, the Commission assessor may have examined body worn camera footage from multiple sources which demonstrate that the use of force was justified.
- [338] A public authority may have dealt with the suspected misconduct and taken appropriate action such as termination or referral to WA Police.
- [339] The secrecy provisions of the *Corruption, Crime and Misconduct Act* will generally prevent a reporter from being told what has occurred.
- [340] The Commission has no obligation to notify a reporter as to any action that has been taken. This includes referral to a public authority with a direction to notify the Commission of the outcome or a referral with monitor and review.

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<sup>66</sup> *Corruption, Crime and Misconduct Act* s 35.

[341] The Commission will not notify a reporter of a decision to commence an operation to investigate the allegation. There are many covert actions to be taken at the commencement of an operation that would be imperilled if disclosed.

## Chapter Nine

### Oversight of the Commission

- [342] Because the Commission has broad powers, some of which directly affect the privacy of an individual, Parliament has provided a structure to oversee the exercise of the Commission's functions.
- [343] The Parliamentary Inspector of the Corruption and Crime Commission is a statutory appointment and is an Officer of Parliament. The function of the Parliamentary Inspector are:<sup>67</sup>

#### **195. Functions**

*(1) The Parliamentary Inspector has the following functions —*

- (aa) to audit the operation of the Act;*
- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the laws of the State;*
- (b) to deal with matters of misconduct on the part of the Commission, officers of the Commission and officers of the Parliamentary Inspector;*
- (cc) to audit any operation carried out pursuant to the powers conferred or made available by this Act;*
- (c) to assess the effectiveness and appropriateness of the Commission's procedures;*
- (d) to make recommendations to the Commission, independent agencies and appropriate authorities;*
- (e) to report and make recommendations to either House of Parliament and the Standing Committee;*
- (f) to perform any other function given to the Parliamentary Inspector under this or another Act.*

- [344] Only the Parliamentary Inspector has jurisdiction over minor misconduct by Commission officers.<sup>68</sup> This includes the power to investigate the conduct of Commission officers and to remove a matter concerning an allegation about a Commission officer from the Commission to the Parliamentary Inspector for consideration and determination.<sup>69</sup>

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<sup>67</sup> *Corruption and Crime Commission Act* s 195(1).

<sup>68</sup> Minor misconduct by a person acting in their capacity as an officer of the Commission is removed from the Public Sector Commission's jurisdiction: *Corruption, Crime and Misconduct Act* s 45G(b). See generally *Corruption, Crime and Misconduct Act* s 196 concerning the Parliamentary Inspector's jurisdiction with regards to officers of the Commission.

<sup>69</sup> *Corruption, Crime and Misconduct Act* ss 196(3)(a) and 196(5).

- [345] Although a dispute has not yet occurred, in practice there is potential for a jurisdictional issue to arise, as under the *Corruption, Crime and Misconduct Act* s 196(9):

*The Parliamentary Inspector must not undertake a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the Industrial Relations Act 1979.*

- [346] 'Industrial matter' is defined in the *Industrial Relations Act 1979* in the following terms:<sup>70</sup>

***industrial matter** means any matter affecting or relating or pertaining to the work, privileges, rights, or duties of employers or employees in any industry or of any employer or employee in the industry and, without limiting the generality of that meaning, includes any matter affecting or relating or pertaining to [the matters identified in subparagraphs (a) - (m)].*

- [347] A defined 'industrial matter' includes disciplinary matters.<sup>71</sup>

- [348] In practice, disciplinary matters are handled by the Commission's Chief Executive, but the Parliamentary Inspector is kept informed as a transparency measure.

- [349] Both the Parliamentary Inspector and the Commission have jurisdiction over serious misconduct by Commission officers.

- [350] In the only matter of suspected serious misconduct by a Commission officer to arise in the last decade, the Parliamentary Inspector was informed immediately that possible misconduct was uncovered. By agreement, the Commission conducted the investigation as it was better equipped to do so. The Parliamentary Inspector was closely involved at every stage.

- [351] Once the investigation was complete, by agreement the Parliamentary Inspector exercised his power to remove the investigation so that any opinion reached would be seen to be free from apprehended bias.

- [352] The Parliamentary Inspector receives reports from persons who may be disappointed with a Commission decision. While the Parliamentary Inspector's powers are limited, when suggestions are sometimes made to the Commission, the Commission gives them close consideration and will from time to time conduct a reassessment.

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<sup>70</sup> *Industrial Relations Act 1979* s 7.

<sup>71</sup> See *Industrial Relations Act* ss 7 (definition of 'industrial matter' subparagraph (h)), 36AA(2)(c) read with *Public Sector Management Act 1994* s 78 and Part 5, Division 3.

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

[353] The Joint Standing Committee on the Corruption and Crime Commission comprises an equal number of members appointed by each house.<sup>72</sup>

[354] It is a function of the Committee to:

- (a) monitor and report to Parliament on the exercise of the function 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 and prevention practice may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption, Crime and Misconduct Act*.

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<sup>72</sup> *Corruption, Crime and Misconduct Act* s 216A.

## Chapter Ten

### Parliamentary Privilege

- [355] The *Corruption, Crime and Misconduct Act* s 3(2) provides:

*Nothing in this Act affects, or is intended to affect, the operation of the Parliamentary Privileges Act 1891 or the Parliamentary Papers Act 1891 and a power, right or function conferred under this Act is not to be exercised if, or to the extent, that the exercise would relate to a matter determinable by a House of Parliament.*

- [356] An important privilege of Parliament is enshrined in the *Bill of Rights 1689 (UK)*, Article 9.

*That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.*

- [357] The Commission is a 'place out of Parliament'.

- [358] The Commission may investigate allegations of serious misconduct by members of Parliament when the conduct is part of their function as a public officer, only where the investigation would not impeach or question debates or proceedings in Parliament and does not relate to a matter determinable by a House of Parliament.

- [359] In 2019 a dispute arose between the President of the Legislative Council on the one hand and the Corruption and Crime Commission and Attorney General on the other.

- [360] At the time the dispute arose, the Commission was investigating allegations of serious misconduct by certain public officers when members of the Legislative Council. The Commission executed search warrants at one address seizing documents and electronic devices including a laptop computer. The laptop computer was the property of the Department of Premier and Cabinet. Its return had not been requested when the former member left Parliament.

- [361] A claim of privilege was made in respect of the material seized.

- [362] The computer servers through which members conducted their parliamentary business are not located at Parliament but are under control of the Department of Premier and Cabinet.

- [363] The Commission issued five notices to produce records or things<sup>73</sup> to the Director General of the Department of Premier and Cabinet, and to the Clerk of the Legislative Council.

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<sup>73</sup> *Corruption, Crime and Misconduct Act* s 95.

