



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT BY EMPLOYEES OF THE DEPARTMENT FOR PLANNING AND INFRASTRUCTURE IN RELATION TO THE INSPECTION, LICENSING AND REGISTRATION OF MOTOR VEHICLES

16 September 2010

ISBN: 978-0-9805052-0-7

© 2010 Copyright in this work is held by the Corruption and Crime Commission (“the Commission”). Division 3 of the *Copyright Act 1968* (Commonwealth) recognises that limited further use of this material can occur for the purposes of “fair dealing”, for example, study, research or criticism. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968* please write to the Commission at the postal address below.

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

Corruption and Crime Commission

Postal Address

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

Office Hours

8.30 a.m. to 5.00 p.m., Monday to Friday.

Special Needs Services

If you have a speech or hearing difficulty, contact the Commission via the National Relay Service (NRS) on 133 677 for assistance or visit the NRS Website, www.relayservice.com.au. NRS is an Australia-wide telephone service available at no additional charge. The Commission Toll Free number is 1800 809 000.

If your preferred language is a language other than English, contact the Translating and Interpreting Service (TIS) for assistance. TIS provides a free, national 24 hours a day, seven days a week telephone interpreting service on 13 14 50. TIS also provides on-site interpreters for face-to-face interviews on 1300 655 082.



CORRUPTION AND CRIME COMMISSION

Hon. Barry House MLC
President of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Hon. Grant Woodhams MLA
Speaker of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, the Commission presents the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct by Employees of the Department for Planning and Infrastructure in Relation to the Inspection, Licensing and Registration of Motor Vehicles*.

Yours faithfully

LW Roberts-Smith

The Hon. LW Roberts-Smith, RFD, QC
COMMISSIONER

16 September 2010

ABBREVIATIONS AND ACRONYMS

ACC	Australian Crime Commission
AIS	Approved/Authorised Inspection Station
AVE	Authorised Vehicle Examiner or Vehicle Examiner
“Assessor”	MDL Assessor
“C B Mechanical”	C B Mechanical Services
“the CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
“the Commission”	Corruption and Crime Commission
DoP	Department of Planning
DoT	Department of Transport
DPI	Department for Planning and Infrastructure ⁱ
HR	Human Resources Branch, DPI
ICAC	Independent Commission Against Corruption (New South Wales)
“Licensing Officers”	RTO, MDL Assessor and AVE (Generic Term)
MDL	Motor Drivers Licence
MR1	Motor Vehicle <i>Certificate of Inspection</i> Form
“the PSM Act”	<i>Public Sector Management Act 1994</i>
RTA	<i>Road Traffic Act 1974</i>
RTO	Regional Transport Officer
“Safeway”	Safeway Auto Recyclers
(“the SD Act”)	<i>Surveillance Devices Act 1998 (WA)</i>
(“the TI Act”)	Commonwealth <i>Telecommunications (Interception and Access) Act 1979</i>
TRELIS	Transport Executive and Licensing Information System
WAPOL	Western Australia Police

ⁱ On 1 July 2009 the Department for Planning and Infrastructure was restructured to become the Department of Planning and the Department of Transport. State Land Services and Pastoral Leases were transferred to the Department of Regional Development and Lands (which came into existence on 1 July 2009 when the Department of Local Government and Regional Development was restructured to become the Department of Local Government, and the Department of Regional Development and Lands).

TABLE OF CONTENTS

ABBREVIATIONS AND ACRONYMS	v
EXECUTIVE SUMMARY	xi
Introduction	xi
Commission Investigation	xi
Review of Improper Influence	xiv
Review of Misconduct Management	xiv
Recommendations	xv
Conclusion	xix
Executive Summary: Endnotes	xxi
CHAPTER ONE	
INTRODUCTION	1
1.1 Background	1
1.1.1 Commission Misconduct Investigation	1
1.1.2 Review of Improper Influence Risk	1
1.1.3 Review of Misconduct Management	2
1.1.4 Restructure of the Department for Planning and Infrastructure	2
1.2 Jurisdiction of the Commission	3
1.3 Definitions	4
1.3.1 Misconduct	4
1.3.2 Public Officer	8
1.3.3 Improper Influence	8
1.4 Reporting by the Commission	9
1.5 Disclosure	10
1.6 Telecommunications Interception Material	11
1.7 Privacy Considerations	12
1.8 Opinions of Misconduct	12
1.8.1 Publication of an Opinion	12
1.8.2 Balance of Probabilities	12
1.8.3 Meaning of Corruption	14
1.8.4 Section 23(1) of the <i>Corruption and</i> <i>Crime Commission Act 2003</i>	17
1.8.5 Expression of Opinion	17
CHAPTER TWO	
COMMISSION INVESTIGATION	19
2.1 Background	19
2.1.1 Decision to Conduct Public Examinations	20
2.1.2 Private and Public Hearings	22

2.2	Authorised Vehicle Examiners and Vehicle Examination Centres	23
2.3	Commission Investigation	27
2.3.1	Mr Barry William Tanner and Mr Badih (George) Raphael	27
2.3.1.1	Public Hearing and Investigative Material	28
2.3.1.2	Commission Assessment and Opinions	31
2.3.2	Mr William Brian Burrows and Mr Abraham Merched Roufail	32
2.3.2.1	Public Hearings and Investigative Material	33
2.3.2.2	Commission Assessment and Opinions	35
2.3.2.3	Recommendation	36
2.3.3	Mr Peter David Howard and Ms Susan Evelyn Jabbour	39
2.3.3.1	Public Hearings and Investigative Material	39
2.3.3.2	Commission Assessment and Opinions	46
2.3.3.2.1	Submissions on Behalf of Mr Howard	46
2.3.3.2.2	Assessment and Opinions	46
2.3.3.3	Recommendation	48
2.3.4	Mr John Francis Piercey and Ms Jabbour	49
2.3.4.1	Public Hearings and Investigative Material	49
2.3.4.2	Commission Assessment and Opinions	56
2.3.4.3	Recommendation	57
2.3.5	Mr Brent Edward Kain and Ms Jabbour	58
2.3.5.1	Public Hearings and Investigative Material	58
2.3.5.2	Mr Kain	62
2.3.5.2.1	Commission Assessment and Opinions	62
2.3.5.2.2	Recommendation	63
2.3.5.3	Ms Jabbour	64
2.3.5.3.1	Opinion and Recommendation	77
2.3.6	Other Department for Planning and Infrastructure Authorised Vehicle Examiners	77
2.3.6.1	Mr Robert Alexander Cugley and Mr James Munro Spence	77
2.3.6.2	Matter Referred to DPI for Action	78
2.3.6.3	Private Hearings During September 2009	78
2.3.6.4	Others	81
2.3.7	Other Non-Public Officers	82
2.3.7.1	Mr Jimy Jean Jabbour and Ms Susan Evelyn Jabbour	82
2.3.7.2	Mr Abraham Merched Roufail	82
2.3.8	Issues Identified by the Commission Investigation	82
2.3.8.1	Recommendation	86

CHAPTER THREE	
REVIEW OF IMPROPER INFLUENCE RISK	87
3.1 Background	87
3.2 Commission Review	88
3.2.1 Scope and Methodology	88
3.3 Outcomes of Review	89
3.4 Risk of Improper Influence	89
3.5 Dealing with Improper Influence	92
3.6 Management and Supervision	94
3.6.1 Metropolitan Vehicle Examiners	94
3.6.2 Metropolitan Motor Drivers Licence (MDL) Assessors	96
3.6.3 Regional MDL Assessors and Transport Officers	98
3.7 Training	99
3.8 Conclusions	100
CHAPTER FOUR	
REVIEW OF MISCONDUCT MANAGEMENT	103
4.1 Background	103
4.2 Commission Review	104
4.2.1 Methodology	104
4.3 Leadership and Misconduct Management	105
4.3.1 Workplace Culture	105
4.3.2 Executive Leadership	106
4.3.3 Senior and Middle Management	107
4.3.4 Staff Attitudes and Beliefs	108
4.4 Dealing with Misconduct	108
4.5 Misconduct Management	111
4.5.1 Identification of Misconduct Risk	111
4.5.2 TRELIS and Internal Audit Unit	112
4.5.3 Policy	113
4.5.4 Supervision and Training	114
4.6 Conclusions	116
4.7 Future Implications and Recommendations: Reviews of Improper Influence Risk and Misconduct Management	117
APPENDICES	123
APPENDIX 1	
Notifications of Adverse Matters Under Section 86 of the Corruption and Crime Commission Act 2003	125
APPENDIX 2	
Diagram Illustrating Components of Vehicle Examined, and Criteria for Examination of a Vehicle, by Authorised Vehicle Examiners	129

APPENDIX 3

Department for Planning and Infrastructure *Certificate of Inspection* (MR1) for 1995 Mitsubishi Triton Utility (1BRE 038) 133

ENDNOTES 137

EXECUTIVE SUMMARY

Introduction

- [1] This report deals with the outcomes of three concurrent, but separate, activities of the Corruption and Crime Commission (“the Commission”) during 2008 and 2009.
- [2] The first of those was an investigation into alleged misconduct by public officers of the (then) Department for Planning and Infrastructure (DPI).
- [3] Those allegations were of bribery and other corrupt conduct by Authorised Vehicle Examiners (“Vehicle Examiner”) in Vehicle Examination Centres located in the Perth metropolitan area.
- [4] The investigation was commenced in July 2008 as the result of a notification from the Australian Crime Commission.
- [5] The second activity was a review of improper influence-related misconduct risk across the major licensing functions of DPI, and the capacity of DPI systems to mitigate that risk.
- [6] The third Commission activity was an organisational review of misconduct management by DPI. This involved a review of the culture, systems and policies in place to manage misconduct risk in relation to the operational and corporate functions of DPI.
- [7] The Commission notes that on 1 July 2009 DPI was restructured and its functions were substantially devolved to a new Department of Planning (DoP) and a new Department of Transport (DoT). Some functions became the responsibility of a new Department of Regional Development and Lands.

Commission Investigation

- [8] Motor vehicles cannot lawfully be driven on public roads in Western Australia unless they are registered. Vehicles must be certified as roadworthy before they can be registered.
- [9] The *Road Traffic Act 1974 (WA)* (RTA) conferred responsibility on DPI for vehicle registration. Regulations made under the RTA detail specific vehicle requirements which must be met. Vehicle Examiners are required to conduct physical examination of vehicles and certify that they have done so and that the vehicles are roadworthy.
- [10] The Commission investigation revealed evidence that at least since about 2004 vehicles had been passed and certified as having been inspected and found to be roadworthy by Vehicle Examiners who had not in fact even seen the vehicles.

- [11] In one instance a Vehicle Examiner developed a relationship with the proprietor of a wrecking yard, panel shop and mechanical workshop which evolved into an arrangement of payments for false certifications.
- [12] The proprietor would routinely pass the vehicle details to the Vehicle Examiner, who would then enter them into the DPI data system as inspected and certified vehicles, and subsequently return the completed paperwork to the proprietor (usually at the latter's workshop). The proprietor would then pay him \$50 cash for each vehicle.
- [13] This Vehicle Examiner was subsequently charged with 30 counts of accepting bribes contrary to section 82 of *The Criminal Code* (WA). He pleaded guilty, was convicted and on 6 August 2010 was sentenced to imprisonment for three years, with 18 months to serve before eligibility for parole.
- [14] Other Vehicle Examiners who gave false certificates of examinations and roadworthiness apparently did so out of a habit of giving preferential treatment to individuals with whom they dealt regularly and who had cultivated them. There was no evidence that they sought or received benefits for doing so.
- [15] In December 2009 the Commission notified DPI that it was of the opinion certain named Vehicle Examiners had engaged in misconduct and recommended that DPI consider disciplinary action against them.
- [16] The Director General of DoT informed the Commission that DoT recommenced its disciplinary process against the Vehicle Examiners on 10 December 2009, advising the Commission of the outcomes of that process by letter on 4 August and 23 August 2010. The Director General stated in his letters to the Commissioner:

A disciplinary investigation was conducted into the suspected breach of discipline for each public officer [Vehicle Examiner]. The findings of the Investigators [sic] Report concluded that the misconduct was serious. [On 17 May 2010] the four officers were charged with a breach of discipline ... in accordance with the "Public Sector Management Act 1994". As a result of the four officers denying the charge the matter was then referred to a disciplinary inquiry. On 1 June 2010, the four offices [sic] were advised that a disciplinary inquiry was to be conducted into the alleged breach of discipline.

The disciplinary inquiry ... [was subsequently] conducted and all four Inquiry Reports [presented] ... The Investigator concluded in his Reports that the charge where each of the four officers committed a breach of discipline [had] ... been proven.¹

...

As a result of the four officers committing a breach of discipline, the following action has been taken by the Department [DoT].

- *Mr [John Francis] Piercey — employment was terminated effective 6 August 2010.*
- *Mr [Peter David] Howard — employment was terminated effective 6 August 2010 (... [but] Mr Howard resigned effective 5 August 2010, so the termination of his employment did not take effect).*
- *Mr [Brent Edward] Kain — employment was terminated effective 6 August 2010.*
- *Mr [William Brian] Burrows — will be transferred to the role of MDL [Motor Drivers Licence] Driver Assessor within the Licensing section of the Department of Transport. His classification will be reduced from level 4 to level 3. This transfer will take effect from Monday, 6 September 2010.*

Mr Piercey, Mr Howard, and Mr Kain were advised in person that their employment would be terminated as a result of the inquiry report. The Department met with Mr Howard on the 5 August 2010, and advised [him of] the action the Department was going to take ... [but that it] would not be actioned as a result of his resignation.²

[17] One business proprietor, Ms Susan Evelyn Jabbour, deliberately set out to subvert Vehicle Examiners from their duty. Typically, she began the process by persuading an Examiner to inspect vehicles she drove into the Vehicle Examination Centre and parked to one side, so avoiding the long queues of waiting vehicles, which there invariably were. Later she would simply present them with the paperwork to be filled in and recorded on the vehicle database, without bringing the vehicles to the Examination Centre at all. In some instances, she was able to persuade Vehicle Examiners to either examine vehicles — or merely complete the paperwork — at her business premises.

[18] In this way, she was able not only to avoid having to spend time waiting for vehicle examinations, but was able to have vehicles passed and certified as roadworthy when they were not. The financial benefit to her was significant: in addition to paying the DPI examination fee of \$83.30 customers would be charged sometimes several hundred dollars, which could be paid in cash.

[19] The Commission has recommended that the Director of Public Prosecutions give consideration to the prosecution of Ms Jabbour under sections 7 and 85 of *The Criminal Code (WA)* for offences of counselling or procuring public officers to falsify official records.

