



CORRUPTION AND CRIME COMMISSION



Perth City



Bungle Bungles



Kalbarri



Bunker Bay



Beverley



Hamersley Gorge

PERFORMANCE AT A GLANCE 2014-2015

The Corruption and Crime Commission *Annual Report 2014-2015* provides an account of the activities of the Commission during the reporting period. This brochure, *Performance at a Glance*, provides a summary of those activities.

26 OCTOBER 2015

Overview

Role of the Commission

The Corruption and Crime Commission ("the Commission") was established by the Parliament of Western Australia, commencing operations on 1 January 2004, for the purposes of:

- improving continuously the integrity of, and reducing the incidence of misconduct in, the public sector; and
- combating and reducing the incidence of organised crime.

The Commission is independent of the government of the day and responsible directly to the Parliament.

Dealing with Misconduct

One of the ways in which the Commission has fulfilled its misconduct role is by receiving allegations of misconduct about public officers.

"Public officers" include police officers, Ministers of the Crown, prison officers, public service officers, teachers, members and employees of either House of the Parliament, councillors and employees of local governments and some contractors to the Government. There are approximately 140,000 public officers in Western Australia.

The Commission assesses every allegation it receives. Allegations can be received as reports from members of the public, notifications from public authorities, or be developed by the Commission itself from information it receives from other sources. The majority of allegations received by the Commission are notifications from public authorities. During the 2014-2015 reporting period the Commission assessed 982 allegations of misconduct received from the public and 4,048 allegations of misconduct received from public authorities (refer table on p.6).

Some significant allegations are investigated by the Commission itself, and others are referred to appropriate authorities for action. Sometimes allegations are referred to the police or the Public Sector Commission, but usually they are referred to the authority that employs the public officer involved in alleged misconduct. This allows the employing agency to deal with the allegation using its own disciplinary procedures. The Commission often monitors progress, and then reviews how the authority has dealt with an allegation.

Sometimes, when the Commission investigates allegations itself, it holds examinations of witnesses on oath. These examinations are usually held in private, but can also be in public.

Dealing with Organised Crime

The Commission combats and reduces the incidence of organised crime by facilitating the use of exceptional powers by WA Police. Application for use of these powers by WA Police is initiated by the Commissioner of Police.

Proclamation of the *Corruption, Crime and Misconduct Act 2003*

On 1 July 2015 the *Corruption and Crime Commission Act 2003* ("the CCC Act") was amended to become the *Corruption, Crime and Misconduct Act 2003* ("the CCM Act")¹ Responsibility for dealing with minor misconduct was given to the Public Sector Commissioner, with the Commission retaining responsibility for serious misconduct.

Serious misconduct includes:

- allegations of all types about the conduct of officers and employees of WA Police; and
- allegations about corrupt or serious criminal conduct by all other public officers.

¹ The CCC Act provided for the establishment and operation of the Commission.

Serious criminal conduct is something which has a penalty of 2 years or more imprisonment under *The Criminal Code* or another law and can include offences such as assault, stealing, fraud, bribery, drug offences, misusing a computer system and disclosing official information.

Corrupt conduct includes situations in which a public officer misuses their official position or powers to obtain a benefit for themselves or someone else, or cause someone a detriment. This can include things like rigging contracts, fixing fines, accepting gifts without declaring them, accepting bribes, and favouritism for improper reasons.

Reporting Misconduct

The resources listed below have been prepared by the Commission and the Public Sector Commission to assist with the reporting of misconduct, and can be found on the Commission Website at:

<http://www.ccc.wa.gov.au/PreventionAndEducation/Resources/Pages/default.aspx>.