- [364] The Commission was not involved in the decision by the Department of Premier and Cabinet as to the procedure adopted to identify privileged documents. The process involved lawyers from the State Solicitor's Office advising what documents may be privileged.
- [365] The five notices were challenged by the President of the Council as an invalid exercise of power: *The President Legislative Council v Corruption and Crime Commission & others [No 2]* [2021] WASC 223. As a result, hundreds of thousands of dollars were spent on the litigation and the Legislative Council looked as if it was protecting its own members from an investigation, even if that was not the case.
- [366] Efforts to settle proceedings were abortive.
- [367] The trial judge, Justice Hall, now a judge of appeal, rejected the challenge by the President and upheld the validity of the notices, accepting that the notices excluded any document that was privileged.<sup>74</sup> Justice Hall also held that only Parliament could determine privilege for itself, not the Department of Premier and Cabinet. To that extent, the Legislative Council succeeded in its action against the Attorney General.
- [368] As is likely to be the case in the future, the Commission casts a wide net in an investigation. It may not know in advance what documents or other things will be relevant until it has examined material.
- [369] An investigation by the Commission may seek terabytes of information. During an investigation the Commission may not know whether there are relevant documents or where they are to be found. So, it goes to the obvious places such as email caches.
- [370] If the person under investigation is a senior public servant, they may hold documents that might be privileged such as draft second reading speeches. These will be captured along with documents relevant to the investigation. Hence the need for the protocol.
- [371] Eventually the Commission may ultimately be interested in only a handful of emails and documents. It has no interest in any privileged documents.
- [372] Justice Hall rejected submissions by the President of the Legislative Council that the ambit of the notices was too wide. It was submitted by the President that if the Commission provided more focused notices that described the particular documents with greater precision, it would be possible to avoid capturing privileged documents. The Judge held:<sup>75</sup>

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<sup>74</sup> *The President Legislative Council v Corruption and Crime Commission [No 2]* [2021] WASC 223 [5].

<sup>75</sup> *The President Legislative Council v Corruption and Crime Commission [No 2]* [2021] WASC 223 [126].

[126] *First, investigations by their nature do not always allow for documents to be described with precision. The investigator may not know with certainty what documents exist or are likely to touch on the matter being investigated. It is typical of warrants and notices to describe documents in fairly broad terms that relate to their subject matter. That is particularly so in the case of the CCC which is dealing with broad concepts such as serious misconduct. Second, when the investigation relates to members of Parliament (or, indeed, members of the public service) it would be virtually impossible to obviate the risk that privilege would arise as an issue regardless of how precise the description of the documents was. On the plaintiff's case, any possible issue in that regard would act as a bar to the exercise of the investigative power. Third, the protection afforded to the proceedings of Parliament can extend to documents that are closely connected to those proceedings, but that is not a clear line and will involve a qualitative judgment. Even if documents are precisely described in a notice there may still be an issue of whether any of them are closely connected to the proceedings of Parliament.*

[373] When a new President of the Legislative Council was appointed, the President and the Speaker of the Legislative Assembly signed a protocol with the Commission to deal with future notices. The intent of the protocol signed on 21 December 2021 was as follows:

2.2. *The intent of this Protocol is to ensure that:*

2.2.1 *search warrants are executed without improperly interfering with the functioning of Parliament or the Commission;*

2.2.2. *documents and other things are produced to the Commission pursuant to the Corruption, Crime and Misconduct Act 2003 s 95 in a timely manner;*

2.2.3. *members, their staff and the House are given a proper opportunity to raise claims of immunity from production by reason of parliamentary privilege in relation to any document or other thing that may be subject to lawful seizure by the Commission or subject to production to the Commission; and*

2.2.4. *the Commission can fulfil its statutory functions and obligations under the Corruption, Crime and Misconduct Act 2003 whilst respecting parliamentary privilege.*

[374] As to parliamentary privilege, the protocol provided:

**4. *Parliamentary privilege***

4.1. *Evidentiary material cannot be placed beyond the reach of the Commission simply because it is held by a Member, or is on premises used or occupied by a Member.*

4.2. *The Commission must exercise care regarding any claim of immunity from production by reason of parliamentary privilege when executing*

*warrants on premises occupied or used by a Member, exercising its powers under the Corruption, Crime and Misconduct Act 2003 s 95, or fulfilling any other statutory function under this Act or any other Act.*

- 4.3. *Any public officer or Member may make a claim of immunity from production by reason of parliamentary privilege in respect of any document or other thing which falls within the scope of 'proceedings in parliament' as provided in Article 9 of the Bill of Rights (UK) 1688. Article 9 is part of the law of Western Australia as provided for in the Parliamentary Privileges Act 1891 s 1.*
- 4.4. *Parliamentary privilege also extends to actions which are necessarily incidental to proceedings in Parliament.*
- 4.5. *The question of whether the material constitutes 'proceedings in parliament' may turn on what has been done with the material, or what a Member intends to do with it, rather than what is contained in the material or where it is found.*

[375] While speeches and proceedings in Parliament including tabled documents attract parliamentary privilege, the position in relation to other documents is less clear. Bringing a document in Parliament House does not automatically grant it immunity from production. This is why the protocol is important. It has worked satisfactorily since it was signed thanks to goodwill and cooperation on both sides.

## Chapter Eleven

### Public or Private Examinations

- [376] A continuing debate across Australia is the extent to which anti-corruption commissions can or should hold public examinations as opposed to private examinations. The default position in Western Australia is that an examination is not open to the public.<sup>76</sup> However, the Commission may open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential of prejudicial or privacy infringements, it considers it is in the public interest to do so.<sup>77</sup>
- [377] Over the past 10 years the Commission has adopted a conservative approach to public examinations. There may be times when the seniority of a public officer means that it is in the public interest for there to be public accounting of certain actions. In 2024, the Commission concluded that a public examination of the former Parliamentary Commissioner for Administrative Investigations was appropriate due to his office, as head of one of the integrity agencies. More often the Commission has summoned for public examination a public authority head who is not suspected of serious misconduct but whose actions or inactions have allowed misconduct to occur by others.
- [378] An example occurred 10 years ago. The CEO of the Shire of Dowerin had been stealing from the Shire for many years to cover his gambling addiction. When confronted by officers from the Commission he readily admitted his offences and subsequently served a term of imprisonment.
- [379] The Commission travelled to Dowerin and conducted two days of public examinations of councillors, Shire staff and auditors so that the rate payers of Dowerin could understand what had happened and why.
- [380] By way of further example, in 2023, the Commission reported on serious misconduct risks in a Housing Authority project that cost the State at least \$30 million. The Director General was publicly examined to explain what happened.
- [381] Many witnesses summoned by the Commission are not suspected of misconduct but provide information to advance the investigation. Their privacy is an important consideration. Witnesses are advised that even though the examination is in private, their evidence may be made public at a later stage.

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<sup>76</sup> *Corruption, Crime and Misconduct Act* s 139.

<sup>77</sup> *Corruption, Crime and Misconduct Act* s 140.

[382] Their evidence may be reproduced in part in a public report. If appropriate, the Commission may protect their privacy by anonymising their identity.