[20] The Commission investigation identified a number of issues emanating from weaknesses in policies, practices and procedures as they applied either generally at a systemic level or specifically to the inspection, licensing and registration of motor vehicles in this State by DPI officers.

[21] As a consequence of its investigation the Commission has recommended action by DPI (now DoT) to protect and promote its integrity and that of the services provided by it and to reduce the risk of misconduct.

Review of Improper Influence

[22] The Commission's concomitant review of the major licensing functions of DPI was directed to identifying whether, and if so, where improper influence might be a misconduct risk.

[23] The risk of improper influence was found to be significant across the 13 DPI centres visited by Commission officers during the review.³

[24] Vehicle Examiners and MDL⁴ Assessors (Assessor), and to a lesser extent Regional Transport Officers, are regularly faced with improper influence incidents including bribes, threats and intimidation, emotional pressure and requests for favour based on assumed friendship or association.

[25] The Commission found DPI's approach to managing the Assessor and Vehicle Examiner business functions heightened its exposure to improper influence and therefore the likelihood of improper influence-related misconduct occurring.

[26] There is a high probability improper influence-related misconduct is widespread in DPI's (now DoT) licensing operations and as a consequence is likely to be systemically diverting DoT from its organisational licensing goals.

Review of Misconduct Management

[27] The third aspect of the Commission's work here was a review of how DPI managed misconduct.

[28] The Commission examined the capacity of DPI systems and processes to effectively manage misconduct risk generally. It focused on the adequacy of policies, procedures and structures within DPI to prevent, manage and appropriately respond to misconduct events.

[29] By virtue of its activities, DPI was exposed to high levels of misconduct risk, both in terms of the possibility of misconduct occurring and the consequences of misconduct when it did occur.

[30] The review found that despite a clear commitment by Executive to building the organisation's capacity to manage misconduct this had not been effectively communicated throughout the organisation. Approaches across business units were inconsistent, driven by the views of individual managers, and DPI staff generally were sceptical about management commitment to dealing with misconduct. There was poor understanding about what constituted misconduct and the identification of corporate misconduct risks was embryonic. In the absence of a strategic approach to the development of a whole-of-agency misconduct management mechanism, the systems, processes and policies in place were *ad hoc*

and uncoordinated. DPI had some considerable way to go before it could be said to be effectively managing its misconduct risk exposure.

Recommendations

- [31] The Commission makes 13 recommendations as a consequence of its investigation and reviews, 12 of which are recommendations for further action by DPI (now DoT). Of those 12 recommendations four relate to the taking of disciplinary action against four named Vehicle Examiners. As noted in [16] above, the recommended disciplinary action has been undertaken by DoT, resulting in the termination of employment of two Vehicle Examiners, resignation by another, and demotion and transfer of the fourth Vehicle Examiner.
- [32] The thirteenth recommendation by the Commission relates to the conduct of Ms Jabbour.

Recommendation 1: Mr Brian William Burrows

In the opinion of the Commission the conduct of Mr William Brian Burrows as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* ("CCC Act").

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Burrows.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Burrows, on 4 December 2009, for consideration.

Recommendation 2: Mr Peter David Howard

In the opinion of the Commission the conduct of Mr Peter David Howard as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* ("CCC Act").

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Howard.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Howard, on 4 December 2009, for consideration.

Recommendation 3: Mr John Francis Piercey

In the opinion of the Commission the conduct of Mr John Francis Piercey as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* (“CCC Act”).

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Piercey.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Piercey, on 4 December 2009, for consideration.

Recommendation 4: Mr Brent Edward Kain

In the opinion of the Commission the conduct of Mr Brent Edward Kain as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* (“CCC Act”).

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Kain.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Kain, on 4 December 2009, for consideration.

Recommendation 5: Ms Susan Evelyn Jabbour

The Commission recommends pursuant to section 43 of the *Corruption and Crime Commission Act 2003* that the Director of Public Prosecutions give consideration to the prosecution of Ms Susan Evelyn Jabbour under sections 7 and 85 of *The Criminal Code (WA)*, for offences relating to Mr Peter David Howard, Mr John Francis Piercey and Mr Brent Edward Kain.

Recommendation 6

In order to protect and promote the integrity of the Department of Transport (DoT) and the services provided by DoT, it is recommended that DoT conduct a systemic review of policies, practices and procedures as they apply to the inspection, licensing and registration of motor vehicles in this State by DoT officers in order to address the issues identified by the Commission investigation (refer [276] of main body of this report) including those relating to:

- practices which enable the certification of vehicles as roadworthy without inspection;
- purchase of multiple transferable inspection receipts (MR numbers);
- particular vulnerability of Vehicle Examiners to corruption, misconduct and improper influence;
- on-site inspection of vehicles on premises of businesses that are not DPI Authorised Inspection Stations;
- protracted queuing at Vehicle Examination Centres that operate on a “first-come first-served basis”, that is, Welshpool and O’Connor, as customers are not required to pre-book vehicle examinations;
- “whistleblowing”;
- flow-on effect of inappropriate conduct by certain Vehicle Examiners to others;
- access to inspection areas by members of the public and contact with Vehicle Examiners before completion of inspection process;
- oversight of Vehicle Examiners; and
- training and support (particularly in relation to use of TRELIS and existence of procedural manuals) provided for Vehicle Examiners.

By doing so, DoT would be in a better position to reduce the incidence of misconduct by eliminating those factors that foster misconduct.

Recommendation 7

That the Department of Transport ensure licensing goals and performance measures support organisational outcomes relating to the provision of a safe transport system for the community, where road users meet required driver competencies and vehicles meet required standards.

Recommendation 8

That the Department of Transport establish a corporate culture that values, and is inclusive of, all staff and operational areas.

Recommendation 9

That the Department of Transport develop a corporate strategy for managing misconduct, including a mechanism that gives it practical effect.

Recommendation 10

That the Department of Transport identify its misconduct risks as part of the corporate risk management process and ensure appropriate controls are put in place to mitigate these risks.

Recommendation 11

That the Department of Transport review internal reporting processes with a view to implementing a mechanism that will support staff reporting suspected misconduct, and ensure incidents are notified to the Commission, consistent with section 28 of the *Corruption and Crime Commission Act 2003*, and are dealt with appropriately.

Recommendation 12

That the Department of Transport develop policies, procedures and systems that assist licensing officers to identify and appropriately respond to improper influence.

Recommendation 13

That the Department of Transport implement staff development strategies aimed at raising and maintaining awareness about misconduct and related staff responsibilities.

Conclusion

[33] In early December 2008 the Commission advised DPI of concerns arising from the Commission investigation into alleged public sector misconduct by Vehicle Examiners. The Commission notes that DPI reacted quickly to protect road users. DPI immediately notified owners of vehicles that may have been declared roadworthy without proper examination that their vehicles needed to be presented for inspection at a Vehicle Examination Centre or other such facility authorised by DPI. Statistics relating to inspection of affected vehicles provided to the Commission by DoT on 10 September 2010 are set out below.

Description	Number
Vehicles of Interest	1,177
Vehicles with Lapsed Registration or Deregistered by Owners	374
Vehicles Requiring Inspection	803
Vehicles Inspected and Passed (Either First Time or at Subsequent Inspections)	788
Vehicles that Failed Inspection (and Issued with a "Work Order")	9
Vehicles to be Inspected ⁱⁱ	6

[34] The Commission has established a Team within the Corruption Prevention Directorate whose objectives include assisting DoT to address the issues identified in this report. The Team will:

- (1) monitor and evaluate the progress of the implementation of recommendations contained in this report;

ⁱⁱ Currently being finalised by DoT.

- (2) provide feedback to assist DoT to improve systems for preventing and managing misconduct through assessment, monitoring and review of DoT misconduct notifications and investigations; and
- (3) provide ongoing advice to DoT.

[35] The Commission acknowledges and records its appreciation for the invaluable assistance, cooperation and support provided by DPI and in particular by the then Director General, Mr Eric Lumsden PSM,⁵ during the periods relevant to the investigation of alleged public sector misconduct, and reviews of improper influence risk and misconduct management, and subsequently by both DoT and DoP.

EXECUTIVE SUMMARY: ENDNOTES

¹ Letter to the Hon. LW Roberts-Smith, RFD, QC, Commissioner of the Corruption and Crime Commission, of 4 August 2010 from Mr R Waldock, Director General, Department of Transport [01073-2008-1664].

² Letter to the Hon. LW Roberts-Smith, RFD, QC, Commissioner of the Corruption and Crime Commission, of 23 August 2010 from Mr R Waldock, Director General, Department of Transport [01073-2008-1723].

³ Metropolitan Licensing Centres, Vehicle Examination Centres and regional business centres.

⁴ Motor Drivers Licence.

⁵ Subsequent to the restructure of the Department for Planning and Infrastructure on 1 July 2009 Mr Eric Lumsden, PSM, became the Director General of the Department of Planning.

CHAPTER ONE

INTRODUCTION

1.1 Background

[1] This is a report on the investigation by the Corruption and Crime Commission (“the Commission”) of alleged public sector misconduct by employees of the Department for Planning and Infrastructure (DPI) during 2008, a 2009 review of the presence of improper influence as a misconduct risk for DPI and a 2008-2009 organisational review of misconduct management by DPI. Although the investigation and reviews were, at times, concurrent, they were separate Commission undertakings.

1.1.1 Commission Misconduct Investigation

[2] The investigation by the Commission of alleged public sector misconduct by employees of DPI was in relation to the inspection, licensing and registration of motor vehicles during 2008. The investigation, which commenced in July 2008, focused on allegations of bribery and corruption of public officers employed as Authorised Vehicle Examiners (AVE or “Vehicle Examiner”) by the Licensing Services section of DPI, in Perth metropolitan Vehicle Examination Centres.

[3] There are six such Centres and the Commission investigation was principally concerned with the activities of public officers located in two of these, that is, Kelmscott and Welshpool, and to a lesser extent O’Connor. The other Centres are located at Midland, Osborne Park and Warwick.

[4] The scope and purpose of the investigation was to:

determine if any public officer employed by the Department for Planning and Infrastructure has, is or may have engaged in misconduct in relation to the inspection, licensing and registration of motor vehicles or in any other function in their capacity as a public officer.

1.1.2 Review of Improper Influence Risk

[5] The review by the Commission of improper influence-related misconduct risk was across the major licensing functions of DPI, and was conducted during the period February to May 2009. The review looked at the nature, extent and management of improper influence-related misconduct risk for Vehicle Examiner, MDL¹ Assessor (Assessor) and Regional Transport Officer (RTO) functions in the Perth metropolitan and regional areas. The review provided an in-depth perspective of improper influence as a specific misconduct risk area in licensing and the capacity of the wider systems to mitigate this risk.

[6] The improper influence review focused on the licensing roles of Vehicle Examiners, Assessors and RTOs.

1.1.3 Review of Misconduct Management

[7] The Commission organisational review of misconduct management by DPI, which commenced in January 2008, was a review of the culture, systems and policies in place to manage misconduct risk in relation to the operational and corporate functions of DPI. This review provided a broad understanding and perspective of the approach by DPI to misconduct management. It allowed conclusions to be drawn about both the comprehensiveness and effectiveness of organisational systems in mitigating misconduct risk and responding to misconduct events.

[8] Section 7A of the *Corruption and Crime Commission Act 2003* (“the CCC Act”) specifies the main purposes of the Commission, and section 7B specifies how these purposes are to be achieved. One purpose of the Commission is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”. One of the ways the Commission does this is by helping public authorities to increase their capacity to deal effectively and appropriately with misconduct, that is, to prevent, identify and manage misconduct. The Commission may conduct reviews to assess this capacity, as it has done in the case of DPI and several other authorities.

1.1.4 Restructure of the Department for Planning and Infrastructure

[9] On 1 July 2009 DPI was restructured and became the Department of Planning and the Department of Transport. At that time, State Land Services and Pastoral Leases were transferred to the Department of Regional Development and Lands (which came into existence on 1 July 2009 when the Department of Local Government and Regional Development was restructured to become the Department of Local Government, and the Department of Regional Development and Lands).

[10] Prior to the July 2009 restructure DPI was responsible for planning and regulation of transport systems, licensing services, land accessibility planning, tenure and development, and the development of integrated land and transport policy. The goals of DPI were to –

provide innovative, timely and well-planned solutions for:

- *land-use, transport and infrastructure delivery; and*
- *an accessible, safe and well-regulated transport system.*²

[11] Subsequent to the July 2009 restructure the Department of Transport (DoT) became responsible for undertaking operational functions (Marine Safety, Rail Safety, Passenger Services etc.), and for strategic transport planning and policy across the range of public and commercial transport systems that service Western Australia, including Licensing, and the Transport Executive and Licensing Information System (TRELIS),ⁱ

ⁱ TRELIS is the DPI licensing database which, in the case of Vehicle Examination Centres, is used to keep records of motor vehicle inspections and motor vehicles licensed for use on public roads in Western Australia.

Maritime and Aviation, Freight and Logistics, and Land Transport. DoT has more than 1,000 employees.³ At the same time, the Department of Planning (DoP) became responsible for ensuring that public and private land is used appropriately and consistently, including location of industry, commerce, residential services, community facilities and all of the necessary infrastructure.⁴

- [12] This report deals exclusively with licensing related functions that were transferred from DPI to DoT. However, throughout this report reference will be made primarily to DPI, as opposed to either DoT or DoP, as the Commission investigation and reviews were concerned with activities that occurred, and the situation that existed, prior to the restructure of DPI, effective 1 July 2009, and information relevant to the investigation was sourced from DPI. Reference may be made to either DoT or DoP as applicable to events after 1 July 2009.
- [13] The Commission acknowledges and records its appreciation for the invaluable assistance, cooperation and support provided by DPI during the periods relevant to the investigation of alleged public sector misconduct, and reviews of improper influence risk and misconduct management, and subsequently by both DoT and DoP.

1.2 Jurisdiction of the Commission

- [14] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the CCC Act faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the CCC Act.
- [15] It is a function of the Commission, pursuant to section 18 of the CCC Act, to ensure that an allegation about, or information or matter involving, misconduct by public officers is dealt with in an appropriate way. An allegation can be made to the Commission, or made on its own proposition. The Commission must deal with any allegation of, or information about, misconduct in accordance with the procedures set out in the CCC Act.
- [16] It is also a function of the Commission, pursuant to section 17 of the CCC Act, to help prevent misconduct (the **prevention and education function**). It performs this function by –
 - (a) *analysing the intelligence it gathers in support of its investigations into organised crime and misconduct; and*
 - (ab) *analysing the results of its investigations and the information it gathers in performing its functions; and*
 - (ac) *analysing systems used within public authorities to prevent misconduct; and*

- (ad) *using information it gathers from any source in support of its prevention and education function; and*
- (b) *providing information to, consulting with, and making recommendations to public authorities; and*
- (c) *providing information relevant to its prevention and education function to the general community; and*
- (ca) *ensuring that in performing all of its functions it has regard to its prevention and education function; and*
- (cb) *generally increasing the capacity of public authorities to prevent misconduct by providing advice and training to those authorities, if asked, to other entities; and*
- (d) *reporting on ways to prevent misconduct.*

(emphasis added)

1.3 Definitions

1.3.1 Misconduct

[17] The term “misconduct” has a particular and specific meaning in the CCC Act and it is that meaning which the Commission must apply. Section 4 of the CCC Act states that:

Misconduct occurs if —

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years’ imprisonment; or*
- (d) *a public officer engages in conduct that —*
 - (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
 - (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*

- (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
- (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,

and constitutes or could constitute —

- (v) an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or
- (vi) a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).