- *Fact Sheet No. 1: About the CCC*
- *Fact Sheet No. 2: Definition of Serious Misconduct*
- *Fact Sheet No. 3: Reporting Serious Misconduct*
- *Fact Sheet No. 4: Definition of Public Officer*
- *Guidelines for Notification of Serious Misconduct*
- *Notification of Misconduct in Western Australia*
- *Summary of Misconduct Notification Categories Flow Chart*

In addition, July and August 2015 *Updates*, which provide an overview of misconduct allegations notified to the Commission and the Public Sector Commission since 1 July 2015, are available on the Commission Website at:

<http://www.ccc.wa.gov.au/Publications/MediaReleases/Pages/default.aspx>

Appointment of Commissioner

The Hon. John Roderick McKechnie, QC, was appointed Commissioner on 1 April 2015 with effect from 28 April 2015. Prior to his appointment Mr McKechnie was the Senior Judge General Division of the Supreme Court of Western Australia, having joined the Court on 4 March 1999.

The office of Commissioner was vacant during the period 15 April 2014 to 27 April 2015. During that period Acting Commissioner Christopher Shanahan, SC and Acting Commissioner Neil Douglas performed the functions of that office. Since his appointment Commissioner McKechnie has continued to build on the work commenced by the Acting Commissioners, including:

- commitment to a positive working relationship with WA Police, culminating in a Memorandum of Understanding (MOU), which was signed by the Commissioner and Dr Karl O'Callaghan, APM, the Commissioner of Police, on 8 July 2015;
- establishment of a protocol with the Parliamentary Inspector of the Corruption and Crime Commission on 9 June 2015 regarding the referral of allegations concerning, or that may concern, Commission officers;
- fostering a collaborative working relationship with the Public Sector Commission to ensure a smooth transfer of responsibility for minor misconduct;



John McKechnie

Hon. John McKechnie, QC
COMMISSIONER

- enhancing the Commission's intelligence capability by using a misconduct intelligence assessment process, enabling the Commission to better respond to emerging corruption and serious misconduct "hot spots" in the Western Australian public sector; and
- an internal organisational review and work to reposition the Commission for the future, thereby signalling a shift towards a more strategic, targeted and intelligence-led approach to identifying, preventing and dealing with serious misconduct and corruption in the Western Australian public sector.

2014-2015 Snapshot

During the 2014-2015 reporting period the activities of the Commission occurred under the CCC Act. For that period the Commission had responsibility for both serious and minor misconduct, referred to collectively as "misconduct".

- Assessed **5,283** allegations of misconduct and reviewable police action.
- Monitored **909** allegations the subject of disciplinary, investigatory or other action by an appropriate authority. Reviewed **1,586** allegations the subject of disciplinary, investigatory or other action by an appropriate authority.
- Conducted **317** preliminary investigations and assessments pursuant to section 32(2) of the CCC Act and conducted **62** investigations pursuant to section 33 of the CCC Act, with **46** of those undertaken by the Commission and **16** undertaken by the Commission in co-operation with an independent agency or appropriate authority.
- In relation to the Commission's misconduct function, charged **13** persons, including **5** public officers, with **82** charges. During the reporting period **69** charges were finalised in relation to **13** persons with **13** persons convicted in relation to **68** charges.

In relation to the Commission's organised crime function, **nil** persons were charged and **nil** charges were finalised.
- Delivered 19 corruption prevention and education presentations and forums to 858 public officers and community members.
- Made **5** reports pursuant to Part 5 of the CCC Act. Of those **1** report contained **2** recommendations.
- Received **nil** applications for an exceptional powers finding and **nil** applications for a fortification warning notice.

- As a consequence of the Annual Assurance Audit ("the Audit") for the 2014-2015 period, the Auditor General issued an unqualified audit opinion, advising that no significant issues had been identified that were likely to impact on the 2015-2016 audit.
- The Ombudsman Western Australia is the Principal Inspector for the purposes of the *Telecommunications (Interception and Access) Western Australia Act 1996* ("the TIA Act"). After conducting inspections of the records of the Commission under the relevant provisions of the TIA Act for the 2014-2015 period, the Principal Inspector found that the Commission complied with those provisions (as contained in Part 2 of the TIA Act).