## Chapter Twelve

### The Commission, Courts and Prosecutions

- [383] The relationship between the commission and a court is in many respects the same as the relationship between any other body and the judiciary. The Commission is an inferior tribunal, amenable to judicial review.
- [384] A Commissioner's appointment is time limited, unlike a judge who holds office until retirement age. The commission has a parliamentary committee and Inspector for oversight.
- [385] The commission has some similarities to court procedure. The roles of a commissioner and a judge are quite different although some of the functions (conducting examinations, summoning and swearing witnesses, requiring documents to be produced) are common to each.
- [386] A judge makes findings of fact and declares rights of parties. A finding of fact is incontrovertible.<sup>78</sup> It binds at least the parties and on occasions others. A judge's main function in a non-criminal jurisdiction is declaring rights between citizens, whether they arise under contract through tort or some other reason. In criminal matters, a judge has sole power to enter judgment of conviction or acquittal, whether after plea or after trial by jury or judge.
- [387] By contrast, the Commission does not make findings. It investigates and reports to Parliament or a minister or a principal officer on the results of its investigation. Its investigations are not adversarial but inquisitorial. They may range far and wide within the ambit of serious misconduct, subject only to the scope and purpose of the investigation as set by the Commission. An examination under oath, whether conducted in private or in public, is only a small part of the Commission's wider investigatory function. The Commission has power to form opinions of misconduct, but those opinions are not legally binding.

### The Commission does not prosecute

- [388] From its inception until 2015 it was erroneously thought the Commission had the power to conduct prosecutions unless the DPP took the matter over.
- [389] In 2015, the Court of Appeal ruled that the Commission lacked the power.<sup>79</sup>

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<sup>78</sup> *Fazio v Fazio* [2010] WASC 263.

<sup>79</sup> *A v Maughan* [2016] WASCA 128; (2016) 50 WAR 263.

- [390] While it is natural to want to see alleged wrongdoers face the consequences in court, the number and result of prosecutions has never been a key performance indicator for the Commission.
- [391] There are several reasons.
- [392] The standard of proof sufficient for an opinion of misconduct is much lower than the standard of proof necessary for a conviction.
- [393] An accused person cannot be convicted of any criminal offence unless the court is satisfied beyond reasonable doubt that the accused is guilty. This is the highest standard known to the law.
- [394] By contrast, the Commission has no statutory standard of proof. Before forming an opinion of serious misconduct, the Commission adopts the civil standard of proof, which is the balance of probabilities, taking into account the seriousness of the allegations.
- [395] Evidence is different. A court requires admissible evidence. The Commission is not bound by the rules of evidence but may inform itself as it thinks fit.
- [396] A statement or disclosure made by a witness in answer to a question that the Commission requires the witness to answer is not generally admissible in criminal proceedings.
- [397] Therefore, an admission to criminal conduct by a witness at the Commission may not form part of a prosecution brief.
- [398] This immunity from use of the statement is to satisfy the companion principle of the criminal law, that no person can be compelled to testify against themselves.
- [399] The immunity does not extend to civil proceedings including any proceedings under the *Criminal Property Confiscation Act*.
- [400] The Commission has no control over decisions made by WA Police or the Office of the Director of Public Prosecutions for WA about a prosecution.
- [401] There have been many successful prosecutions following a Commission investigation. The Commission will give assistance to a WA Police investigation including all documents and other records gathered during a Commission operation.

## Chapter Thirteen

### Intelligence Led Investigations

- [402] Most of the Commission's operations are reactive. A notification is received, assessed and a decision is made to commence an investigation.
- [403] On 21 April 2015, a week before the appointment of a new Commissioner, the Commission published a Repositioning Report.<sup>80</sup>
- [404] The essence of the 'enhanced business model' approach is captured in [18] of the Repositioning Report:
- A key feature of the Commission's enhanced approach to its business is that it will not seek to focus on responding directly to each individual allegation received, reported or notified to it but rather seek to engage identified corruption and serious misconduct hot spots by targeted investigations of strategic value.*
- [405] The proposed business model was adopted.
- [406] Several standing investigations were established to gather intelligence to identify potential serious misconduct risks in individuals.
- [407] The model has been recently reviewed and changes made to increase its usefulness.
- [408] A difficulty that has made identification of public officers who may be a serious misconduct risk harder is the lack of any full list of public officers. The Public Sector Commissioner does not keep a list. The many public authorities and government trading entities keep records, some of which are hard to follow.
- [409] Commission officers meet regularly with public authorities to exchange information and identify trends of serious misconduct. This helps the Commission identify which allegation is of such a nature as to justify Commission resources and the location of any misconduct hot spots.

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<sup>80</sup> Corruption and Crime Commission, 'Report on an Administrative Matter Relating to the Functions of the Commission Pursuant to Section 88 of the Corruption and Crime Commission Act 2003 ("the Repositioning Report")', tabled on 21 April 2015.

## Chapter Fourteen

### Serious Misconduct Risks

- [410] Operations conducted by the Commission over the past decade have exposed serious misconduct, police misconduct and serious misconduct risks. They have been detailed in reports by the Commission that are tabled in Parliament.<sup>81</sup>

### Procurement Risks

- [411] The amount of money spent by public authorities to purchase goods and services, sometimes hundreds of millions of dollars, makes procurement activity a potential for serious misconduct. The State government annual spending on procurement tops \$30 billion. Unless tightly controlled, the misconduct or corruption risks are obvious.
- [412] Governance has improved since the passage of the *Procurement Act 2021*.
- [413] A significant development in 2021 was the publication of *AS 8001:2021 Fraud and Corruption Control*.
- [414] *AS 8001:2021* is increasingly adopted by government and private enterprises.
- [415] In Western Australia, the Auditor General has issued the Fraud Risk Management Better Practice Guide. It is to be hoped the Guide is in constant use.
- [416] Large value contracts are less prone to misconduct risk. There is too much probity wrapped around the contract. It may suffer other problems but is usually a low misconduct risk.
- [417] The misconduct risk is greater on smaller contracts - local government capital works, maintenance contracts for part of the government estate, small capital contracts in local authorities.

### Red Flags for Procurement Misconduct: Process

- [418] There are recognised 'red flags' that may be an indicator of serious misconduct.
- [419] Bigger public authorities have procurement teams. There are significant misconduct risks when a business unit in the public authority seeks to bypass the procurement team and handle things themselves. At best there is a risk that the process may be manipulated to produce a desired outcome.

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<sup>81</sup> *Corruption, Crime and Misconduct Act* s 84.

At worst, someone may be getting a kickback. Beware if an officer is trying to influence or manipulate a procurement panel.

[420] The Commission has observed all of these examples:

1. Frequent or exclusive engagement with one company to deliver a product or service without recognised procurement processes appearing to have been followed.
2. Businesses with little or no experience in the industry receiving contracts to supply goods or services. The business may have been incorporated shortly before tenders opened for a contract.
3. Unusual invoice or payment patterns, such as split invoices (which lower value of individual invoices and therefore avoid scrutiny), limited or obscure information on invoices (for example entries such as 'admin' or 'contract' fees), an absence of paperwork relating to payments or billing in excess to what has been ordered.
4. Individuals recruited to roles who appear to have little or no relevant qualifications or experience in the particular area.
5. Individuals who have been appointed outside the recognised recruitment process.
6. Inadequate information provided by or available on businesses or individuals applying for procurement, recruitment etc, or a reluctance to provide this when asked for it.
7. A business that is selected for a contract despite not being on the Common Use Arrangements (CUA) register.
8. Commercial or recruitment contracts awarded to companies or individuals with connections to senior public servants or those in key roles.
9. Procurement processes taking a long time to conclude or alterations to bid documentation to make the bid more favourable part way through the process.
10. Deliberate attempts to bypass a public authority's procurement section. By way of example, at a port authority, two workers manipulated a selection process for port security to achieve an outcome they thought was more beneficial.
11. Breach of delegated authority. Individuals who exceeded their delegated level of authority and did not consult with their Board.