- [18] Misconduct, as defined in section 4 of the CCC Act applies only to the conduct of public officers.
- [19] In section 3 of the CCC Act “**serious misconduct**” is defined as “misconduct of a kind described in section 4(a), (b) or (c)”.
- [20] Misconduct of a kind described in section 4(d)(i) – (iv) must not only involve the type of conduct described there, but must also be serious enough to meet the criteria set out in section 4(d)(v) or (vi).
- [21] Section 4(d)(v) says that the conduct must be serious enough so that it constitutes, or could constitute, an offence against a written law.
- [22] Section 4(d)(vi) is more complex. It says that the conduct must be serious enough so that it constitutes or could constitute “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)”.
- [23] The words in brackets are important. They make it clear that where the public officer concerned is not an officer of the public service, and subject to the *Public Sector Management Act 1994* (“the PSM Act”), the test is notional – that is, although it cannot then apply directly, the Commission must assess the public officer’s conduct against the objective criteria set out in the PSM Act, as if that person were a member of the public service.

[24] In Cox v Corruption and Crime Commission [2008] WASCA 199, Martin CJ at [63] stated that:

... [s]ection 4(d)(vi) [of the CCC Act] expressly provides that the definition of "misconduct" applies whether or not the public officer is a public service officer whose employment could be terminated on the grounds of a disciplinary offence under the PSMA [the PSM Act]. It is therefore clear that the conduct defined as "misconduct" by s 4(d) of the [CCC] Act is that which would provide reasonable grounds for termination if the public officer was liable to termination under the PSMA, irrespective of whether or not the public officer is so liable. In the case of a public officer who is not a public service officer covered by the PSMA, the definition imposes a hypothetical standard of conduct – the hypothesis being that the officer could in fact be liable to dismissal under the terms of the PSMA.

Steytler P at [116] stated that:

... there is nothing in s 4(d)(vi) of the CCC Act that requires the public officer in question to have been a public service officer under the PSM Act. That is made plain by the words "(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)". It is consequently irrelevant whether Dr Cox was, or was not, a public service officer for the purpose of the PSM Act.

[25] General principles of official conduct are set out in section 9 of the PSM Act, which states that:

The principles of conduct that are to be observed by all public sector bodies and employees are that they –

- (a) *are to comply with the provisions of –*
 - (i) *this Act and any other Act governing their conduct;*
 - (ii) *public sector standards and codes of ethics; and*
 - (iii) *any code of conduct applicable to the public sector body or employee concerned;*
- (b) *are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and*
- (c) *are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.*

[26] Breaches of discipline are set out in section 80 of the PSM Act, which states that:

An employee who –

- (a) *disobeys or disregards a lawful order;*
- (b) *contravenes –*

- (i) any provision of this Act applicable to that employee;
or
- (ii) any public sector standard or code of ethics;
- (c) commits an act of misconduct;
- (d) is negligent or careless in the performance of his or her functions; or
- (e) commits an act of victimisation within the meaning of section 15 of the “Public Interest Disclosure Act 2003”,
commits a breach of discipline.

- [27] Section 80(e) was added on 1 July 2003 but otherwise the section has remained unchanged.
- [28] A breach of discipline may be a minor breach or a serious breach. In order to be dismissed under section 86(3)(b)(vi) of the PSM Act a person must have committed a serious breach. The PSM Act does not provide criteria for determining whether a breach is minor or serious. The *Disciplinary Procedures Guide* produced by the Department of the Premier and Cabinet, Government of Western Australia, states (at paragraph 2.3) that: “Agencies must use their own judgement when determining if a breach is serious or minor in nature. Consideration should be given to the impact the breach of discipline has on the relationship of trust between the respondent and the employing authority, other employees and the general public”.⁵
- [29] The *Disciplinary Procedures Guide* also states (at paragraph 4.9) that: “Serious breaches of discipline are difficult to define and in most cases a question of degree will be involved. An employing authority’s view is also likely to vary with the nature of the public sector body’s business and the position held by the respondent”.⁶
- [30] A minor breach may be punished by a reprimand or a fine not exceeding 1 days pay or both, pursuant to section 83(1)(a)(i), (ii) or (iii) of the PSM Act.
- [31] If a departmental investigating authority is of the opinion that a serious breach of discipline appears to have been committed, that authority shall cause the public officer to be charged with that alleged breach pursuant to section 83(1)(b) of the PSM Act.
- [32] The procedure for dealing with a charge of a serious breach of discipline is set out in section 86 of the PSM Act.
- [33] The punishments which may be imposed where a charge of a serious breach of discipline is admitted and proved are set out in section 86(3)(b) of the PSM Act. Section 86(3)(b) states that:
 - ... if a respondent admits a charge under subsection (2) and the employing authority finds the charge to be proved, the employing authority –

(b) may –

...

(vi) dismiss the respondent,

- [34] Where the public officer concerned is a Chief Executive Officer and the recommendation is for dismissal, the Minister shall so recommend to the Governor (section 89 of the PSM Act).
- [35] It follows from the above, that not only must there be an identifiable (actual or possible) breach of discipline under the PSM Act for section 4(d)(vi) of the CCC Act to be brought into play, but it must be characterisable as a serious breach for the punishment of dismissal to be an option under section 86(3)(b)(vi) of the PSM Act.

1.3.2 Public Officer

- [36] The term “public officer” is defined in section 3 of the CCC Act by reference to the definition in section 1 of *The Criminal Code (WA)*. The term “public officer” includes any of the following: police officers; Ministers of the Crown; members of either House of Parliament; members, officers or employees of any authority, board, local government or council of a local government; persons holding office under, or employed by, the State of Western Australia, whether for remuneration or not; and public service officers and employees within the meaning of the PSM Act.
- [37] By definition, officers employed as Vehicle Examiners by the Licensing Services section of DPI are “public officers”, as they are included in the category of “public service officers … within the meaning of the PSM Act”. By section 64(1) of the PSM Act “the employing authority of a department or organisation may in accordance with approved procedures appoint for and on behalf of the Crown a person as a public service officer … on a full-time or part-time basis —”:
 - (a) *for an indefinite period as a permanent officer; or*
 - (b) *for such term not exceeding 5 years as is specified in the instrument of his or her appointment.*

1.3.3 Improper Influence

- [38] The term “improper influence” is used in this report generically to describe the actions and behaviours of customers intended to improperly affect the outcome of a business activity or process to gain a benefit which they would not otherwise have obtained. Put simply, to divert public officers from fidelity to the public interest because of other personal interests. USLegal, Inc defines improper influence as:

... a way of corruptly influencing a public servant. Such influence induces or tends to induce a public servant to act on any basis other than the merits of the matter. ... Generally, through improper influence, a person corruptly solicits or [makes] demands for the

benefit of any person, or a public servant accepts or agrees to accept, anything of value from any person, intending to be influenced or rewarded in connection with any business.⁷

- [39] A number of Commission investigations have focused on alleged public sector misconduct in connection with the activities of lobbyists and other persons. Legitimate lobbying does not need to rely on the use of improper influence strategies to achieve its objective. However, improper influence occurs where lobbying seeks to achieve its objective regardless of the merits of its case by inducing a public servant to act in a way that does not advance the public interest, or is in fact antithetical to it.
- [40] Common methods of improper influence include bribery, threats, offers of gifts or benefits, and claims to special treatment based on personal association or friendship. If improper influence is not recognised, and responded to appropriately it can lead to the misuse (or abuse) of authority and discretion by public officers. It is this misuse (or abuse) of authority and discretion on the part of a public officer that gives rise to misconduct.
- [41] In the context of DPI, improper influence-related misconduct might involve the certification of a motor vehicle as roadworthy without inspection, or granting a *Learner's Permit* to a person who did not pass the required Learner's Permit Theory Test.
- [42] Improper influence-related misconduct risk is well documented in the regulatory sector because of the considerable authority exercised by such agencies and the value attached to the services which are subject to regulation (refer [110]).

1.4 Reporting by the Commission

- [43] Under section 84(1) of the CCC Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:
 - (a) *statements as to any of the Commission's assessments, opinions and recommendations; and*
 - (b) *statements as to any of the Commission's reasons for the assessments, opinions and recommendations.*
- [44] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4) of the CCC Act, or dealt with under section 93 of the CCC Act.
- [45] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

- [46] On 5 November 2009 Counsel Assisting provided written submissions to the Commission. Those included arguments that the Commission should form adverse opinions about misconduct in relation to a number of public officers. Those officers were Mr Barry William Tanner, Mr William Brian Burrows, Mr Peter David Howard, Mr John Francis Piercey and Mr Brent Edward Kain.
- [47] A copy of the submissions by Counsel Assisting was provided to each of those public officers, or their legal adviser, by letter on 6 November 2009. Only Mr Howard made substantive submissions in response. The Commission has taken them into consideration.
- [48] A number of persons were notified by letter dated Thursday 29 July 2010 of possible adverse matters which it was proposed to include in this report. They were invited to make representations about those and other matters about which they might wish to do so by Friday 20 August 2010. They were advised that they and/or their legal adviser could inspect the transcript of hearings before the Commission and evidentiary material going to matters identified. A number of persons provided representations and the Commission has given consideration to them.
- [49] The Commission has taken all representations into account in finalising this report.
- [50] A list of persons who received notifications under section 86 of the CCC Act in respect of this report is detailed in Appendix 1 to this report.

1.5 Disclosure

- [51] The Commission has powers that include the capacity to apply for warrants to lawfully intercept telecommunications, utilise surveillance devices, conduct searches, compel the production of documents and other things, compel attendance at hearings and to compel responses to questions on oath in hearings conducted by the Commission.
- [52] Section 151 of the CCC Act controls the disclosure of a “restricted matter”. A “restricted matter” means any of the following:
 - (a) *any evidence given before the Commission;*
 - (b) *the contents of any statement of information or document, or a description of any thing, produced to the Commission;*
 - (c) *the contents of any document, or a description of any thing, seized under this Act*
 - (d) *any information that might enable a person who has been, or is about to be, examined before the Commission to be identified or located; or*
 - (e) *the fact that any person has been or may be about to be examined before the Commission.⁸*

[53] Restricted matters cannot be disclosed unless particular criteria are met. Section 151(4)(a) of the CCC Act states that: a “restricted matter may be disclosed in accordance with a direction of the Commission”.⁹ Further, pursuant to section 152(4), “official information” (that is, “in relation to a relevant person, means information acquired by the person by reason of, or in the course of, the performance of the person’s functions under this Act”¹⁰) may be disclosed by a relevant person (that is, “a person who is or was ... an officer of the Commission ... or a Commission lawyer”¹¹) if it is disclosed:

- (a) *under or for the purposes of this Act;*
- (b) *for the purposes of a prosecution or disciplinary action instituted as a result of an investigation conducted by the Commission ... under this Act or any other prosecutions or disciplinary action in relation to misconduct;*
- (c) *when the Commission has certified that disclosure is necessary in the public interest;*
- (d) *to either House of Parliament ...;*
- (e) *to any prescribed authority or person; or*
- (f) *otherwise in connection with the performance of the person’s functions under this Act.*¹²

[54] The Commission takes decisions about releasing information to the public very seriously. Consistently with the considerations to which it is required to have regard in deciding whether or not an examination (hearing) should be conducted in public, when considering the disclosure of information in a report the Commission takes into account the benefits of public exposure and public awareness against privacy considerations and the potential for prejudice (refer [89]-[95]).

1.6 Telecommunications Interception Material

[55] The Commonwealth *Telecommunications (Interception and Access) Act 1979* (Cwlth) (“the TI Act”) contains stringent controls and safeguards in relation to telecommunications interception and handling, and communicating information gathered from lawfully intercepted telecommunications. Section 63 of the TI Act prohibits the communication of lawfully intercepted information unless given particular restricted circumstances.

[56] Section 67(1) of the TI Act allows certain intercepting agencies, including the Commission,¹³ to make use of lawfully intercepted information and interception warrant information for a “permitted purpose”. “Permitted purpose”, as defined in section 5(1) of the TI Act, in the case of the Commission “means a purpose connected with: (i) an investigation under the Corruption and Crime Commission Act into whether misconduct (within the meaning of the Act) has or may have occurred, is or may be

occurring, is or may be about to occur, or is likely to occur; or (ii) a report on such an investigation".¹⁴

1.7 Privacy Considerations

- [57] In formulating this report the Commission has considered the benefit of public exposure and public awareness and weighed this against the potential for prejudice and privacy infringements. The Commission has also complied with the strict requirements of the TI Act and *Surveillance Devices Act 1998 (WA)* ("the SD Act") in the utilisation of intercepted information in this report.
- [58] As a result of these considerations the Commission may decide not to include names of various individuals who assisted the Commission during its investigation. Similarly, some extracts from telecommunications interception material set out in this report may have been edited by omitting the names of individuals or other information collateral to the investigation of alleged Public Sector misconduct, and reviews of improper influence risk and misconduct management.

1.8 Opinions of Misconduct

1.8.1 Publication of an Opinion

- [59] The Commission fully appreciates that any expression of opinion by it in a published report that a public officer has engaged in misconduct is serious. The publication of such an opinion or any adverse matter against a public officer, or any other person, may have serious consequences for the public officer, or person, and their reputation.
- [60] The Commission is careful to bear these matters in mind, when forming opinions, when conducting investigations and reviews, and when publishing the results of investigations and reviews.
- [61] It should be noted, however, that as a standing Commission of inquiry, section 7B(1) of the CCC Act, which, *inter alia*, conducts administrative investigations, the Commission does not determine whether any person has committed a criminal or disciplinary offence. The opinions of the Commission are confined to whether or not a public officer has engaged in misconduct according to the particular definition contained in section 4 of the CCC Act.