Allegations

In 2014-2015 the Commission received/assessed 5,283 allegations of misconduct and reviewable police action. Although every allegation has different circumstances, they are grouped into categories for reporting purposes. The table below lists the ten most frequent categories of misconduct allegations received/assessed in the reporting period. These account for 72.8% of the allegations received/assessed.

Top Ten Allegations by Category		
Category	No.	%
Breach of code of conduct/policy/procedures	985	18.6%
Assault - physical/excessive use of force	691	13.1%
Neglect of duty	532	10.1%
Unprofessional conduct - demeanour/ attitude/language	415	7.9%
Inappropriate behaviour	331	6.3%
Corrupt Conduct	207	3.9%
Fraud/falsification/fabrication	185	3.5%
Bullying/Intimidation/Harassment	176	3.3%
Breach of confidentiality/misuse of information/ improper disclosure	166	3.1%
Misuse of computer system/ email/internet	156	3.0%
Total	3,844	72.8%

Examples: unlawful use of Taser weapon by a police officer; excessive force resulting in damage to property by a police officer while executing a warrant; and assault of a prisoner by a prison officer.

Examples: a prison nurse failed to properly check that medicine was given to the correct prisoner; and a manager failed to investigate allegations of bullying and harassment.

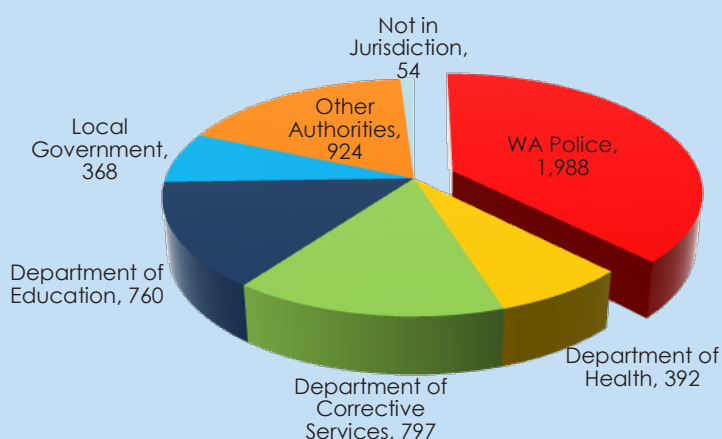
Examples: acceptance of hospitality in return for preferential treatment; and planning officer benefitting from a private developer for allowing buildings to be constructed in breach of local by-laws and planning schemes.

Examples: falsifying a worker's compensation claim; and creating a false invoice for payment.

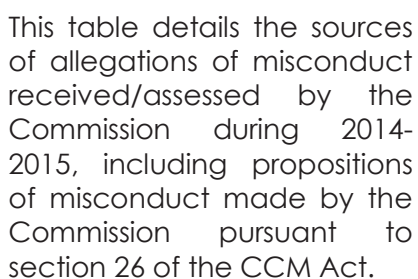
Example: providing confidential information regarding tender documents to an external contractor.

It is not unusual for "assault/excessive force" to be one of the major allegation categories. This is because WA Police are required to notify the Commission of all complaints they receive about these matters, whether they are considered to be reviewable police action or an allegation of misconduct. The nature of policing can necessarily involve a use of force.

Allegations by Subject Authority	
Subject Authority	No.
WA Police	1,988
Department of Corrective Services	797
Department of Education	760
Department of Health	392
Local Government	368
Other	924
Not in Jurisdiction	54
Total	5,283



The above table shows the breakdown by subject authority of the 5,283 allegations of misconduct received/assessed by the Commission during 2014-2015. The numbers for WA Police include notifications by police of matters which may concern reviewable police action.



ALLEGATION

INVESTIGATION

The matter was referred to WA Police in January 2014 and the Commission in February 2014.

OUTCOME

The Department subsequently strengthened its internal processes and conducted tailored education forums for all approving officers outlining their roles and responsibilities in approving payment via purchase requisitions and corporate credit cards.