12. Individuals who concealed improper influence by using subjective and misleading considerations through biased and unverified presentations to Executives.
13. Poor recording keeping, obscured accountability and lack of transparency and documentation.
14. Ignoring evaluation results and awarding contracts to companies with no rationale.
15. Senior staff misunderstanding delegations, leading to unauthorised approvals and a misunderstanding of governance rules.

### **Red Flags for Misconduct: Public Authorities**

- [421] There have been similarities in misconduct observed through Commission investigations over the past two years:
1. **Conflicts of interest** were either undeclared, mismanaged, or ignored in three of four matters.
  2. **Lack of transparency and documentation** undermining accountability.
  3. **Over-reliance on internal controls** without verification, allowed misconduct to go undetected.
  4. **Failure to act promptly** or investigate thoroughly, left risks unaddressed.
  5. **Poor governance and oversight** enabled individuals to bypass rules or manipulate outcomes.
- [422] Matters involving the management of intellectual property and conflicts of interest is an emerging area of concern to the Commission.
- [423] Any agency who creates systems, processes, inventions, products or publications of commercial value, will be exposed to corruption risks around misuse of intellectual property.
- [424] Agencies who use contractors who engage in activities that produce intellectual property may be at a greater risk, given they often have existing industry specific networks outside of their public official role, that can be exploited for improper gain.

- [425] The Commission has noted a rise in notifications regarding intellectual property across WA Health, due in part to the dual arrangements often seen with clinicians, who also perform medical research.
- [426] Lack of clarity in the contractual arrangements of such officers to clearly define ownership of intellectual property is an area of corruption risk.
- [427] Given intellectual property is a type of asset, public authorities should give serious consideration to their intellectual property strategy being part of their asset management plan and how it may be incorporated into their internal audit and corruption-risk management programs.
- [428] Management of the risks identified in this matter requires proactive steps by both employees and the employing Health Service Providers. In addition to employees understanding their obligations to declare conflicts of interest, it is important that they have appropriate policies and processes in place to guide expectations and support compliance.

### **Red Flags for Misconduct: Individuals**

- [429] Police misconduct risks include:
1. **Inadequate internal oversight and accountability:** misconduct may go uncorrected, undermining public trust and accountability.
  2. **Delayed or incomplete investigations:** initial action often misses key issues or fails to consider all relevant evidence.
  3. **Abuse of authority and discretion:** officers using their powers in ways that are technically lawful but ethically or operationally inappropriate.
  4. **Misapplication or misunderstanding of legal powers:** officers misapplying or misunderstanding their legal authority.
  5. **Failure to consider vulnerability and welfare:** disregard for vulnerable persons may increase the risk of harm and breaches of duty of care.
  6. **Poor recordkeeping and procedural compliance:** officers failing to follow basic procedures, impeding accountability.
- [430] Red flags for individual misconduct may include the following examples, each of which has been observed by the Commission:
1. **Living beyond means but appearing rich:** the former Assistant Director General of the Department of Communities Paul Whyte was

rumoured to be related to Irene Whyte's women's fashion shops, so his apparent extravagant lifestyle was put down to inherited wealth.

2. **Gambling:** The Shire of Dowerin CEO was well known within the office as a gambler. He controlled the accounts and hired staff, paying them more than their qualifications would normally allow. No one realised he was embezzling the Shire until one day when he was out of the office, the bank rang to ask whether the Shire knew that its credit card was used on gambling sites.
3. **Speciality contracts:** A red flag is raised when an advisor recommends a contract, then is hired to supervise the contract. This has been observed in contracts for provision of information technology services. If the services include proprietary software, any public authority may be locked into the supplier who benefits when the supervisor keeps awarding work due to scope creep or technical advice. As a misconduct prevention measure, a person or entity engaged to advise on information technology and other requirements should not be engaged to manage or supply subsequent information technology.
4. **Close association with promoted staff members:** In separate operations into a vice chancellor at Murdoch University and the CEO of the Shire of Halls Creek, it was found that each principal officer had corrupted the appointment process to ensure that a close companion was appointed to a senior position.
5. **Personality:** A corrupt officer may be excessively nice and friendly, especially upwards. Alternatively, they may be a bully and intimidating downwards. Either way, through a sense of disbelief that such a nice friend could be corrupt, or a sense of dread that bullying behaviour will be unleashed if the suspected corrupt officer is questioned, a corrupt officer may use personality to conceal their offending.
6. **Taking no leave:** The administrator of a country hospital was very dedicated. He did everything himself and never took leave. One day he broke his leg and was taken off to another hospital. This was involuntary leave. An acting administrator was sent down from Perth. In those days, pay day involved receiving an envelope with actual money inside. On the first pay day, the acting administrator discovered no less than 4 ghost employees. The administrator was paying himself the 'wages' of the ghost employees.
7. **Offers of gifts and/or hospitality that are disproportionate or do not have a connection with the business activities being conducted:** If

an item is of value to the person receiving it, it may be regarded as a bribe even if it is of objectively low financial value. An example of this may be a ticket to an event that would otherwise be difficult to obtain.

8. **'Off the record' conversations:** communications not conducted through official and recorded communication channels. For example, being unwilling to put something in writing or email etc.
9. **Pressure** being exerted on staff to act otherwise in accordance with recognised process or procedure.
10. **Willing to take shortcuts:** reputation as a person who gets things done.
11. **Chaotic paperwork.**
12. **Non-disclosure of conflicts of interest.**

### **Misconduct Risks: The Trusted Assistant**

- [431] The 'trusted assistant' is effectively invisible in the shadow of a person of influence and is trusted implicitly.
- [432] A Commission operation into a health clinic uncovered an administration manager so trusted that her supervisor gave her the bank token, allowing her to bypass a two-person control on accounts.
- [433] For years no one controlled or queried her overtime claims or her leave entitlements. Despite claiming virtually no leave, she spent at least three weeks in foreign travel most years. On retirement, her leave entitlements, nearly half a million dollars, was paid out.
- [434] By way of further examples, in a government service suppliers lined up to bribe the manager responsible for awarding contracts. He was trusted by senior management. The manager was eventually imprisoned, and several contractors were sentenced to imprisonment or suspended imprisonment.
- [435] A manager trusted to award contracts to private housing inspectors demanded 10% of the value of all contracts awarded to an accomplice.
- [436] Almost non-existent supervision of a trusted officer was a cause of misconduct in an agricultural facility.
- [437] The fact that there may be red flags does not of course mean that there is necessarily corrupt behaviour. These are possible indicators, no more. But whenever the Commission has formed an opinion of misconduct, one or more of these indicators has been present.