1.8.2 Balance of Probabilities

- [62] The Commission may form an opinion as to misconduct on the evidence before it only if satisfied of misconduct on the balance of probabilities. The seriousness of the particular allegation and the potential consequences of the publication of such an opinion by the Commission, also go to how readily or otherwise it may be so satisfied on the balance of probabilities.
- [63] The balance of probabilities is defined as:

The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proved to be true on the balance of probabilities if its existence is more probable than not, or if it is established by a preponderance of probability ...¹⁵

[64] The balance of probabilities is a standard used by courts when considering civil matters. It is a standard which is less than the criminal standard of beyond reasonable doubt. This was confirmed by the High Court in a unanimous judgement in Reifek v McElroy (1965) 112 CLR 517:

... The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge ...

[65] The balance of probabilities can be applied to circumstantial evidence, as explained by the High Court in Luxton v Vines (1952) 85 CLR 352:

... The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture ... But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusions sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise ...

[66] The degree of evidence necessary to reach a conclusion on the balance of probabilities varies according to the seriousness of the issues involved. This was explained by Sir Owen Dixon in Briginshaw v Briginshaw (1938) 60 CLR 336:

... Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences ...

or, as Lord Denning said in Hornal v Neuberger Products Ltd (1956) 3 All ER 970: “The more serious the allegation the higher the degree of probability that is required ...”.

[67] Furthermore, the Commission could not reach an opinion of misconduct on the basis of a “mere mechanical comparison of probabilities”, without any actual belief in its reality. That is to say, for the Commission to be satisfied of a fact on the balance of probabilities, it would have to have an actual belief of the existence of that fact to at least that degree.¹⁶

1.8.3 Meaning of Corruption

[68] As indicated above (refer [18]-[19]), misconduct is defined by section 4 of the CCC Act, and misconduct of a kind described in section 4(a), (b) and (c) is defined as “**serious misconduct**” by section 3 of the CCC Act. Section 4(a) deals with public officers who act corruptly, or corruptly fail to act, in the performance of the functions of their office or employment and section 4(b) deals with public officers who corruptly take advantage of their office or employment to obtain a benefit or cause a detriment to any person.

[69] Corruption is a notoriously difficult concept to define. The word is not defined in the CCC Act. Although there are many cases which discuss the meaning of corruption, each is a product of the statutory provision (or common law concept) being considered and the circumstances then at hand.

[70] The leading authority in Western Australia on the meaning of corruption is Willers v R (1995) 81 A Crim R 219. In that case Malcolm CJ said that section 83 of *The Criminal Code* (WA), “is concerned with the use of power or authority for improper purposes”. Malcolm CJ noted that in the context of the corporations law the term improper “has been held not to be a term of art, but simply to refer to conduct by an officer of a company which was inconsistent with the proper discharge of the duties, obligations and responsibilities of the officer concerned ...”. Malcolm CJ went on to cite various definitions from the dictionary. Malcolm CJ said, for example, that the Oxford English Dictionary definition of “corrupt” included “perverted from uprightness and fidelity in the discharge of duty; influenced by bribery or the like”. In the same dictionary the verb “corrupt” meant “to destroy or pervert the integrity or fidelity of (a person) in his discharge of duty”. Ultimately Malcolm CJ concluded that an exercise of lawful authority for an improper purpose can amount to corruption under section 83 of *The Criminal Code*. (WA) Malcolm CJ’s *ratio decidendi* should not be taken as an exhaustive definition of the meaning of corruption. The facts in that case involved the abuse of an otherwise lawful power for an improper purpose. The charges were laid under section 83(c) of *The Criminal Code* of acting “corruptly in the performance or discharge of the functions of ... [the officer’s] office or employment, so as to gain a benefit ... or ... cause a detriment”. On such a charge, proof of an intent to obtain a benefit or cause a detriment was itself an element of the offence. Malcolm CJ’s reasons must be understood in that context. The case

does, however, provide a guide to what may amount to corruption in the circumstances of that case.

[71] Re Lane (unreported, Supreme Court, Qld, Ryan J, 9 October 1992) concerned legislation pursuant to which a public officer could lose their superannuation entitlements if they committed an act of corruption. As to the meaning of corruption Ryan J said:

In my opinion, in this context it means conduct which is done deliberately and contrary to the duties incumbent upon the person by virtue of his public office, as a result of which the person has sought to gain an advantage for himself or another.

I consider that the word “corruptly” is not to be equated with “dishonestly”, and that dishonesty does not necessarily connote corruption, but if a person who holds a public office dishonestly applies public moneys to his own use, then his conduct is properly describable as corruptly using a public office held by him.

I accept as correct the submission made on behalf of the respondent that it is necessary to find a conflict between duty and interest before one can find a corrupt performance or non-performance of public duties. But if a person uses a public office which he holds so as to dishonestly apply for his own benefit public funds, he has allowed his own private interest to override his public duty to apply the funds only for public purposes, and his conduct is corrupt.

(emphasis added)

[72] Thus for Ryan J the essence of corruption was the dereliction of public duty. The judgment of Ryan J in Re Lane was cited with approval by Higgins J in DPP (Cth) v Hogarth (1995) 93 A Crim R 452. It is of course important to appreciate that the interpretation of particular words (such as “corruptly”) can be very case-specific, and turn on the particular legislative context and the facts of the case.

[73] Nonetheless, another decision that provides a useful insight into the meaning of the phrase “acts corruptly” is that of the Federal Court of Australia in Williams v R (1979) 23 ALR 369. That case involved an appeal from the ACT Supreme Court. At trial the appellant was convicted of conspiring to cause a police officer to act corruptly. His defence was that he had paid the police officer the money so as to encourage him to investigate the complaint (against the appellant) properly because he had been “framed”. In deciding the case it was important to assess the meaning of the phrase “acts corruptly”. Blackburn J (with whom St John J agreed) expressed this opinion about the meaning of the phrase, at 373:

The word has, in my opinion, a strong connotation of misconduct, i.e., dereliction of duty, whether by act or omission. To that extent, the scope of the section resembles that of the common law offence of bribery, which implied the intention to procure a breach of duty on the part of the official bribed.

(emphasis added)

[74] The trial judge's direction to the jury in that case left open the possibility that the jury might think that they could convict the appellant even if they concluded that he had bribed the police officer to conduct a thorough investigation. Blackburn J took the view that the appellant could not be convicted of conspiring to cause a police officer to act corruptly in circumstances where he was paid to do his duty. For that reason the conviction was quashed with an order for a retrial. The decision in this case is authority for the proposition that the phrase "acts corruptly" means to act contrary to one's public duty.

[75] In the criminal law, the notion that a person may act corruptly does not of itself necessarily involve the gaining of a benefit or the causing of a detriment. As Willers demonstrates, section 83 of *The Criminal Code* (WA) makes it an offence for a public officer, without lawful authority or a reasonable excuse, to act "corruptly" in the performance or discharge of the functions of his office or employment, so as to gain a benefit for, or cause a detriment to, any person. The meaning of "corruptly" therefore cannot necessarily involve an intent (or purpose) to obtain a benefit or cause a detriment.

[76] More importantly, the same distinction is made clear in section 4 of the CCC Act itself. The word "corruptly" appears in both section 4(a) and 4(b). The former contains no reference to the gaining of a benefit or the causing of a detriment. That subsection makes it misconduct for a public officer to "corruptly" act or fail to act in the performance of his or her office or employment. The latter does expressly refer to gaining an advantage or causing a detriment, by the public officer "corruptly" taking advantage of his or her office or employment. If the notion of "corruptly" already included an intent to gain an advantage or cause a detriment, those words would be otiose.

[77] It is axiomatic that the proper construction of a statutory provision turns upon the words used in the particular provision, read in the context of the Act of which the provision is part, and having regard to the general purpose and policy of the legislation.¹⁷

[78] Ordinary dictionary definitions support the conclusion that in section 4 of the CCC Act, "corruptly" connotes dereliction or breach of duty, or acting contrary to one's duty; being perverted from fidelity or integrity. "Corruption" is the perversion of a person's integrity in the performance of official or public duty or work.¹⁸ It involves the concept of a prohibited act undertaken with a wrongful intention.¹⁹ The Commission accepts that the notion of "corruptly" in section 4(a) and (b) of the CCC Act requires that the conduct contrary to the duties incumbent upon the public officer by virtue of their office (to adopt the language of Ryan J in Re Lane) also be attended by moral turpitude of a kind implied by the expression "perverted from fidelity or integrity". Without attempting to be exhaustive, that may be found in dishonesty;²⁰ an improper purpose;²¹ in circumstances in which there is some conflict between the public officer's interests and their duty; or in some other relevant factor.²²

[79] Thus, “corruptly”, in section 4(a) and (b) is not to be equated with “dishonestly” nor “for an improper purpose”, nor (merely), “contrary to [their] duty”. For present purposes it is sufficient to state that the Commission takes the law to be that “corruptly” in section 4(a) and (b) of the CCC Act connotes conduct done deliberately, which is contrary to the duties incumbent upon the public officer by virtue of their office and attended by moral turpitude in the sense explained above.

1.8.4 Section 23(1) of the *Corruption and Crime Commission Act 2003*

[80] Section 23(1) of the CCC Act prohibits the Commission from publishing or reporting a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence. Accordingly, the Commission must not publish or report an opinion that a person has engaged in misconduct of a kind described in section 4(c) unless they have been convicted (or at least pleaded guilty) to the relevant offences. In such a case the Commission would be reporting a fact, not its opinion, as to that.

1.8.5 Expression of Opinion

[81] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the investigation and reviews. Any expression of opinion in this report is so founded.

CHAPTER TWO

COMMISSION INVESTIGATION

2.1 Background

[82] This chapter focuses on the investigation by the Commission of alleged public sector misconduct by employees of DPI in relation to the inspection, licensing and registration of motor vehicles during 2008. As previously stated, the investigation focused on allegations of bribery and corruption of public officers employed as Vehicle Examiners by the Licensing Services section of DPI, in Vehicle Examination Centres located in the Perth metropolitan area.

[83] The investigation by the Commission commenced as a result of notification received by the Commission from the Australian Crime Commission (ACC) in accordance with sections 18(2)(g)(iii) and 25 of the CCC Act. The latter relates to reporting any matter to the Commission that a public officer or any other person suspects on reasonable grounds concerns or may concern misconduct that:

- (a) *has or may have occurred;*
- (b) *is or may be occurring;*
- (c) *is or may be about to occur; or*
- (d) *is likely to occur.*

[84] The material provided on notification was in accord with relevant provisions of the *Australian Crime Commission Establishment Act 2002* (Cwlth) and the TI Act.

[85] Section 26 of the CCC Act empowers the Commission to make a proposition about the occurrence of misconduct "based on the Commission's own experience and knowledge, or assessment of a received matter". The Commission may then use its powers to assess and investigate a proposition.

[86] The scope and purpose of the investigation was to:

determine if any public officer employed by the Department for Planning and Infrastructure has, is or may have engaged in misconduct in relation to the inspection, licensing and registration of motor vehicles or in any other function in their capacity as a public officer.

[87] In July 2008 the Commissioner approved an investigation by the CCC in cooperation with the Western Australia Police (WAPOL) and the ACC in accordance with section 33(1)(b) of the CCC Act. While the CCC investigation focused on allegations of misconduct by public officers employed by DPI, the WAPOL and ACC investigations focused on the suspected involvement of private and/or criminal entities.

[88] The Commission investigation encompassed a review of materials provided by the ACC and documentation provided by DPI, an examination of other documentation provided to the Commission voluntarily and in response to notices served on persons pursuant to sections 95, 100 and 101 of the CCC Act, interviews of various persons, and private and public hearings (examinations). Section 95 relates to the Commission's power to obtain documents and other things, Section 100 relates to the Commission's power to enter and search premises of public authority or officer, and section 101 to the issue and effect of search warrants.

2.1.1 Decision to Conduct Public Examinations

[89] Section 139 of the CCC Act stipulates that except as provided in section 140 an examination is not to be open to the public. Section 140(2) allows the Commission to open an examination to the public only if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so.

[90] In this case the Commission weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, and decided that it was in the public interest to conduct six out of 10 of the examinations of witnesses in public.

[91] Although the CCC Act speaks in terms of a person being examined (for the purpose of obtaining information to advance an investigation), there is a general tendency for those to be described in the media as a "hearing". To avoid confusion, the Commission will use that word to mean a compulsory examination of a person before it.

[92] In his remarks at the start of the January 2009 public hearings Commissioner the Hon. Len Roberts-Smith, RFD, QC said:

Specific considerations to which the Commission has had regard in relation to whether the hearings in this instance should be public include first in relation to public exposure: that the investigation is well progressed and there is substantial evidence that offences of corruption, involving the giving and receiving of bribes or favours, may have been committed; the activities of the public officers could have compromised public safety and there is a need for public exposure of that in the public interest; public hearings at this stage would afford a degree of transparency to the conduct of a significant investigation, without compromising it.

This investigation has identified multiple vehicle examiners suspected of engaging in misconduct. Public exposure of the circumstances will act as a strong deterrent to those who may also be involved in, or may have been thinking of being involved in similar behaviour. Although the overt actions taken by the Commission to date would have the likely effect of stopping any similar conduct not yet identified, public exposure of the matter would be likely to discourage others from being part of any similar scheme.

The investigation has highlighted a number of procedural weaknesses in the Department for Planning and Infrastructure (DPI) processes and system. Public exposure of what has occurred will be very useful in

ensuring that DPI is properly equipped by government to deal with the weaknesses identified. Public exposure of this matter will encourage other agencies to work with the Commission's corruption prevention, education and research directorate in developing corruption resistant strategies.

As to public awareness, members of the public made aware of the activities under investigation may come forward with relevant information about these or similar activities. Finally, as to potential for prejudice or privacy infringements, the only potential for prejudice or privacy infringements is to those who were apparently actively involved in the conduct concerned.

...

Public awareness is an important aspect of the Commission's function of improving continuously the integrity of, and reducing the incidence of misconduct in the Western Australian public sector. Subject to section 139 of the CCC Act, Commission hearings should not generally be shrouded with a cloak of secrecy as that would deny to them the public character which is an essential element in public acceptance of the Commission's work.

[93] In his opening address at the January 2009 public hearings Counsel Assisting, Mr Brett Tooker, said:

... last year 209 people died on WA roads ... studies have shown that vehicle defects are a contributing factor in about 6 to 12 per cent of motor vehicle accidents.

It is important if we are able to reduce the number of accidents and fatalities on our roads that all motor vehicles are roadworthy ...

The Commission is currently investigating an allegation that vehicles are not being examined properly or at all by some examiners. This public hearing seeks to further that investigation. If it is true that some vehicles have not been properly examined or worse still, that some vehicles have not been examined at all, this is a very dangerous situation indeed. It could mean potentially that there are a number of unroadworthy vehicles on our roads.