Investigations

The Commission may conduct a preliminary investigation as part of its assessment of an allegation. During the reporting period 317 preliminary investigations were conducted. Examples of allegations which were subject to preliminary investigation included:

- misuse of force by WA Police officers;
- unlawful access and disclosure of information;
- conflicts of interest in procurement; and
- fraud, bribery and corruption.

Once an assessment has been completed the Commission may decide to take action in accordance with options set out in section 33 of the Act. The options include the Commission investigating the allegation, either by itself or in cooperation with an appropriate authority; referring the allegation to an appropriate authority for action; or taking no action.

In 2014-2015 reporting period the Commission conducted 62 investigations.

The majority of allegations assessed are referred to an appropriate authority for action. Appropriate authorities are public authorities with the power to take disciplinary, investigatory or other action and are frequently the public authority which employs the public officer who is the subject of an allegation.

The Commission may monitor the progress of an investigation conducted by an appropriate authority, and may review how the authority dealt with the allegation, and whether it was reasonable in the circumstances. In the course of the monitoring and review process the Commission may make recommendations about how a matter should be dealt with. In 2014-2015 recommendations were made to WA Police, Department of Health, Environmental Protection Authority and Pilbara Development Commission.

CASE STUDY TWO

UNLAWFUL USE OF A RESTRICTED ACCESS COMPUTER: CORRUPT CONDUCT

ALLEGATION

A public officer at a regional prison was alleged to have acted corruptly by unlawfully accessing the departmental computer system and passing on restricted information to third parties, and allowing prisoners to use an office phone to make unmonitored calls.

INVESTIGATION

The investigation revealed that the phone calls made by prisoners included attempts to obtain cannabis from associates outside the prison.

On one occasion a prison inmate made a call with the purpose of obtaining cannabis for the public officer to take into the prison. The public officer assured the inmate that the office phone was not monitored by prison authorities.

On another occasion the public officer stood at the doorway to keep watch and counselled a prisoner on the volume of his voice so that his use of the office phone would not be discovered.

The public officer also repeatedly unlawfully accessed the departmental computer system and passed on restricted information about third parties at the request of inmates.

OUTCOME

The public officer pleaded guilty to two counts of corruption and seven counts of unlawful use of a restricted-access computer system, and was sentenced to 28 months imprisonment, with a minimum 14 months imprisonment before being eligible for release.

In sentencing the Judge found that all the offences were very serious but, in particular, the corruption offences:

... undermine the maintenance of the prison system as a place of correction ... The public rightly expects that everyone connected with the administration of justice from police to prosecutors, judges and those employed who are serving in the correction system will maintain the highest standards of integrity. When that trust that is given is abused there is a proper expectation that it will be regarded seriously and punished appropriately.

Powers Available to the Commission

Powers available to the Commission are under Part 6 of the CCM Act. Those powers include: obtaining information and documents; serving a summons on a person to attend before the Commission at an examination to give evidence; entering and searching premises; issuing search warrants; the use of assumed identities by Commission officers; and the conduct of a controlled operation or an integrity testing programme. The power of the Commission to conduct examinations is under Part 7 of the CCM Act.

In practice a misconduct investigation will involve the use of some or all of the powers under Part 6 of the CCM Act (as well as other traditional investigative methods) before a decision is made to conduct an examination. The Commission is very conscious of the intrusive nature of these powers on individual rights and freedoms. In deference to that the Commission applies the principle of "least intrusion". For example, the Commission will not use its power to compel a person to provide a document, pursuant to section 95 of the CCM Act, if it is anticipated that the person will do so willingly (noting that in some cases a section 95 notice may need to be served to protect the position of the person).

Compulsory Examinations

The compulsory examination of a person by the Commission is an investigative tool. It is not the same as a hearing conducted by a court or a tribunal, and no judgment is made about guilt or innocence. The purpose of an examination is to obtain information to advance an investigation by the Commission into an allegation of misconduct - not to prove or disprove a charge, but to find out the truth.