## **Misconduct Risk: Donations to Political Parties**

- [438] In a modern democracy it is essential that political parties raise money. This immediately gives rise to the possibility, or at the least the perception of, favours purchased.
- [439] If a business or person donates to a political campaign and later obtains a favourable government contract, it is very hard to tie the two events together.
- [440] Ministers generally act on advice from their departments. A procurement process may have been conducted by persons other than the Minister. A donation or favour may have no influence in the outcome.
- [441] The perception remains. However, significant steps have been taken in WA to open the donation process to far greater transparency.
- [442] Former Attorney General John Quigley may not have been given sufficient credit for drafting, then guiding through Cabinet and Parliament, amendments to the *Electoral Act 1907* Part 6 - 'Electoral finance and disclosure of political contributions, income and expenditure'.
- [443] This is a revolutionary procedure to bring transparency to political donations. A voter who takes the trouble to seek out the information of gifts to political parties or individuals can make an informed choice as to their vote.
- [444] Time will tell whether the legislation is effective, but it certainly does represent a considerable step in the direction of transparency.

## **WA Police - Balancing Risk and Efficiency**

- [445] In WA Police, a general policy of rotation between squads is an effective misconduct prevention measure.
- [446] Misconduct risk prevention can be costly. Expertise built up over years may be lost.
- [447] In rotation, WA Police balances the misconduct risks against possible loss of expertise.
- [448] The procedures around seizure of cash and drugs were once fairly loose. The process now is tightly controlled.
- [449] Body worn camera footage has made a seismic difference to the investigation of use of force issues and other matters relating to the interaction between the police and the public. It is a significant misconduct prevention measure. It also protects WA Police from baseless accusations.

## Corruption Risk: Misuse of Credit Cards

- [450] The use of government issued credit cards for business purposes is widespread and obviously efficient.
- [451] In the Shire of Dowerin operation referred to earlier, lax supervision and auditing meant that the business credit card was used on gambling sites for years.
- [452] Separately, Operation Taurus into the Assistant Director General of the Department of Communities uncovered that he had requested and received an increase on the monthly credit limit of his corporate credit card from \$10,000 to \$50,000. No explanation or business rationale was discovered.
- [453] This enabled him to create invoices for phantom companies. No work was performed by those companies. The monthly total was always less than the limit of \$50,000, enabling him to authorise payment of the invoices.
- [454] A misconduct risk is identified by the example when the officer incurring expense, and the officer authorising payment are one and the same. This should not happen. *Treasurer's Instruction TI 5: Expenditure and Payments (TI 5)* requires appropriate controls in place to enforce the segregation of duties in relation to the payment authorisation process so that no single officer controls all aspects of this process. Often the payments officer is a comparatively junior employee in Accounts, with limited opportunity to query an authorisation.
- [455] For maintenance at a large medical institution, a loophole in the software program used to request and schedule maintenance requests had a loophole, allowing a technician to add his own company to the list of approved suppliers. He then charged the institution for work he was already paid to perform.

## Not Always Misconduct

- [456] Not all Commission operations result in opinions of misconduct.
- [457] The Commission's task is not to find serious misconduct, but to ascertain whether there is serious misconduct. Sometimes it is important to find an absence of misconduct.
- [458] By way of examples, an operation into suspected misconduct by local government councillors into the termination of the CEO concluded there was no evidence of misconduct. There had been previous media criticism of the Council.

- [459] Allegations about the treatment of a dying man admitted to hospital proved groundless after a thorough investigation.
- [460] Misconduct risks in the use of confidential data were exposed in reports relating to three public authorities.
- [461] The purchase of a prime piece of land in Cockburn Central had cost the government about \$39 million. The Commission did not find misconduct, but did find significant misconduct risks.

## **Chapter Fifteen**

### **Changes for the Better**

- [462] Australia and Western Australia have undergone institutional change in the last 35 years since ICAC was established in New South Wales. Each state and territory has an anti-corruption commission, independent of government.
- [463] The long-awaited Commonwealth agency, the National Anti-Corruption Commission, is finally a reality.
- [464] Despite their independence from government and Parliament, some anti-corruption commissions are hobbled by their enabling Acts.
- [465] When in opposition, politicians love anti-corruption commissions. Once they attain government, their views can change and a commission, once seen as a bulwark, now may be perceived as a fetter.
- [466] This is illustrated by the attitude of Parliaments to the issue of public examinations. Some states prohibit them entirely. Others, including the Commonwealth, place significant conditions to be met before a Commission can conduct a public examination.
- [467] All told though, the rise of anti-corruption commissions has been a significant development in the fight against corruption. By its very nature, deterrence cannot be measured. Nevertheless, there must be many public officers who have been deterred from a corrupt act or abuse of office because of the presence of commissions and the fear of exposure.
- [468] The fact that Australia scores low on the Corruption Perceptions Index is an indicator that corruption prevention measures are working.
- [469] The old cliché 'sunlight is the best disinfectant' holds true for corruption. Corruption flourishes in dark places.

### **Has the Commission Made a Difference?**

- [470] At the conclusion of its reports, the Commission may make recommendations for a public authority.
- [471] The Commission has adopted the practice of revisiting the recommendations the following year or years to report on implementation.
- [472] A public authority is not bound by a Commission recommendation, but usually the public authority will try to implement the recommendation or express reasons why it may not be practical.

- [473] Even without a recommendation, the government or authority may take reformatory action to prevent a recurrence of misconduct.

### **Local Government**

- [474] The criminal behaviour by the Shire of Dowerin CEO had been going on for some years undetected. One elected official confessed during a public examination that until the previous Friday he did not know there was a *Local Government Act* which set out his responsibilities.
- [475] The State government brought local government audits under the control of the Auditor General and made plans for training for elected councillors.
- [476] By invitation, the Commission was represented at a meeting of WALGA (Western Australian Local Government Association), which turned hostile. Several councillors who were farmers insisted they ran multi-million-dollar businesses.
- [477] This may be true, but the governance of a family company with one business cannot be compared with the governance of a rural local authority, its finances, activities, and regulations.

### **Licensing**

- [478] Commission surveillance officers filmed a licence examiner taking bribes to pass motorcycle and vehicle licences.
- [479] He was able to accomplish this with the unwitting but naïve help of staff in country towns who accessed the TRELIS database maintained by the Department of Transport. The Department of Transport tightened accesses to TRELIS.<sup>82</sup>
- [480] A number of motor vehicle examiners were derelict in their duty, allowing vehicles on Western Australian roads without proper clearance.<sup>83</sup> Their contracts were terminated.
- [481] A truck driving school passed applicants for a driver's licence for a fee with minimal driving demonstration. The Department of Transport re-examined nearly 400 drivers, many of whom failed.

### **A Vulnerable Person**

- [482] An Indigenous man pleaded guilty to manslaughter.

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<sup>82</sup> Corruption and Crime Commission, 'A review of the Department of Transport's management of unlawful access to TRELIS', published 5 August 2021; Corruption and Crime Commission, 'Further review of the Department of Transport's management of unlawful access to TRELIS', published 9 November 2023.

<sup>83</sup> Corruption and Crime Commission, 'Report on the activities of certain vehicle examiners contracted by the Department of Transport', published 24 January 2017.