(emphasis added)

[94] Concern has been expressed in the past when Commission hearings have been conducted in public. Commissioner Terence Cole QC in his conduct of the Royal Commission into the building and construction industry, in addressing the need to conduct hearings by Royal Commissions in public, stated:

It was necessary for me to weigh the risk that reputations may be unfairly damaged against the public interest in the matters that I was required by my terms of reference to investigate. I had to make a judgment regarding the competing interests. Reasonable minds may differ in relation to which portions of evidence should be taken in public and which in private, but the public interest in a Royal Commission conducting its hearings in public should not be underestimated. Public hearings are important in enhancing public

confidence in a Commission as they allow the public to see the Commission at work.

They also enhance the ability of Commissions to obtain information from the public as they demonstrate to the public the types of matter with which the Commission is concerned and they allow potential witnesses to see that they would not be alone in giving evidence to a Commission. Summarising concerns of this type Mason J emphasised in the Australian Building Construction Employees v Builders Labourers Federation case that in conducting Royal Commission hearings in private seriously undermines the value of the inquiry. It shrouds the proceedings with a cloak of secrecy, denying to them the public character which to my mind is an essential element in public acceptance of any inquiry of this kind and its report.

[95] The Commission agrees with the comments made by Commissioner Cole and has taken those considerations into account.

2.1.2 Private and Public Hearings

[96] Private hearings were held by the Commission in respect of alleged public sector misconduct by employees of DPI on 10 December 2008, 28 January 2009, 15 and 16 September 2009, and 23 October 2009. The latter was subsequently made public (the non-disclosure restriction being lifted by the Commissioner). Public hearings were held on 27 and 28 January 2009, and on 17, 18 and 19 February 2009. The following witnesses were called to give evidence during the hearings.

Public Officers (during the period relevant to the investigation).

- Mr Allan Roy Jenner, Expert Witness (27 January 2009).
- Mr Barry William Tanner (27 January 2009).
- Mr William Brian Burrows (18 February 2009).
- Mr Peter David Howard (19 February 2009).
- Mr John Francis Piercley (19 February 2009).
- Mr Brent Edward Kain (19 February 2009).
- Mr Desmond Arthur Lawry, Expert Witness (15 September 2009).
- Mr James Munro Spence (15 September 2009).
- Mr Robert Alexander Cugley (16 September 2009).
- Mr Glenn Raymond Cooper, Expert Witness (23 October 2009).

Non-Public Officers

- Mr George Badih Raphael (10 December 2008, 28 January 2009 and 15 September 2009).
- Mr Jimy Jean Jabbour (10 December 2008 and 17 February 2009).
- Ms Susan Evelyn Jabbour (10 December 2008, and 17 and 18 February 2009).
- Mr Abraham Merched Roufail (18 February 2009).

[97] At the conclusion of the public hearings on 19 February 2009 Commissioner Roberts-Smith invited “any person who had been called as a witness” and who “considers some other witness or evidence should be put before the Commission insofar as it concerns them, they should notify Counsel Assisting in writing”. In addition, “[a]s to cross-examination ... any person who has been called as a witness or mentioned in evidence in a way they consider is adverse to them ... may apply to the Commission ... for that witness to be recalled for the purpose of cross-examination”.²³

[98] The only witness to make such an application was Mr Howard. As a consequence the Commission summonsed Mr Glenn Raymond Cooper to give evidence at a private hearing on 23 October 2009 (subsequently made public).

[99] At the conclusion of the hearing on 23 October 2009 Commissioner Roberts-Smith made the following orders:

- (1) ...
- (2) (a) *Counsel Assisting will have fourteen days to file and service written submissions as to misconduct by public officers.*
- (b) *Any affected party whom Counsel Assisting has submitted has engaged in misconduct will have fourteen days from the date of service on them of the submission by Counsel Assisting to file written submissions in reply with the Corruption and Crime Commission.*²⁴

[100] Written submissions received in reply to the written submissions served by Counsel Assisting on 6 November 2009 have been taken into account by the Commission in finalising this report.

2.2 Authorised Vehicle Examiners and Vehicle Examination Centres

[101] The *Road Traffic Act 1974* (RTA) confers on DPI responsibility for registering the State’s vehicles. Vehicles must be registered before they can be lawfully used on the road. Registration is conferred only where a vehicle is deemed roadworthy (that is, passed examination). The *Road*

Traffic (Vehicle Standards) Rules 2002 detail specific requirements for vehicles, including dimensions, braking, lighting and emissions: all of which must conform to the Australian Design Rules (as at the date of manufacture of the vehicle). DPI Vehicle Examiners, and Authorised Inspection Station (AIS) and Approved Inspection Station (AIS) personnel are registered motor vehicle mechanics and trained to examine vehicles in accordance with the Australian Design Rules. The Motor Vehicle *Certificate of Inspection* (MR1) is used to record details of each vehicle examination.²⁵

- [102] Vehicle Examiners employed by DPI or an AIS are designated as Authorised Vehicle Examiners (AVE or "Vehicle Examiner"). DPI has authorised private businesses (Authorised Inspection Stations) to provide limited vehicle examinations in the Perth metropolitan area for Heavy Vehicles (over 4,500 Kilograms) and Light Vehicles, and in regional centres (Approved Inspection Stations) for Heavy, Light and Written-Off Vehicles.
- [103] Those employed by DPI operate from one of six Vehicle Examination Centres located in the Perth metropolitan area. There are six such Centres and the Commission investigation was principally concerned with the activities of public officers located in two of these, that is, Kelmscott and Welshpool, and to a lesser extent O'Connor. The other Centres are located at Midland, Osborne Park and Warwick. The Centres are open from 7:30 a.m. to 4:30 p.m., Monday to Friday (excluding public holidays). The Kelmscott, Midland, Osborne Park and Warwick Centres require customers to pre-book a vehicle examination, whilst O'Connor and Welshpool operate on a "first-come first-served basis", with customers required to arrive no later than 3:30 p.m.²⁶
- [104] This report is not concerned with AIS Vehicle Examiners.
- [105] A vehicle is required to be examined if it:
 - is an imported vehicle or the licence for the vehicle has lapsed;
 - is subject to a defect or compliance notice ("yellow sticker");ⁱⁱ
 - has been modified (to give it a distinctive appearance, to improve its performance, to add special features or adapted for a specialised purpose); or
 - is subject to an annual examination (as prescribed by the *Road Traffic (Vehicle Standards) Rules 2002*, for example, buses, taxis and left-hand drive vehicles).²⁷
- [106] At a Commission public hearing on 27 January 2009 Mr Allan Roy Jenner, a DPI Acting Senior Administrative Officer, was asked about matters relating to the examination of a vehicle by a Vehicle Examiner, that is,

ⁱⁱ If a "yellow sticker" (defect notice) is attached to your vehicle, it cannot be driven on the road for general use after the expiry date shown on the "yellow sticker". Department of Transport Website, <http://www.transport.wa.gov.au/licensing/yourvehicle/1441.asp>, viewed 21 May 2010.

examination process and implications of licensing a vehicle without inspection.

He will examine that vehicle from the front to the back to make sure that it is in a roadworthy state.

As well as doing an inspection over the pits, is there any other aspect to the testing and the checking?---He will road test the vehicle to make sure it handles correctly, the brakes, the steering, suspension handles correctly on the road.

*Once the inspection is done and the test drive is done, that will be the end of the inspection. Is that right? ---Yes.*²⁸

...

TOOKER, MR: Now, Mr Jenner, could you tell us from your experience, is there an average time it takes to inspect your average four-door passenger vehicle?---It's roughly 30 minutes on a full inspection.²⁹

...

*What are minor inspections for?--- ... for vehicles that were deemed not to be at major risk, which ... were under three years or under 60,000 kilometres, primarily covered by manufacturer's warranty ...*³⁰

...

*... a minor inspection then that would take around about 15 minutes to do.*³¹

...

*... A vehicle that's been issued with a defect notice, a "yellow sticker", will need to be examined fully to make sure that it is roadworthy.*³²

...

What are some of the implications if a vehicle wasn't inspected and it was required to be inspected?

THE COMMISSIONER: You mean if it was approved as having been inspected but in fact had not been?

TOOKER, MR: Yes; yes?---What would be the implications? *Well, you could have an unroadworthy vehicle which could cause accidents, fatalities. A whole measure of things can happen.*

TOOKER, MR: *If an unlicensed vehicle was inspected in this way without actually being inspected, but passed and then licensed by someone and then onsold, is there potential that that new buyer of the vehicle would not know that they were buying an unroadworthy - - -?---Would be totally unaware, totally unaware that that vehicle - as far as they would be concerned, I suppose they would think that the vehicle has been examined and therefore it's a roadworthy vehicle.*

Because it has been registered?---Because it was unlicensed and then registered, yeah.

What about car rebirthing, is there potential for cars to be rebirthed if they're not inspected properly?---Yes.

Why is that? What does an examiner do during the course of a full examination that might prevent car rebirthing?---Well, they check - on the vehicle identification number area and compliance plate area ...³³

(emphasis added)

[107] In his opening address at the January 2009 public hearings Counsel Assisting, Mr Tooker, stated the following in relation to the examination of vehicles at Vehicle Examination Centres.

The process for getting your car inspected is not an overly complicated one. You must first purchase an inspection receipt. This can be done at the examination centre itself or if you want to do it in advance you can purchase one of these over the phone using a credit card. The inspection receipt contains a unique six-number code prefixed by the letters MR. Once you have your examination receipt and MR number you can then get your car examined.

... When you present your car to an examiner for inspection you must present your inspection receipt or your MR number if you purchased it over the phone. Having done that the examiner will then inspect your vehicle.

At the end of the examination your car will either be passed or failed. If it fails you will be issued with a work order and you must if you want to get your car registered then get the car repaired and return for a reinspection. A reinspection incurs a further fee on top of the fee paid for the original inspection. If the car is passed and it is licensed you will be able to drive it away. If the car is unlicensed you must then register the vehicle before driving it.³⁴

(emphasis added)

[108] The diagram in Appendix 2 to this report illustrates some of components of a vehicle that are examined during inspection by a Vehicle Examiner, and some of the criteria for examination of a vehicle.³⁵

[109] The vehicle examination process includes an administrative component which requires the payment of a vehicle examination fee, the completion of forms and recording of relevant data. In relation to this, during his opening address at the January 2009 public hearings, Mr Tooker explained:

During an inspection the examiner must manually fill out a form which is called an MR1 or "Certificate of Inspection". Once the inspection is complete the examiner must place the details on to DPI's computer which is called TRELIS. If the vehicle being examined is unlicensed the electronic version of the "Certificate of Inspection" will be printed off, signed by the examiner and given to the customer so that he or she can then go and register the vehicle.³⁶

(emphasis added)

[110] Certain anomalies in this process, which will be addressed in detail later in this report, appear to have provided opportunity for compromise and created a real risk of misconduct. Investigations conducted by the Commission and other anti-corruption agencies, such as the Independent Commission Against Corruption (ICAC) in New South Wales, have repeatedly demonstrated that agencies, and sections within agencies such as the Licensing Services section of DPI, with regulatory functions are particularly vulnerable to corruption and misconduct. Particular risk factors that have been identified include:

- the regulated industry is profitable and licences issued by agencies (regulatory officers) are valuable;
- work undertaken by regulatory officers involves a high degree of discretion;
- there is a close relationship between the industry and regulatory officers;
- there is a lack of immediate supervision or oversight of regulatory officers; and
- regulatory officers are moderately paid.

It can be said that all of the above factors apply in the case of the DPI Licensing Services section, where Vehicle Examiners, who are generally mechanics by trade, are likely to have strong bonds with those employed in the motor vehicle industry, inspect vehicles autonomously without peer review, are trusted to follow procedures and are also relatively moderately paid.³⁷ The problem is not unique to Western Australia. ICAC in a report entitled *Rebirthing Motor Vehicles: Investigation Into the Conduct of Staff of the Roads and Traffic Authority and Others*, 1 November 2000, revealed that officials of the Roads and Traffic Authority failed to follow procedures and acted corruptly in order to facilitate the “rebirthing”ⁱⁱⁱ of vehicles by private individuals (criminal groups and individuals), often for financial reward.

2.3 Commission Investigation

2.3.1 Mr Barry William Tanner and Mr Badih (George) Raphael

[111] Mr Barry William Tanner was employed as a Vehicle Examiner (No. 208) by the Licensing Services section of DPI during the period relevant to this investigation, authorised as an examiner under the *Road Traffic (Licensing) Regulations 1975* and a public officer. Mr Tanner resigned from his position as a Vehicle Examiner at the Kelmscott Vehicle

ⁱⁱⁱ Stolen cars can be given a new identity by a process known as rebirthing. Rebirthing involves the removal of the Vehicle Identification Number and Engine Number, and the issuing of new identifiers. Registration then provides a new identity for the vehicle, with no link to the legitimate owner. This produces a valuable item for the criminals involved, ready for resale to an unsuspecting buyer. *Rebirthing Motor Vehicles* report by ICAC, p.1.

Examination Centre in December 2008, effective 14 January 2009. At that time Mr Tanner had worked for DPI for approximately 13 years.³⁸

2.3.1.1 Public Hearing and Investigative Material

[112] At a Commission public hearing on 27 January 2009 Mr Tanner admitted that he knew Mr Badih (George) Raphael, the proprietor of a vehicle wrecking yard, panel shop and mechanical workshop in O'Connor, Western Australia, trading as Safeway Auto Recyclers ("Safeway"). Mr Tanner also admitted that he had visited the Safeway premises in O'Connor.³⁹ When Mr Tanner was asked how he knew Mr Raphael he said:

I've been - even before I was in the department I was in mechanical workshops and garages myself and I've actually bought parts off him, I'm sure. I can't give you an exact time I've known him. I'm sure I actually had dealings with him before I come into the department ...

I couldn't tell you when I first met him but I have known him for a number of years.

More than 13 years obviously because you have been working - - -?---I'm sure. I'm sure. To be - I can't be certain.⁴⁰

(emphasis added)

[113] At the public hearing Mr Tanner also admitted that he passed cars for Mr Raphael without inspecting them, as is evidenced by the following extracts.

All right. I will go back to the question I was asking you earlier. You have told us that initially you did the pre-inspections followed by actual inspections, then it evolved into a situation where you would do on-site inspections. Did the arrangement evolve into a situation where you would fill out the paperwork, passing a vehicle or whatever, without seeing the vehicle at all?---There was a few vehicles done like that, not very many. Yes - yeah, there were some done like that. The majority of the vehicles though, I looked at the vehicles.⁴¹

...

You would look at them and after you passed them or not, then he would pay you the \$50. Is that - - -?---The majority - no. The majority of the vehicles I wouldn't pass there and then. It'd be the next day after I'd - either come over the pits - as I said, there were some cars that I passed that didn't come over the pits and there were a few cars that I didn't inspect.