During the 2014-2015 reporting period the Commission conducted private examinations in relation to nine matters (investigations). During those examinations 27 witnesses were called to give evidence over a period of 21 days.

The Commission did not conduct any examinations in public during the 2014-2015 reporting period.

Compulsory Examinations (Hearings) Conducted During 2014-2015		
Hearings	Matters	Days
Public	0	0
Private	9	21
Total	9	21

CASE STUDY THREE

MISUSE OF A COMPUTER SYSTEM: DISCLOSING CONFIDENTIAL INFORMATION

ALLEGATION

The Commission conducted an investigation into allegations that a former police officer was illegally accessing information from a police computer to give to a lawyer with whom he had a personal relationship.

INVESTIGATION

The investigation revealed that the information the police officer gave the lawyer included affidavits associated with telephone and surveillance intercept warrants, WA Police incident reports and personal details about some of the lawyer's clients and a DVD of an interview with a murder suspect. The police officer also repeatedly accessed personal information from the police computer system about the lawyer and her mother. The conduct occurred over several years between 2008 and 2013.

OUTCOME

The police officer was charged by the Commission with a total of 17 offences. The sentencing magistrate said any term of imprisonment for a former police officer "would be difficult" but it was the only way to deal with the offences. The magistrate observed that the conduct was repeated and the officer knew that what he was doing was "wrong, inappropriate and unlawful", noting that the police officer's behaviour was a breach of the public trust. The magistrate said that the potential to seriously compromise a WA Police investigation by disclosing an intercept warrant affidavit was very serious.

In July 2014 the officer was sentenced to nine months imprisonment, to be served immediately, and fined \$2,000.

Covert Powers Inspections

The *Criminal Investigation (Covert Powers) Act 2012* requires the Commission to inspect records of controlled operations conducted by WA Police, the Department of Fisheries and the Australian Crime Commission (ACC). Each of these agencies report to the Commission on their operations and the Commission reports on these to the Parliament.

Inspection of Controlled Operations						
Inspections of Controlled Operations	Controlled Operations Authorisations	Variation to Authorities	Applications Refused	Applications Withdrawn	Retrospective Authorisations	Total
WA Police	61	17	1	0	0	79
Department of Fisheries	3	0	0	1	0	4
ACC	0	0	0	0	0	0
Total	64	17	1	1	0	83

A "controlled operation" is a law enforcement operation which may involve use of an assumed identity or another action which would otherwise be a breach of the law.

In fulfilling this role, among other things the Commission considers whether the lawful authorities given to agencies to conduct controlled operations were properly exercised in compliance with the law, and whether the operations conformed with the authorities granted.

This table provides an overview of the controlled operations completed by WA Police, the Department of Fisheries and the ACC between 1 July 2014 and 30 June 2015 and inspected by the Commission.



Charges and Convictions

Although the Commission is not a body established to prosecute people, criminal or other offences are often identified in the course of its investigations and charges may then be laid against public officers and non-public officers. Of the 82 charges laid during 2014-2015, 25 were still before the courts at the end of the reporting period. Of the 69 charges which produced an outcome during 2014-2015, some of which were laid in previous years, 68 were the subject of a conviction. One charge resulted in an acquittal.

The conviction rate by charges was 98.55% and by person charged was 100%.

Some examples of the types of charges laid in the reporting period included:

- **Corruption** pursuant to section 83(c) of *The Criminal Code*.
- **Fraud** pursuant to section 409(1) of *The Criminal Code*.
- **Unlawful use/installation of a surveillance device** pursuant to section 7(1) of the *Surveillance Devices Act 1998*.
- **Assault** causing bodily harm pursuant to section 317 of *The Criminal Code*.
- **Unlawful use of a restricted-access computer system** pursuant to section 440 of *The Criminal Code*.
- **Unlawfully disclosing a restricted matter** pursuant to section 167(3) of the CCM Act.