- [483] Subsequently, flaws in the investigation were identified. The Commission conducted an operation into police actions in interviewing and arresting the Indigenous man. Systemic weaknesses were uncovered, including inexperience, lack of knowledge of the *Criminal Investigation Act*, improper interview techniques and the need for a caution to be understood by a person with little command of English.<sup>84</sup> A judge ruled that the record of interview was inadmissible as it was involuntary.
- [484] The conviction was quashed by the Court of Appeal.<sup>85</sup>
- [485] The Commission reported to Parliament for several years on the progress being made by WA Police to implement Commission recommendations.<sup>86</sup>

### **Prisons**

- [486] A series of operations into use of force in Corrective Services prisons led to 51 recommendations, most of which have been accepted by the Department of Justice and implemented.<sup>87</sup>

### **Domestic Violence**

- [487] An operation centred on the WA Police response to a domestic violence incident in which a child was murdered, demonstrated a flawed response and provided lessons for the future.<sup>88</sup>

### **Poor Audits**

- [488] A cooperative investigation with WA Police into corruption and fraud exposed inadequate audits both internal and external, leading the government to increase the resources of the Auditor General and requiring an independent officer to be appointed to Risk and Audit Committees of public authorities.

### **Dangerous Drugs in Hospitals**

- [489] An operation into the storage and use of dangerous drugs in hospital exposed weaknesses that put patient care at risk. There was little control at the time, leading to tampering with medicines, resulting in patients

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<sup>84</sup> Corruption and Crime Commission, '*Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*', published 5 November 2015.

<sup>85</sup> *Gibson v The State of Western Australia* [2017] WASCA 141.

<sup>86</sup> Corruption and Crime Commission, '*The implementation of recommendations arising from the Commission's investigation into Operation Aviemore - a final report*', published 24 October 2019.

<sup>87</sup> Corruption and Crime Commission, '*Report on the balance of recommendations arising out of previous Commission reports on the Department of Corrective Services*', published 10 May 2022.

<sup>88</sup> Corruption and Crime Commission, '*Report on the response of WA Police to a particular incident of domestic violence on 19-20 March 2013*', published 21 April 2016.

receiving reduced doses. The Health Department responded to recommendations for improvement.

### **Electoral Allowances**

- [490] A Commission investigation<sup>89</sup> into the misuse of electoral allowances was one reason for the Salaries and Allowances Tribunal to implement a new system with tightened controls.
- [491] A Commission report on misconduct risks in the use of electoral officers resulted in the government commissioning an inquiry and report.<sup>90</sup>

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<sup>89</sup> Corruption and Crime Commission, '*Misconduct risks in electorate allowances for Members of Parliament*' published 17 December 2019.

<sup>90</sup> Corruption and Crime Commission, '*Significant misconduct risks to good government*' published 11 October 2024.

## Chapter Sixteen

### A New Anti-Corruption Act

- [492] A new Act is necessary to take account of changes affecting the Western Australian community after 21 years.
- [493] The *Corruption, Crime and Misconduct Act* is no longer completely fit for purpose. It has inconsistencies and references to matters that are no longer current such as the Police Royal Commission and the Anti-Corruption Commission. As already mentioned, the Commission's role in making an exceptional powers finding requires adjustment to take account of current criminal risks to the State. The Joint Standing Committee on the Corruption and Crime Commission, in its reports, has called for amendments or a new act.

### RECOMMENDATION THREE

- [494] Instructions be given to replace the *Corruption, Crime and Misconduct Act* with a new Act fit for purpose. The new Act should incorporate the best practice guidelines illustrated by the Fundamental Principles agreed by the Australian Anti-Corruption Commissioners. A timetable should be prepared with the intent that a bill be brought forward during the currency of this Parliament.

### Fundamental Principles of Australian Anti-Corruption Commissions

- [495] The Fundamental Principles of Australian Anti-Corruption Commissions were agreed as between the 10 Australian Anti-Corruption Commissioners (including Commissioner McKechnie) in July 2024. The Fundamental Principles provides as follows:

*These twelve principles enable Anti-Corruption and Integrity Commissions (Anti-Corruption Commissions) to independently and effectively undertake their functions. They provide a legislative and policy framework within which Australian Anti-Corruption Commissions may achieve national consistency and readily collaborate.*

*The principles express a shared approach to engaging with Australia's obligations under the United Nations Convention against Corruption.*

#### **1. The ability to consider referrals from any third party**

*Anti-Corruption Commissions should be empowered to consider an allegation of corruption referred to it by any third party. Third parties, in this context, include public sector employees, heads of public authorities, holders of public office and members of the public.*

*Empowering Anti-Corruption Commissions to receive allegations of corruption from any third party will ensure that the Commission can consider allegations detected by a public authority as well of allegations that are reported by whistle-blowers.*

**2. The ability to commence an investigation on own volition (own motion powers)**

*Anti-Corruption Commissions should be empowered to commence investigations into corruption or maladministration on its own motion, so long as the investigation falls within the jurisdiction of the Commission. This “own motion power” enables a Commission to initiate investigations into allegations that have been detected by the Commission, rather than limiting its investigation powers to allegations that have been referred to it.*

**3. A requirement for the heads of public sector agencies to report allegations of corruption to the Anti-Corruption Commission**

*In keeping with the responsibility of public sector agency heads for the integrity of their agency, public sector agency heads should be subject to a mandatory duty to report allegations of corruption relating to their agency to the Anti-Corruption Commission.*

*This duty to report may also be expanded, as appropriate, to other public officials whose functions might identify allegations of corruption within the Anti-Corruption Commission’s jurisdiction.*

**4. Protections for whistleblowers and witnesses**

*A person who refers information or gives evidence to a Commission should be immune from any criminal, civil, administrative or disciplinary liability, and from the enforcement against them of contractual rights or remedies, for doing so. The taking of any reprisal against a person for giving information or evidence to a Commission should be an offence. However, these protections should not exempt such a person from liability for providing intentionally false or misleading information or evidence, nor from liability for past conduct of the person that is disclosed by the person.*

**5. Coercive powers to obtain information and evidence**

*In addition to traditional law enforcement investigative tools to obtain information and evidence, Anti-Corruption Commissions should be able to compel the production of information or documents, and conduct hearings, as a coercive tool to obtain evidence. Anti-Corruption Commissions should be able to compel and use records that would usually attract an immunity from production where it can be demonstrated that it is necessary and proportionate to advance an investigation. This includes the express abrogation of the privilege against self-incrimination in respect of evidence given or documents or information produced, but with corresponding use immunity provisions, so that evidence obtained under compulsion cannot be used against the witness from whom it is obtained (though it can be used against others) in a criminal prosecution (except a prosecution for an offence against the relevant integrity legislation).*

*The features of hearings in this context include:*

- *The power to summons witnesses.*
- *The power to require production of information and documents.*
- *The power to take evidence subject to penalty for perjury (on oath or affirmation).*

*Anti-Corruption Commissions should be able to conduct hearings either in public or private. The types of considerations in deciding whether to conduct a hearing in public or in private include reputation, witness welfare, privacy, confidentiality, any risk of compromising a fair trial in potential criminal proceedings, and the public interest.*

#### **6. The ability to refer matters to a prosecuting authority**

*Anti-Corruption Commissions are, by their very nature, investigation agencies. They should be empowered (or not restricted in their ability) to refer briefs of evidence assembled as a result of their investigations directly to a prosecuting authority, such as the Director of Public Prosecutions, for assessment for prosecution action.*