...

Of the 200 to 250 that you say you examined in 2008, how many do you think you would have passed without seeing at all?---No more than 10, I'm sure.⁴²

...

But you would on occasions sign the paperwork to certify a car as roadworthy having never seen it?---As I - as I said before, yes. There wasn't many vehicles done that way but yes, it was done.⁴³

...

Counsel Assisting showed Mr Tanner transcripts and played audio of two lawfully intercepted telephone calls on 15 July 2008, between Mr Tanner and Mr Raphael, and then asked further questions.⁴⁴

All right, so would you accept that in July 2008 you don't seem to have a big problem with not inspecting the vehicle before signing off the paperwork? ---Yeah. As I said, there weren't a lot of vehicles done that way. This one definitely was. With the first I didn't remember the vehicle. With the - with that second transcript I remembered the vehicle and no, I didn't inspect that vehicle.⁴⁵

...

And is it the case that as the year went on you did more inspections without actually seeing the car?---No. No, as I say, most of the vehicles I did inspect, you know, I did have a look at at some stage. It was just, sometimes there were circumstances where he couldn't get them for me to have a look at.⁴⁶

...

Counsel Assisting then asked questions in relation to a lawfully intercepted telephone conversation between Mr Tanner and Mr Raphael that occurred on 25 August 2008.⁴⁷

And then you say you "will do another couple this arvo"? ---Right. I actually could've looked at these vehicles previously. I certainly didn't inspect - not inspect all vehicles. As I said to you earlier, there were some vehicles I didn't inspect but there wasn't many. The majority of them I'd inspect I may not licence that vehicle for a few days until all the paperwork was in order; you know, till he'd got receipts and so forth for the inspection.⁴⁸

...

The examination continued.

Have you signed some of these certificates to say that you have inspected them and they are - - -?---I signed - - -

Sorry, just let me finish?---Yeah, sorry.

To say that you have inspected them and certified them as roadworthy without inspecting them at all?---There were some that I done, yes. Every vehicle that I done the paperwork for I actually filled the paperwork out. Not all the examiners do. Some of the examiners hardly sign anything. Right? I have. Yes.

So for all of the cars that you didn't inspect, you did fill out the paperwork and sign it?---Yes; yes.

And in those cases you have certified a vehicle as roadworthy when you wouldn't know one way or the other whether it is?---Correct. That's on the cars that I never inspected, yes.⁴⁹

...

Is it possible it's more than the 10 you told us about?---I'd say so now, looking at this; yes.⁵⁰

...

*Do you think you did more without inspecting them over time?---Yeah, it appears that way. Certainly - definitely from the - from the beginning it definitely wasn't like that. I - yeah.*⁵¹

(emphasis added)

- [114] In addition Mr Tanner admitted that he was paid \$50 for every vehicle that he passed for Mr Raphael.⁵² An example of a vehicle passed without an inspection by Mr Tanner is an orange automatic 2007 Ford Sedan. Mr Tanner passed this vehicle as roadworthy on 15 July 2008.⁵³ This vehicle had previously been involved in a collision and deemed an economic write-off.⁵⁴ Mr Tanner admitted that he did not inspect this vehicle.⁵⁵ After it was passed as roadworthy by Mr Tanner it was licensed by Mr Raphael's brother and purportedly it was subsequently sold to an unsuspecting buyer.⁵⁶ Mr Tanner was paid \$50 for passing this vehicle.⁵⁷
- [115] An analysis of DPI inspection records indicated that Mr Tanner carried out exclusive certification of vehicles recorded under inspection receipts (which contain a unique six-number code prefixed by the letters MR) purchased by Mr Raphael. This involved 345 vehicles between 28 September 2007 and 1 December 2008. In the event that Mr Tanner received \$50 for each vehicle the cash amount derived would have been \$17,250.
- [116] Video surveillance material showed numerous occasions of Mr Tanner meeting with Mr Raphael to exchange vehicle documentation and receive cash payments. That evidence is supported by relevant original DPI inspection records, other documents obtained from DPI and material contained in an Exercise Book,⁵⁸ seized from Mr Tanner by Commission officers in December 2008 during a search of a Mitsubishi Triton Utility, which contains corresponding records of relevant inspection receipts (or MR numbers) purchased by Mr Raphael, the details of relevant vehicles, records of specific amounts of money collected from Mr Raphael and the date on which it was collected. The amounts detailed on relevant dates correspond with video surveillance material. Entries in the Exercise Book are evidence of collusion between Mr Tanner and Mr Raphael that goes as far back as April 2008, but the actual date was probably much earlier. Mr Tanner did not commence making entries in the Exercise Book until the extent of the collusion required a record to be maintained in order to manage the exchange of cash for documentation relating to the certification of vehicles. By May 2008 the meetings to exchange cash for documentation had become routine.

[117] Although DPI inspection records indicated that Mr Raphael was presenting vehicles for inspection at the Kelmscott Vehicle Examination Centre, which is 30 kilometres from Safeway, and not the O'Connor Vehicle Examination Centre which is near Safeway, video surveillance confirmed that neither Mr Raphael (or any person employed by him) or the owners of specific vehicles certified by Mr Tanner, at the request of Mr Raphael at the relevant time, were attending the Kelmscott Vehicle Examination Centre to present vehicles for examination. There was also no indication that Mr Tanner was making any effort to inspect the vehicles elsewhere, with or without prior DPI approval. Telecommunication interceptions confirmed that Mr Raphael was providing vehicle details and MR numbers (as inspection receipts can be purchased in bulk without presentation of a vehicle) to Mr Tanner over the telephone. This information was then used by Mr Tanner to circumvent policies and procedures, and falsify vehicle inspection records.

[118] Evidence available to the Commission confirmed that Mr Raphael purchased low-priced second hand vehicles, generally trade-in vehicles or vehicles sold at auction, and onsold them for profit. Where the vehicle was unlicensed at the time of purchase Mr Raphael arranged for Mr Tanner to provide a completed and signed *Certificate of Inspection* to the new owner, who would arrange change of ownership and payment of the licence. The same evidence also confirmed that Mr Raphael was well-known in the motor vehicle industry and privately as a person who, for a fee, could obtain certification of inspection without the presentation of a vehicle. In such cases a fee of \$300 cash was paid to Mr Raphael by the owner of the vehicle, from which Mr Raphael paid an inspection fee of \$83.30 to DPI and a cash bribe of \$50 to Mr Tanner, retaining \$166.70.

2.3.1.2 Commission Assessment and Opinions

[119] The evidence available to the Commission establishes that Mr Tanner certified vehicles as roadworthy for Mr Raphael without inspecting them. In return he was paid \$50 per vehicle. Mr Tanner's conduct was deliberate, contrary to the duties incumbent upon him as a public officer (that is, his lawful responsibilities as an Authorised Vehicle Examiner), perverted from integrity and attended by moral turpitude.

[120] In the opinion of the Commission Mr Tanner's conduct constitutes serious misconduct under section 4 of the CCC Act, in that he:

- acted corruptly in the performance of his functions as a Vehicle Examiner (section 4(a) of the CCC Act); and
- corruptly took advantage of his position as a Vehicle Examiner to obtain a benefit for himself (section 4(b) of the CCC Act).

His conduct also constitutes misconduct in that it:

- directly adversely affected the honest performance of the functions of a public authority, that is, DPI (section 4(d)(i) of the CCC Act);

- constituted the performance of his functions in a manner that was not honest (section 4(d)(ii) of the CCC Act);
- constituted a breach of the trust placed in him by reason of his employment as a public officer (section 4(d)(iii) of the CCC Act); and
- could constitute an offence against section 82 of *The Criminal Code* (WA) and a disciplinary offence affording reasonable grounds for termination of employment under the PSM Act (section 4(d)(v) and (vi)).

[121] On 23 September 2009 the Commission charged Mr Tanner with 30 counts of bribery contrary to section 82 of *The Criminal Code* (WA), whereby “[a]ny public officer who obtains, or who seeks or agrees to receive, a bribe ... is guilty of a crime and is liable to imprisonment for 7 years”. The offences were committed by Mr Tanner between 8 August and 6 November 2008 whilst employed as a public officer by DPI.

[122] Mr Tanner pleaded guilty to all 30 charges in the Perth Magistrates Court on 14 April 2010. The matter was committed to the District Court of Western Australia and was listed for sentence on 6 August 2010. On that date Mr Tanner was sentenced by His Honour Judge Groves to 18 months imprisonment on Count 1 and 18 months imprisonment on Count 2, to be served immediately with 18 months imprisonment for the remaining 28 Counts (to be served concurrently). In total Mr Tanner received a sentence of three years imprisonment, but had faced a maximum penalty of seven years imprisonment on each Count. He was made eligible for parole after serving a minimum of 18 months imprisonment.

[123] Consequently, in the opinion of the Commission, Mr Tanner also engaged in serious misconduct under section 4(c) of the CCC Act.

[124] As Mr Tanner has resigned from DPI, the Commission makes no recommendations for further action in relation to him.

[125] Mr Raphael, a non-public officer, was also charged by the Commission on 23 September 2009 with 30 counts of bribery contrary to section 82 of *The Criminal Code* (WA), whereby “... any person who gives, or who offers or promises to give, a bribe to a public officer [Mr Tanner], is guilty of a crime and is liable to imprisonment for 7 years”. Mr Raphael pleaded guilty to all 30 charges in the Perth Magistrates Court on 2 October 2009 and was due to be sentenced in the District Court on 4 March 2010, but failed to appear on that date. It is believed that Mr Raphael is overseas; however, his actual whereabouts, or whether or not he has any intentions to return to Australia, are unknown. Those proceedings are still extant.

2.3.2 Mr William Brian Burrows and Mr Abraham Merched Roufail

[126] Mr William Brian Burrows was employed as a Vehicle Examiner (No. 224) by the Licensing Services section of DPI during the period relevant to this investigation. He was located at the Welshpool Vehicle Examination Centre. Mr Burrows had worked for DPI for nearly nine years.⁵⁹

2.3.2.1 Public Hearings and Investigative Material

[127] At a Commission public hearing on 18 February 2009 Mr Burrows admitted that he knew Mr Abraham Merched Roufail, a self-employed semi-retired businessman who until 2007 owned and operated Eurotyres under the trading name of A & J Roufail Auto Repairs, and that Mr Roufail regularly attended the Welshpool Vehicle Examination Centre.⁶⁰ Mr Burrows admitted that he certified vehicles as roadworthy for Mr Roufail without inspecting them, as was legally required. On evidence he said:

Have you ever passed a vehicle for Abe Roufail without actually seeing the vehicle?---Yes.

*How many times do you reckon you have done that?---Once or twice, a few more maybe. Mainly new vehicles.*⁶¹

(emphasis added)

[128] A 1995 lime-green Mitsubishi Triton Utility (“Mitsubishi Ute”) was one example of a vehicle passed by Mr Burrows without an inspection.

[129] Photographic and video surveillance material confirmed that on the morning of 31 October 2008 Mr Roufail visited C B Mechanical Services (“C B Mechanical”) in Bentley, obtained paperwork from the dashboard of the Mitsubishi Ute at 9:33 a.m., and carried paperwork and a number plate to his own vehicle, a silver Toyota Hilux, at approximately 9:34 a.m. He then left C B Mechanical in the Toyota Hilux. When asked at a Commission public hearing on 18 February 2009 Mr Roufail agreed that he “got into that car [the Toyota Hilux] with some paperwork and ... dealer plate and ... [drove] off” and didn’t leave C B Mechanical in “the green Mitsubishi Ute”.⁶²

[130] Video surveillance material confirmed that Mr Roufail was at the Welshpool Vehicle Examination Centre by 10:04 a.m., spoke with Mr Burrows and handed him paperwork for the Mitsubishi Ute. Asked by the Commissioner during the 18 February 2009 public hearing:

... Is your evidence now that in relation the lime-green utility [Mitsubishi Ute] you collected the paperwork, got into your car, drove to Welshpool and gave Billy [Mr Burrows] the paperwork, and that you did not take that car there on that occasion? Is that what your evidence now is?

Mr Roufail said: “Yeah, that was correct; Yeah”.⁶³

[131] Mr Roufail also confirmed during the hearing that the Mitsubishi Ute had a “yellow sticker” (defect or compliance notice) at the time, that he assured Mr Burrows that “the car had got new tyres” and that Mr Burrows told him “it’s okay the owner [can take] ... the sticker off”, permission he gave without the vehicle being presented for inspection at the Welshpool Vehicle Examination Centre.⁶⁴

[132] Counsel Assisting showed Mr Roufail a *Certificate of Inspection* (MR1) for the Mitsubishi Ute,⁶⁵ with the words “Work Order” scrawled prominently on the front page. Also on the front page was the DPI “Vehicle Passed”

Stamp, signed by Vehicle Examiner No. 224, Mr Burrows, on 31 October 2008. A copy of the *Certificate of Inspection* is provided in Appendix 3 to this report. Mr Roufail reconfirmed that “Bill Burrows never laid eyes on [the] ... lime-green Mitsubishi Ute” and that he had certified the vehicle as he “took my word”.⁶⁶

- [133] Video and photographic surveillance device material confirmed that Mr Roufail left the Welshpool Vehicle Examination Centre soon after 10:05 a.m., arriving at C B Mechanical by 10:27 a.m. Mr Roufail admitted during the public hearing that he told the proprietor of C B Mechanical “he could take the ‘yellow sticker’ off”.⁶⁷
- [134] An analysis of what was involved in the example of the Mitsubishi Ute is instructive. As a Vehicle Examiner Mr Burrows was required by the RTA, and associated regulations and policies, to physically examine the vehicle. His failure to do so was in breach of his lawful duty. The *Certificate of Inspection* he signed on 31 October 2008, certifying that he had examined the vehicle, was false. It was dishonest and a breach of the trust placed in him.
- [135] If a defect or compliance notice specifies a defect in a vehicle that requires rectification, the notice stops being in force when a Vehicle Examiner or Police Officer finds that the defect has been rectified.⁶⁸ Mr Burrows certified the Mitsubishi Ute as roadworthy without knowing that the defect had been rectified, as he had not seen the vehicle.
- [136] Mr Burrows admitted later in the public hearing that he had passed other vehicles for Mr Roufail without seeing them.
- [137] A forensic analysis of TRELIS and other DPI records revealed that between 1 June 2004 and 2 December 2008 Mr Burrows certified 272 vehicles for Mr Roufail, of which he failed only one. The Vehicle Examiner with the next highest number of vehicles certified for Mr Roufail between 1 June 2004 and 2 December 2008, at the Welshpool Vehicle Examination Centre, was Mr Howard, who certified 119 and failed none. The highest number of examinations done for Mr Roufail over that period by any other Vehicle Examiner at the Welshpool Centre was 32.
- [138] Between 1 January and 2 December 2008 Mr Burrows certified 55 vehicles for Mr Roufail, of which he again failed only one. The Vehicle Examiner with the next highest number of vehicles certified for Mr Roufail at the Welshpool Centre during that period did only nine (of which two failed).
- [139] During the public hearing Mr Burrows stated in evidence that he had not received payment from Mr Roufail for passing the Mitsubishi Ute, nor for any other vehicle, and that he had assisted Mr Roufail as they had “just become sort of friendly over the years” and Vehicle Examiners “were really under the pump”.⁶⁹

Did Abe give you any money - - -?---No.