Reports

Part 5 of the CCM Act sets out how the Commission may report on the results of its investigations and other matters. Reports educate and inform the public sector and are necessary in the public interest to enable informed action to address misconduct risks identified in a report. Reports also enable the Parliament and the Western Australian community to be satisfied that significant public sector misconduct allegations and issues are dealt with transparently and accountably.

In 2014-2015 the Commission published four reports in addition to its *Annual Report 2013-2014*.

Report on Misconduct Risk in Local Government Procurement

This report was tabled in the Parliament by the Minister for Local Government on 26 February 2015. The report sets out the findings of procurement audits in five metropolitan local governments conducted by an independent auditor on behalf of the Commission, six case studies relating to Commission investigations and a post-investigation review of financial governance by one of the local governments that was the basis for one of the case studies.

Broadly, as a consequence of the audits, review and investigations, the Commission identified that "procurement and financial governance processes used by local governments in Western Australia can leave them vulnerable to fraud, corruption and other forms of misconduct ... exacerbated by a lack of risk assessment by many local governments in their procurement processes, which in turn means there is a lack of planning about how those risks may be mitigated". The Minister for Local Government described the report as a "wake-up call" and advised that "the [State Government] ... will carefully consider the report's findings to determine what measures need to be taken to address the [misconduct] risks identified".

Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector

This report was tabled in the Parliament by the Commission on 26 March 2015.

The Commission undertook an extensive intelligence-gathering and risk assessment exercise in 2014. This work, known as the misconduct intelligence assessment, provided the Commission with a broad picture of the "state of the public sector", including the general trends and issues affecting it and areas of systemic pressure within it. It also allowed the Commission to identify those public sector agencies and activities that are inherently more susceptible to corruption threats and misconduct risks.

Report on an Administrative Matter

The report was tabled in the Parliament by the Commission on 5 November 2014 to address criticisms and serious misconceptions about actions undertaken by the Commission in responding to allegations of misconduct and criminality against its own officers.

The Repositioning Report

This report was tabled by the Commission in the Parliament on 21 April 2015 and provides an account of how the Commission seeks to reposition itself following an evaluation of the first 10 years of its operation and to respond to the rapidly and constantly changing Western Australian public sector environment.

Research

In 2014-2015 the Commission conducted research into contemporary corruption prevention theories, practices and evaluation strategies, and risk in local government procurement practices.

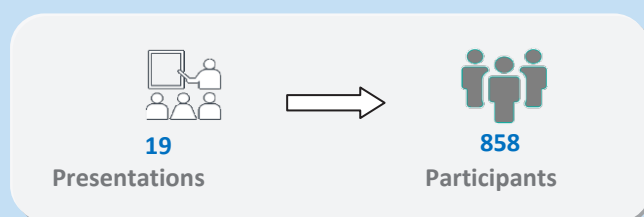
The Commission also published the results of research conducted into corruption threats and misconduct risks in the Western Australian public sector. The *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector* was tabled in the Parliament on 26 March 2015.

The Commission commissioned research by Flinders University into contemporary literature across Australian, New Zealand, United Kingdom and United States jurisdictions regarding corruption in correctional settings. The research culminated in a review report, which complements the Commission's strategic intelligence approach by exploring the causes and nature of corruption and misconduct in the corrective services environment and exposing the particular vulnerabilities of officers working within that sector.

The review report was provided to key stakeholders during the reporting period.

Education

The Commission delivered 19 presentations and workshops to Chief Executive Officers, public officers, community members and industry and service groups in 2014-2015.



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This brochure and further information about the Commission can be found on the Commission Website at www.ccc.wa.gov.au.

Corruption and Crime Commission

186 St Georges Terrace, PERTH WA 6000

Po Box 7667, Cloisters Square, PERTH WA 6850

Telephone: (08) 9215 4888

1800 809 000 (Toll Free for callers outside the Perth metropolitan area.)

Facsimile: (08) 9215 4884

Email: info@ccc.wa.gov.au



Perth Foreshore



Esperance



Rottnest Island



Kalgoorlie



Margaret River



Near Meekatharra