#### **7. The ability to make recommendations**

*As with other integrity agencies, such as the auditor-general and ombudsman, it is an important aspect of the work of an Anti-Corruption Commission to be able to make recommendations to heads of public authorities that arise from the Commission's work. These recommendations may relate to individuals or systemic issues identified through the Commission's work and have the aim of strengthening the integrity framework and anti-corruption controls and preventing the corrupt conduct from recurring.*

*As a matter of best practice, an Anti-Corruption Commission should also be able to make recommendations to the public sector as a whole, either through a recommendation tabled in Parliament or provided to an appropriate Minister that relate to addressing corruption vulnerabilities or risks generally within the public sector.*

#### **8. The ability to report on investigations and make public statements**

*One of the key ways that an Anti-Corruption Commission can give insight into their operations is through the ability to report on investigations and make public statements. This should include the ability to oversight and report on the implementation of any recommendations. This is important to provide transparency in relation to the way that an Anti-Corruption Commission undertakes their work, to provide assurance to the public and public sector that corruption allegations are appropriately dealt with and as a mechanism of general deterrence.*

*In preparing a report on an investigation, Anti-Corruption Commissions should provide procedural fairness to persons to whom a finding is proposed to be made. In deciding whether to publish a report or make a public statement, Anti-Corruption Commissions should balance the public interest in disclosing the information with any unreasonable prejudicial consequences that might result.*

## **9. A corruption prevention function**

*As well as having an investigation function, it is best practice for an Anti-Corruption Commission to also have a corruption prevention function. Investigations, by their very nature, focus on events that have already occurred. In contrast, a corruption prevention function focuses on identifying vulnerabilities and potential mitigations to prevent the event from occurring in the first place or avoid similar events occurring in the same or separate entities. This is a crucial element in a robust anti-corruption framework.*

*The corruption prevention function requires adequate resourcing to be able to support public authorities and public officials to mitigate the corruption risks that they face and put in place strong corruption prevention controls. The function may include multiple elements such as education, engagement, research, advice, support and specific projects.*

## **10. A sufficient and predictable budget**

*An Anti-Corruption Commission's capacity to fulfil its statutory functions will be limited by its budget. The Commission's efficacy can therefore be undermined by budgetary restrictions. The threat of a potential reduction in budget also threatens an Anti-Corruption Commission's perceived, or actual, independence.*

*It is acknowledged that all public authorities will have some budgetary limitations. However, an Anti-Corruption Commission's budget should be largely quarantined from the political process. The way in which this is achieved will depend on the jurisdiction, but could involve a budget being set by Treasury, with oversight from a Parliamentary Committee. Any funding model should be transparent, certain and flexible, promoting accountability by both the funding body and the anti-corruption agency.*

## **11. Transparency of appointments**

*The process for appointment of integrity commissioners impacts on the community's perceptions of an Anti-Corruption Commission's independence. Commissioner appointments should be made on the basis of merit following an open and transparent appointment process. Selection should be measured against publicly available criteria, with an independent panel putting forward a shortlist of suitable applicants to the relevant Minister for appointment. Merit should be the dominant consideration in selection.*

*The Council of Australasian Tribunals Tribunal Independence in Appointments - Best Practice Guide offers a useful template for this process.*

## **12. Effective and proportionate oversight**

*Given the powers available to Anti-Corruption Commissions, effective and proportionate oversight of Commissions should be established, to ensure transparency and accountability. Appropriate oversight mechanisms include an independent inspectorate and parliamentary oversight through a dedicated parliamentary committee.*

## Summary of Recommendations

### Recommendation 1

- [496] It is timely to re-examine the exceptional powers Part of the *Corruption, Crime and Misconduct Act* and, if necessary, implement changes to make it fit for purpose to protect the State against organised crime and criminal cartels.

### Recommendation 2

- [497] Expand the definition of 'public officer' in the *Corruption, Crime and Misconduct Act* to cover all persons who do work for a public authority in whatever capacity, including persons and incorporated bodies that have contracts with government.

### Recommendation 3

- [498] Instructions be given to replace the *Corruption, Crime and Misconduct Act* with a new Act fit for purpose. The new Act should incorporate the best practice guidelines illustrated by the Fundamental Principles agreed by the Australian Anti-Corruption Commissioners. A timetable should be prepared with the intent that a bill be brought forward during the currency of this Parliament.

## Tabled Commission Reports 2015 - 2025

Report name	Date tabled
Report on Misconduct Risk in Local Government Procurement	4-Feb-15
Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector	26-Mar-15
Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013	20-Aug-15
Report on an Investigation into Acceptance and Disclosure of Gifts and Travel Contributions by the Lord Mayor of the City of Perth	5-Oct-15
Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke	5-Nov-15
Response of WA Police to a Particular Incident of Domestic Violence on 19-20 March 2013	21-Apr-16
Report on a Purchase of Land in the Australian Marine Complex Henderson by a Senior Officer of LandCorp	20-Jun-16
Report on a Matter of Governance at Murdoch University	1-Jul-16
Report on a matter of Governance at the Shire of Dowerin	10-Oct-16
Operation Aviemore: Commissioner of Police response to Commission Recommendations	2-Dec-16
A Report on Corruption in Respect of Driver Licence Applications	16-Dec-16
Report on the Activities of Certain Vehicle Examiners Contracted by the Department of Transport	24-Jan-17
Report on Matters of Serious Misconduct in the Shire of Exmouth	2-May-17
Report on the Supply and Management of Schedule 8 Controlled Drugs at Certain Public Hospitals in Western Australia	20-Jun-17
Report on Corruption in Respect of Truck Driving Licence Applications	2-Nov-17
Report into allegations of serious misconduct by Councillors of the City of Perth between 21 and 24 October 2017	18-Dec-17

<b>Report into a Tasering Incident on 31 March 2017 at Fremantle</b>	<b>21-Mar-18</b>
<b>Review of Police Response to an Incident in a Country Town where Excessive Force was used and an Arrested Person's Details not Recorded</b>	<b>21-Mar-18</b>
<b>Report on Department of Transport Response to Commission Recommendations</b>	<b>4-Apr-18</b>
<b>The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore - A Further Report</b>	<b>4-Apr-18</b>
<b>Report into inadequate supervision of prisoners whilst in the community</b>	<b>11-May-18</b>
<b>Report on serious misconduct risks around dangerous drugs in hospitals</b>	<b>25-May-18</b>
<b>Report into inadequate use of force reporting at Eastern Goldfields Regional Prison in May 2017</b>	<b>27-Jun-18</b>
<b>Report into inadequate use of force reporting at Eastern Goldfields Regional Prison on 27 March 2017 and Bunbury Regional Prison on 14 November 2016</b>	<b>27-Jun-18</b>
<b>Report into inadequate use of force reporting at Hakea Prison on 21 March 2016</b>	<b>27-Jun-18</b>
<b>Report on corrupt custodial officers and the risks of contraband entering prisons</b>	<b>26-Jun-18</b>
<b>Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service</b>	<b>16-Aug-18</b>
<b>Report on corruption in Information Technology at Horizon Power</b>	<b>20-Aug-18</b>
<b>Report into how conflicts of interest undermine good governance - A report on the Chief Executive Officer of the Shire of Halls Creek</b>	<b>30-Aug-18</b>
<b>Report into misconduct risks in WA prisons</b>	<b>26-Oct-18</b>
<b>Report into unauthorised release of confidential information of the Public Transport Authority</b>	<b>18-Oct-18</b>
<b>Review of an arrest incident by Western Australian Police at Hamilton Hill</b>	<b>1-Nov-18</b>
<b>Report into the Road Safety Commission and an allocation of funds to Western Force</b>	<b>13-Dec-18</b>
<b>Review of police response to an incident in High Street Mall Fremantle on 3 September 2017</b>	<b>7-Feb-19</b>