- - - for doing that job?---No.

For any jobs?---No.

...

Did you ever pass vehicles without inspecting them for anyone else?---Not that I know of.

*So why did you provide these favours to Abe Roufail?---Basically, like I said, we sort of had a bit of a rapport over all the years and just - you know, you just get to help out some people more than others.*⁷⁰

...

*... How long would you say it has been going on that you have perhaps passed cars without seeing them?---Since - since we're under the pump, you know, in the last 12 months or so that we were really under the pump and you just try and help people out, make it so they didn't have to sit in a queue for eight hours and - yeah.*⁷¹

(emphasis added)

[140] Mr Roufail gave similar evidence earlier in the public hearing.

*Have you ever given Bill Burrows any money for helping you out?---I give him nothing. No-one nothing. He get paid from the government and don't need me.*⁷²

(emphasis added)

2.3.2.2 Commission Assessment and Opinions

[141] The evidence available to the Commission establishes that Mr Burrows on a number of occasions certified vehicles as roadworthy for Mr Roufail without inspecting them, as was legally required. In the opinion of the Commission this conduct by Mr Burrows constitutes misconduct under section 4 of the CCC Act in that it:

- directly adversely affected the honest performance of the functions of a public authority (DPI) (section 4(d)(i));
- constituted the performance of his functions in a manner that was not honest (section 4(d)(ii));
- constituted a breach of the trust placed in him by reason of his employment as a public officer (section 4(d)(iii)); and
- could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (section 4(d)(vi)).

[142] The Commission accepts there is no evidence that Mr Burrows received any personal benefit from Mr Roufail for certifying vehicles as roadworthy

without inspection. The continual pressure under which Mr Burrows and others worked in efforts to cope with the heavy demand for vehicle inspections, and the resulting protracted queuing of vehicles awaiting inspection, gave rise to a serious risk of misconduct, to which he succumbed.

2.3.2.3 Recommendation

Recommendation 1: Mr Brian William Burrows

In the opinion of the Commission the conduct of Mr William Brian Burrows as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* ("CCC Act").

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Burrows.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Burrows, on 4 December 2009, for consideration.

The Commission notes, that following a disciplinary investigation and subsequent inquiry by DoT, Mr Burrows was found to have committed a serious breach of discipline. As a consequence he was transferred to the role of MDL Driver Assessor within the Licensing Services section of DoT, effective 6 September 2010, and his employment classification was reduced from Level 4 to Level 3.

[143] Section 85 of *The Criminal Code (WA)* makes it an offence for a public officer to falsify a record. That section provides that:

Any public officer who, in the performance or discharge of the functions of his office or employment, corruptly —

- (a) *makes any false entry in any record;*
- (b) *omits to make any entry in any record;*
- (c) *gives any certificate or information which is false in a material particular;*
- (d) *by act or omission falsifies, destroys, alters or damages any record;*
- (e) *furnishes a return relating to any property or remuneration which is false in a material particular; or*

(f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give,

is guilty of a crime and is liable to imprisonment for 7 years.

[144] In the Commission's opinion the investigation has elicited evidence which would be admissible in a court, that Mr Burrows may have committed an offence under section 85. That is, as a public officer acting in the discharge of the functions of his employment as a Vehicle Examiner, he corruptly:

- made a false entry ("I certify that I have inspected this vehicle in accordance with the policies and procedures of the department [DPI] and that it is in a roadworthy condition"); and
- gave a certificate (*Certificate of Inspection* dated 31 October 2008) which was false in a material particular.

[145] The meaning of the word "corruptly" has been discussed earlier in this report. As is explained there, the notion of "corruptly" used in *The Criminal Code* (WA) does not require proof of an intent to gain a benefit or cause a detriment. Section 83 of the *The Criminal Code* (WA), for example, postulates three circumstances of conduct directed to the gaining of a benefit or the causing of a detriment. One of those is to act corruptly in the performance or discharge of the public officer's functions of their office or employment (section 83(c)). If the word "corruptly" in section 83(c) already included a requirement to prove an intent or purpose to obtain a benefit or cause a detriment, the following words of that section would be redundant.

[146] The Commission has considered whether or not it should make a recommendation pursuant to section 43(1)(a)(i) of the CCC Act that the Director of Public Prosecutions give consideration to the prosecution of Mr Burrows under section 85 of *The Criminal Code*.

[147] On balance, the Commission has come to the conclusion that it should not make such a recommendation. The reasons for that include:

- he received no payment nor any other personal benefit;
- the evidence does not show that he was motivated other than by pressure of work and to "help out" someone he knew;
- the Commission has previously recommended that consideration be given to the taking of disciplinary proceedings against him, and that was done, and a penalty imposed by DoT;
- he did not initiate the conduct;
- although the Commission is satisfied on the evidence available to it that Mr Burrows falsely certified many vehicles for Mr Roufail between 2004-2008, the presently available evidence which would

be admissible in a criminal prosecution would support only a minimum number of charges, which would not be representative of his overall conduct;

- in the circumstances, there is no likelihood of a court imposing any substantial penalty; and
- the public interest in the exposure of his misconduct is better served by publication of it in this report than by a criminal prosecution.

[148] As noted, Mr Roufail owned and operated Eurotyres until 2007. He regularly attended the Welshpool Vehicle Examination Centre. He was familiar with the requirements for the certification of vehicles as roadworthy. He was familiar with the documentation, notably the *Certificate of Inspection*, and the obligation of the Vehicle Examiners to physically inspect vehicles.

[149] In the Commission's opinion there is legally admissible evidence that Mr Roufail counselled or procured Mr Burrows to commit an offence or offences contrary to section 85 of *The Criminal Code* (WA). By section 7 of *The Criminal Code* (WA) any person who counsels or procures another person to commit an offence is deemed to have taken part in committing it and to be guilty of it and may be charged with committing it.

[150] The Commission has considered whether or not it should make a recommendation pursuant to section 43(1)(a)(i) of the CCC Act that the Director of Public Prosecutions give consideration to the prosecution of Mr Roufail under sections 7 and 85 of *The Criminal Code*.

[151] The fact that a "principal" offender has not been charged with or convicted of an offence does not preclude the charging and conviction of one who "counsels or procures" the offence within section 7 of *The Criminal Code*, as a matter of law.^{iv}

[152] In all the circumstances the Commission has concluded it should not make that recommendation.

- Mr Roufail sold the business in 2007, and during the period relevant to the investigation was a self-employed and semi-retired businessman.
- Although he initiated the practice by approaching Mr Burrows, there is no evidence Mr Roufail either gave or offered any payment or other benefit to Mr Burrows.
- There is no evidence he was using Mr Burrows' willingness to certify vehicles for him without inspecting them, to make further financial profit out of his customers.

^{iv} That is because section 7 deems one who counsels or procures to be a principal offender who may be charged with actually committing the offence: see, for example, Gillies P, *The Law of Criminal Complicity*, Law Book Co., Sydney (Australia), 1980, p.203.

- Although the Commission is satisfied on the evidence available to it that Mr Burrows falsely certified many vehicles for Mr Roufail between 2004-2008, the presently available evidence which would be admissible in a criminal prosecution would support only a minimum number of charges, which would not be representative of Mr Roufail's overall conduct.
- In the circumstances there is no likelihood of a court imposing any substantial penalty.
- The public interest in the exposure of his misconduct is better served by publication of it in this report than by a criminal prosecution.

2.3.3 Mr Peter David Howard and Ms Susan Evelyn Jabbour

[153] Mr Peter David Howard was employed as a Vehicle Examiner (No. 226) by the Licensing Services section of DPI during the period relevant to this investigation. He worked at the Welshpool Vehicle Examination Centre. Mr Howard had worked for DPI for about eight years.⁷³

2.3.3.1 Public Hearings and Investigative Material

[154] At a Commission public hearing on 19 February 2009 Mr Howard admitted that he knew Ms Susan Evelyn Jabbour, a proprietor of a business called Eurotyres, located in Welshpool, Western Australia,⁷⁴ and that he certified cars as roadworthy for Ms Jabbour without inspecting them. The following extracts are from the public hearing transcript.

Have you ever passed one of her vehicles without actually seeing the vehicle?---Probably. To be honest I've - you know, because I'm under oath, there's probably been an occasion where it's been an A [Category A, where vehicles are less than three years old with an odometer of less than 60,000 kikometres], similar-type vehicle, and, yes, I probably have.

Do you know how many times you have done that?---No. Very - very - very - no, I couldn't give you a number. It's very minimal.⁷⁵

...

What about passing the vehicle without seeing it, have you provided that kind of service for anyone else?---Well, there's probably been an occasion maybe - without seeing it? What do you mean?

The car doesn't even come down to the licensing centre? ---You just asked me about the A inspections, didn't you, the - no; no, I haven't. I haven't done that.

For other people?---No.

But you have done it for Susan Jabbour?---Yes.⁷⁶

...

Have you ever passed a vehicle for Susan Jabbour without physically inspecting the vehicle, without seeing the vehicle?---There might have been an occasion where there has been a recheck, yes.

But not otherwise?---Not otherwise that I can recall.

Whether you can recall a particular vehicle or not, is it the case or not that you have ever passed a vehicle for Susan Jabbour without seeing the vehicle?---Well, I'm under oath. Yes, there's probably the odd occasion, but as I must add to that, there's always been a question of the type of vehicle, the year of the vehicle, and I've always used that adjustment [judgement]. I've trusted somebody which it looks like I should never have trusted. I've made a mistake, and I regret it.⁷⁷

...

You are talking about passing a car without seeing it? ---Yeah, basically; yeah. I think a lot of that is brought about by the pressure, the queues. It just goes on and on, you know. It's been going on for so long and people are just sick and tired of queuing for five hours in the hot sun. It's just not on. It's not a service.

So sometimes you have said no and on other times unfortunately you have relented, is that right, with Susan?--- Yeah, I have; yeah.⁷⁸

(emphasis added)

[155] Counsel Assisting asked Mr Howard whether he had ever received any money from the proprietors of Eurotyres or received free tyres in return for the preferential treatment that he had given in his capacity as a Vehicle Examiner. Mr Howard said:

... No. I've bought tyres off them but I've never received - and I never would off anybody, because that's part of the requirement of the job, you're not allowed to receive gratitudes [sic].

(emphasis added)

The examination continued.

And the tyres that you have got, were they free or discounted tyres?---Well, I don't know whether they're discounted - I suppose they are discounted. It was never really said. They've just said, "We'll look after you if you want tyres," and we've been over there - I've bought tyres on a couple of occasions; one for myself, one for my son and I just - I've always paid. I've got proof of that.

...

So how many times have you bought tyres from Eurotyres?---Well, two - twice, what I can remember, yes. I've sent people over there. I've sent my - my sons have asked their mates, you know, "Can you get - do you know where there's any tyres at a good price?" I've said, "Well, go and see Abe [Mr Roufail]. Go and see Susie," you know, and they've done that and in some cases he hasn't been able to give a good price compared to others. In one instance I let my - a friend of mine, she's a pensioner, I sent her over there but she got tyres cheaper.

THE COMMISSIONER: *Cheaper somewhere else?---Cheaper somewhere else, yeah.*

TOOKER, MR: So she didn't end up getting them from Eurotyres?---No, she never got them.

Does your son own a Toyota Hilux four-wheel - - -?---That's correct.

- - - drive surf?---Yes.

And did you get tyres for that car for your son?---Yes, we did.

You got get them from Eurotyres?---Yes.

Do you know if you got a discount for those tyres?---It probably would've been a fair price but you paid - we've got evidence of that as well. It was - I think he paid about \$500.

And you said earlier you got some tyres for your own car?---Yes.

Is that the red Holden Statesman?---Yeah, that was the old Statesman I had.

Did you pay for those tyres?---Yes.

How much did you pay?---\$300.

Was that at a discount, as far as you're - - -?---Well, it's a reasonable price. You know, it's an old car. It's a 15-inch tyre sort of thing. It's a reasonable price. I didn't attempt to get it anywhere else. I just - we knew Abe, the tyres, he was a tyre place. We went there, we got tyres, you know. There's evidence of that and I paid for them.⁷⁹

(emphasis added)

[156] In response to a question from Counsel Assisting as to whether he had conducted inspections of vehicles at the business premises of Eurotyres, Mr Howard stated:

*No, I don't recall going over there doing an inspection at her place.*⁸⁰

[157] At a public hearing on 17 February 2009 Ms Jabbour agreed that Mr Howard had purchased tyres at a discounted price from Eurotyres, but not necessarily in return for the preferential treatment that he had given in his capacity as a Vehicle Examiner. Ms Jabbour also agreed that Mr Howard had referred friends to Eurotyres, and that these friends had purchased discounted tyres.

Do you provide him with a discount for ... tyres at all?

*---Yeah. We give him like about 15 per cent. We just charge him 15 per cent on top of what they are. Just like a good customer, like any good customer that comes in.*⁸¹

...

... That's in our shop.

... Yeah. I think he was putting on some tyres on his own car.

Had you provided the tyres to him?---Yeah. He'd purchased the tyres and we were just fitting them for him.

Do you recall if he paid the full rate or the discounted rate?---He paid the discounted rate I think but he's just like any normal good customer that gets a good discounted rate. You just help out people, then they bring you more customers and you can make money off other customers. You look after your friends.

Did Peter ever ask you to provide a discount to friends of his for tyres?---He just - as you would say to anyone - if you're sending someone to your shop you just say, "Just look after them." It's just something that anyone would say. You just give them - you just help out. You want them to look good that they've sent you a customer and you've given them a good price, and you also want to feel good to your mate that you've helped them out and given their friend a good price.

Is it correct then that Peter would refer other customers to you?---Yes, sometimes; yes.

Would you give these customers a discounted rate? ... Peter would always get a better price because he was giving us the customers, but they'd also get a cheaper price than what they could get off anyone else.

*Is it correct that you would provide a discount to Peter and a discount to his friends because he could help you with licensing?---Not necessarily. Just - just to help us out because he used to give us customers; like if you've got people that send you customers all the time, you always want to help them out just because they keep giving you work.*⁸²

(emphasis added)

[158] Ms Jabbour also gave evidence at the public hearing that Mr Howard had never inspected vehicles at Eurotyres and that he had never been provided with tyres free of charge.