<b>Report on an incident in the Fremantle Offender Management Area 1 January 2017</b>	<b>28-Feb-19</b>
<b>Report on the WA Commissioner in Japan</b>	<b>12-Mar-19</b>
<b>Serious misconduct in procurement of environmental services</b>	<b>21-May-19</b>
<b>Abuse of power at the Department of Primary Industries and Regional Development</b>	<b>5-Jul-19</b>
<b>Report on misconduct risks in Health Support Services and North Metropolitan Health Service</b>	<b>19-Sep-19</b>
<b>Review of Recommendations made to Department of Transport arising from three reports</b>	<b>24-Oct-19</b>
<b>Misconduct risks in electorate allowances for Members of Parliament</b>	<b>17-Dec-19</b>
<b>The implementation of recommendations arising from the Commission's investigation into Operation Aviemore - A final report</b>	<b>24-Oct-19</b>
<b>Review of recommendations made following unauthorised release of confidential information from the Public Transport Authority</b>	<b>20-Feb-20</b>
<b>Review of an inadequate investigation by the Department of Communities into allegations of bribery</b>	<b>2-Apr-20</b>
<b>Further review of the WA Police Force response to an incident in the lock-up of a country town</b>	<b>9-Apr-20</b>
<b>Review of a WA Police Force investigation into use of force in respect of a child</b>	<b>20-Apr-20</b>
<b>Report into misconduct risks with access to confidential information in the Office of the Auditor General</b>	<b>23-Apr-20</b>
<b>Review of recommendations made following an arrest incident by Western Australian Police at Hamilton Hill</b>	<b>18-Jun-20</b>
<b>Review of recommendations made to the Department of Justice from six reports</b>	<b>25-Jun-20</b>
<b>Report into misconduct risks with access to confidential information in the Office of the Auditor General</b>	<b>18-Aug-20</b>
<b>Review of recommendations made following reports on dangerous drugs in hospitals in Western Australia</b>	<b>17-Sep-20</b>
<b>Review of an investigation by Western Power into serious misconduct</b>	<b>23-Sep-20</b>

<b>Report on electorate allowances and management of electorate offices</b>	<b>26-Nov-20</b>
<b>Review of an investigation by Water Corporation into serious misconduct allegations in procurement</b>	<b>28-Jan-20</b>
<b>Review of a police use of force incident in Northbridge on 10 November 2019</b>	<b>27-May-21</b>
<b>Final Review of the WA Police Force response to an incident in the lock up of a country town</b>	<b>17-Jun-21</b>
<b>Review of the Auditor General's response to misconduct risks with access to confidential information</b>	<b>24-Jun-21</b>
<b>Review of the Department of Transport's management of unlawful access to TRELIS</b>	<b>5-Aug-21</b>
<b>Serious misconduct by the CEO of the Shire of Ravensthorpe</b>	<b>22-Sep-21</b>
<b>Exposing corruption in Department of Communities</b>	<b>16-Nov-21</b>
<b>A Report into WA Police Force's identification and management of at risk officers</b>	<b>2-Dec-21</b>
<b>Misconduct within the Department of Communities relating to country building projects</b>	<b>7-Apr-22</b>
<b>Final review of recommendations made following reports on dangerous drugs in hospitals WA</b>	<b>7-Apr-22</b>
<b>A report on the deployment of police dogs</b>	<b>11-May-22</b>
<b>Report on the balance of recommendations out of previous Commission reports on the Department of Corrective Services</b>	<b>10-May-22</b>
<b>A report on Murdoch University's governance and oversight of farm management</b>	<b>23-Jun-22</b>
<b>A report on corruption procurement practices and conduct in the Department of Communities</b>	<b>20-Sep-22</b>
<b>A death raises questions at Rockingham General Hospital</b>	<b>14-Mar-23</b>
<b>Excessive use of force by a police officer</b>	<b>8-May-23</b>
<b>Report on oversight of a police investigation into an arrest for disorderly conduct</b>	<b>25-May-23</b>

<b>Serious Misconduct risks in a housing authority project</b>	<b>20-Jul-23</b>
<b>Deployment of Police Dogs Report Recommendation Review</b>	<b>12-Oct-23</b>
<b>Serious Misconduct by a senior police officer</b>	<b>26-Oct-23</b>
<b>Further Review of the Department of Transport's management of unlawful use of TRELIS</b>	<b>9-Nov-23</b>
<b>Report on actions of a public officer at Murdoch University in respect to maintenance contracts</b>	<b>23-Jan-24</b>
<b>Report on biomechanical engineer at Sir Charles Gairdner Hospital</b>	<b>23-Jan-24</b>
<b>An investigation into allegations of serious misconduct following the death of a young detainee in Unit 18 Casuarina Prison.</b>	<b>11-Jun-24</b>
<b>Misconduct risks at Mid-West Ports Authority</b>	<b>14-May-24</b>
<b>A review of misconduct risks within Department of Finance: Lessons for all Government Authorities</b>	<b>14-May-24</b>
<b>A review of Main Roads investigation into misconduct by two managers</b>	<b>13-Jun-24</b>
<b>A review of WA Police investigation into the arrest of an Aboriginal teenager</b>	<b>28-Jun-24</b>
<b>Review of a Public Transport Authority Use of Force Incident</b>	<b>17-Sep-24</b>
<b>Report on the Western Australian Parliamentary Commissioner for Administrative Investigations (Ombudsman)</b>	<b>8-Oct-24</b>
<b>Significant misconduct risk to good government</b>	<b>11-Nov-24</b>
<b>Review of WA Police action into recommendation to improve internal investigation processes</b>	<b>19-Dec-24</b>
<b>Report on risks to confidential information control in the public sector</b>	<b>8-May-25</b>
<b>Report on the dangers of wrongful identification in custody</b>	<b>12-May-25</b>
<b>Report into the misuse of a WA Police Information System</b>	<b>20-May-25</b>

## Commission s 41 Reports 2018 - 2025

Agency	Number of Reports
Child and Adolescent Health Service	2
City of Perth	1
Curtin University	2
Department of Biodiversity, Conservation and Attractions	2
Department of Communities	3
Department of Education	1
Department of Energy, Mines, Industry Regulation and Safety	1
Department of Health	1
Department of Justice	14
Department of Local Government, Sports and Cultural Industries	2
Department of Transport	4
East Metropolitan Health Service	5
Edith Cowan University	1
Insurance Commission of Western Australia	1
Landgate	1
North Metropolitan Health Service	6
PathWest	2
Public Transport Authority	1
Shire of Exmouth	1
Shire of Halls Creek	2
Shire of Wandering	1
South Metropolitan Health Service	1
Southern Ports Authority	1
WaterCorp	1
Western Australia Country Health Service	2
Western Australia Police Force	62
Western Power	1