You have said in your evidence that Peter has attended at Eurotyres to inspect cars. Is that - - -?---No, he's never inspected cars at Eurotyres. He's just come to Eurotyres for tyres.

*So the only occasions was when he wanted to purchase something?---Yeah.*⁸³

...

*Have there ever been any occasions where he has been provided with tyres free of charge?---No.*⁸⁴

[159] During a public hearing on 18 February 2009 Mr Roufail (Abe) also gave evidence that Mr Howard "got nothing" in return for the preferential treatment he had given in his capacity as a Vehicle Examiner.

*Did you ever provide any discount tyres to Peter Howard?---Peter Howard got nothing. I offer him a drink; he never take it.*⁸⁵

[160] Mr Howard, when asked by Counsel Assisting during a public hearing the following day, admitted that he knew Abe (Mr Roufail), and made reference to Abe on a number of occasions during the hearing (refer [155]).

You said Roufail. Is that Abe Roufail that you are talking about?---Abe, yeah ...⁸⁶

[161] In relation to fees charged by the proprietors of Eurotyres for services associated with the inspection of vehicles at the Welshpool Vehicle Examination Centre Ms Jabbour stated, in response to a question from Counsel Assisting:

... but can you just advise me, when people come to Eurotyres for help with licensing, do they pay you a fee for you having to do that?---Yeah, the car yards or whoever comes, it's \$200 our labour and \$83.30 for the pit pass.

Is that the same fee charged to everybody?---Yes, depending if it needs work.

So there could be additional costs on top of that if it needed work?---That's right. If it needed a light globe or tyres or something, that's all extra; just our time to be at the pits.

*Is it correct to say that fee is charged for all your services involved in having that car passed over the pits?---Not necessarily passed, just our time when we're there, it's just our time spent at the pits that - it's not a guaranteed pass, it's just our time that we spend.*⁸⁷

(emphasis added)

[162] One example of a vehicle passed by Mr Howard without an inspection was a manual 1975 purple Holden Gemini Sedan ("Gemini"). This vehicle was the subject of a defect or compliance notice ("yellow sticker") and, therefore, required a full examination.⁸⁸ This was acknowledged by Mr Howard at a public hearing on 19 February 2009.

Of course this purple car, as you saw on the paperwork, was a 1975 car with a work order wasn't it?---Mm. Exactly.

That would have required a full inspection. Correct?---It would've done, yes.

Would you not remember doing a full inspection on a purple Holden Gemini only a couple of months ago?---No, I don't.

But a purple car would stand out wouldn't it?---Well, a purple car would, yeah, but honestly I don't recall that particular car.

*Is that maybe because you didn't ever see it?---Maybe.*⁸⁹

[163] Mr Howard passed this vehicle as roadworthy on 12 November 2008.⁹⁰

[164] The Commission is satisfied the evidence clearly establishes that Mr Howard did not inspect the Gemini, but certified it roadworthy anyway. The evidence was derived primarily from lawful telecommunications interception and surveillance device material, and DPI records.

[165] At 9:47 a.m. on 11 November 2008 Ms Jabbour returned a telephone call to [suppressed ("Mr P")] of [suppressed]. Early in the call Mr P said that he had called the previous day and "spoke to uhm Jimy" (Mr Jabbour) and that he understood "that [suppressed] has had a few cars passed by the pits by you people". Ms Jabbour responded by saying "Yeah, that's right". They discussed the Gemini, which Mr P explained was his personal vehicle. Mr P went on to explain that the vehicle was the subject of a "yellow sticker" as it did not have an exhaust, but that it had been repaired and believed it was roadworthy (even though there was no secondary bonnet release, and the bonnet was "just tied down"). Mr P was seeking Ms Jabbour's assistance to have his vehicle inspected over the pits and passed at the Welshpool Vehicle Examination Centre. Ms Jabbour explained that the "cheapest we do it for is \$300 now", plus the cost of a pit pass, "because we can get almost anything over", or "about \$400". Mr P said that he would arrange to have his vehicle delivered to Eurotyres the next morning and Ms Jabbour indicated that the vehicle should be "done" by the afternoon of that day.⁹¹

[166] DPI records show that vehicle was a manual 1975 purple Holden Gemini Sedan owned by Mr P.⁹²

[167] At 9:51 a.m. the following day Mr P telephoned Eurotyres and spoke with Jimy Jabbour. He said a mate was on his way over with Mr P's car, and the paperwork the police officer wrote out and a copy of the licence papers were in it. He told Jimy Jabbour to contact him if there was a problem.⁹³

[168] Mr P's friend arrived at Eurotyres in the Gemini at 10:08 a.m.⁹⁴ The Gemini was driven onto the workshop driveway, where the three of them spoke and the Jabbours looked over the vehicle and the paperwork. The Gemini was then driven out of the driveway and parked elsewhere on the premises.⁹⁵

[169] At 10:53 a.m. Susan Jabbour left Eurotyres in a blue Holden Utility ("Holden Ute") with Victorian licence plates.⁹⁶ She arrived at the Welshpool Vehicle Examination Centre at 10:55 a.m. and waited in the vehicle examination queue. The Holden Ute was subsequently examined by Mr Burrows.⁹⁷

[170] At 11:41 a.m. Susan Jabbour telephoned Jimy Jabbour. She told him Mr Howard was "on the road", that she had asked Billy [Mr Burrows] to "do the 'yellow sticker'" but he said "no", and that the Holden Ute "has been finished".⁹⁸

[171] Mr Howard arrived at the Welshpool Vehicle Examination Centre at 11:44 a.m. He spoke with Susan Jabbour and appeared to look through some paperwork. At 11:48 a.m. Mr Howard went into the office at the Examination Centre. Three minutes later a male Vehicle Examiner (not Mr Howard) came out of the office and handed some paperwork to Susan Jabbour, who drove away in the Holden Ute,⁹⁹ returning to Eurotyres at 11:58 a.m.¹⁰⁰

[172] At 11:54 a.m. Jimy Jabbour telephoned Susan Jabbour. During the call she told him that she “gave him [Mr Howard] the ‘yellow sticker’”.¹⁰¹

[173] Between 11:54 a.m. and 11:56 a.m. Mr Howard entered the results of an examination on the “Work Order” (“Yellow Sticker”) for the Gemini into TRELIS.¹⁰²

[174] At 12:00 p.m. he entered the details of an examination of the Gemini onto the *Daily Record of Vehicle Examinations* form (or MR23). Those details included that it was presented with a Work Order (“Yellow Sticker”) and that it had passed examination. He was, therefore, well aware that a physical inspection was mandatory.¹⁰³

[175] In the meantime Susan Jabbour had left Eurotyres in the Holden Ute. At 1:50 p.m.¹⁰⁴ she telephoned the Welshpool Vehicle Examination Centre and asked for Mr Howard. She was told he was “not in” that afternoon but “should be” in the following day.¹⁰⁵

[176] However, at 2:28 p.m. that day (12 November 2008) Mr Howard telephoned Eurotyres and told Jimy Jabbour to “tell Susie [Susan Jabbour] that things all right”.¹⁰⁶ A couple of minutes later Mr P telephoned Eurotyres and spoke with Jimy Jabbour, who told him “... that your car is now ready”, that it is “all good mate” and that it will cost \$400. Mr P said he would

*... get together some cash and I'll get someone to swing down and pick it up.*¹⁰⁷

[177] He said he would see if he could “get it done” that day, to which Jimy Jabbour said “no problem mate”.¹⁰⁸

[178] At 2:30 p.m. Susan Jabbour drove the Gemini, from where it had been parked, into the workshop at Eurotyres. She later reversed it out and again parked it outside. She went back to the workshop, but came out again a few minutes later with a key which she took over to the Gemini, before returning to the workshop. The Gemini was later taken from the premises.¹⁰⁹

[179] As mentioned above (refer [163]) Mr Howard signed a *Certificate of Inspection* (MR1) on 12 November 2008, certifying that he had inspected the Gemini and that it “is in a roadworthy condition”. He recorded on the Certificate that the Compliance Plate Month/Year of the Gemini was “10/75”. This did not correspond with the TRELIS record which indicated that the Month/Year was “11/75”. It was put to him that he made that error because he had not seen the vehicle. Mr Howard later claimed that the TRELIS record was incorrect due to a technical error that causes TRELIS to reset a date by one month (in advance) on each occasion that vehicle details are updated. However, an inspection of the vehicle by Commission investigators on 26 October 2009, at the premises of [suppressed] in Wangara, determined that the Compliance Plate Month/Year was in fact “11/75”. The TRELIS record was, therefore, in fact correct.

[180] In the opinion of the Commission Mr Howard made an incorrect (and therefore false) entry on the Certificate in relation to the Compliance Plate Month/Year of the Gemini as he had entered the details written on the Certificate apparently by Ms Jabbour, and passed the vehicle as roadworthy, without inspecting it as he was required to do in accordance with the policies and procedures of DPI.

[181] The Commission's forensic computer analysis of TRELIS and other DPI records revealed that between 1 June 2004 and 2 December 2008 Mr Howard certified 49 vehicles for Eurotyres; he failed none. Over that period the next highest number was done by Mr Piercy (27), followed by Mr Kain (20).

[182] In the 11 months from 1 January 2008 to 2 December 2008 the figures were 32, 27 and 20 respectively, with no fails (another Vehicle Examiner who examined six vehicles for Eurotyres during that time failed three of them; one who examined three vehicles failed two of them; some Vehicle Examiners examined up to five vehicles, all of which were passed).

2.3.3.2 Commission Assessment and Opinions

2.3.3.2.1 Submissions on Behalf of Mr Howard

[183] In response to written submissions served by Counsel Assisting on 26 October 2009 (refer [99]-[100]), submissions on behalf of Mr Howard were received by the Commission on 18 November 2009 under cover of a letter of that date from Mr Robert Lindsay, counsel representing Mr Howard. The submissions made by both Counsel Assisting and Mr Lindsay were considered by the Commission, together with the evidence gathered during this investigation as it relates to Mr Howard. The Commission accepts:

- the submissions put on behalf of Mr Howard that the evidence does not establish to the requisite degree that he received any benefit by way of money or discounted tyres from Ms Jabbour for certifying vehicles as roadworthy without examining them;
- that there is no evidence Mr Howard attended at Eurotyres for the purpose of either inspecting vehicles, or certifying them without inspection; and
- that there were many systemic, training, procedural and other problems in the vehicle examination and certification areas which affected the pressures under which Mr Howard and others worked.

2.3.3.2.2 Assessment and Opinions

[184] What Mr Howard did involved making false certificates, stating that he had inspected vehicles when he had not. He certified they were roadworthy without knowing that to be true.

[185] In the opinion of the Commission, this conduct constitutes misconduct under section 4 of the CCC Act. Such conduct:

- directly adversely affected the honest performance of the functions of a public authority (DPI) (section 4(d)(i));
- constituted the performance of his functions in a manner that was not honest (section 4(d)(ii));
- constituted a breach of the trust placed in him by reason of his employment as a public officer (section 4(d)(iii)); and
- could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (section 4(d)(vi)).

[186] It was submitted on Mr Howard's behalf that his conduct could not constitute a reasonable ground for termination of employment because he had a "... well-intentioned purpose ... in seeking to expedite ... protracted queuing ". The Commission does not accept that submission.

[187] In the Commission's assessment, Mr Howard did not engage in that conduct for that purpose. He was simply minded to assist Ms Jabbour – who had cultivated him to achieve exactly that.

[188] In any event, even were he to have had that purpose, it could in no way justify giving false certifications that vehicles had been physically examined, complied with all legal requirements and were roadworthy, when he had not seen them and had no idea whether they were roadworthy or not.

[189] In the opinion of the Commission, what he did was a deliberate breach of his duty which involved dishonesty, was not an isolated occurrence and went to the heart of the integrity of the licensing system in this State. Nor does the Commission accept the submission that Mr Howard's failure to undertake a physical examination of the Holden Gemini, which was not a Category A vehicle,^v was not such as to justify a possible dismissal. That vehicle had been issued with a defect or compliance notice ("yellow sticker") and, as such, a full (physical) inspection was mandatory. Mr Howard relied entirely on what Ms Jabbour had told him about its condition.

^v Category A vehicles do not require a full inspection as they are vehicles which are less than three years old with an odometer of less than 60,000 kilometres.

2.3.3.3 Recommendation

Recommendation 2: Mr Peter David Howard

In the opinion of the Commission the conduct of Mr Peter David Howard as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* ("CCC Act").

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Howard.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Howard, on 4 December 2009, for consideration.

The Commission notes that, following a disciplinary investigation and subsequent inquiry by DoT, Mr Howard was found to have committed a serious breach of discipline. As a consequence DoT determined to terminate his employment, but the day before that was to be effected Mr Howard resigned from the Public Service, on 5 August 2010.

[190] What Mr Howard did was essentially the same conduct as Mr Burrows. As with Mr Burrows, it involved (amongst other things) false certification of vehicle examination records. For reasons similar to those expressed in relation to Mr Burrows, the Commission has considered whether or not it should make a recommendation pursuant to section 43(1)(a)(i) of the CCC Act that the Director of Public Prosecutions give consideration to the prosecution of Mr Howard under section 85 of *The Criminal Code*.

[191] On balance, the Commission has come to the conclusion that it should not make such a recommendation. The reasons for that include:

- he received no payment nor any other personal benefit;
- the evidence does not show that he was motivated other than by pressure of work and to "help out" someone he knew;
- the Commission has previously recommended that consideration be given to the taking of disciplinary proceedings against him, and that was done, and he was found by DoT to have committed a serious breach of discipline;
- he has since resigned from the Public Service;
- he did not initiate the conduct;

- although the Commission is satisfied on the evidence available to it that Mr Howard falsely certified a number of vehicles for Eurotyres between 2004-2009, the presently available evidence which would be admissible in a criminal prosecution would support only a minimum number of charges, which would not be representative of his overall conduct;
- in the circumstances, there is no likelihood of a court imposing any substantial penalty; and
- the public interest in the exposure of his misconduct is better served by publication of it in this report than by a criminal prosecution.

[192] Ms Jabbour had a pivotal role in corrupting not only Mr Howard from the proper performance of his public duty, but a number of other Vehicle Examiners as well. The Commission will return to consideration of her position, and any appropriate recommendations with respect to her, later in this report.

2.3.4 Mr John Francis Piercy and Ms Jabbour

[193] Mr John Francis Piercy was employed as a Vehicle Examiner (No. 540) by the Licensing Services section of DPI during the period relevant to this investigation. He was located at the Welshpool Vehicle Examination Centre. Mr Piercy commenced work for DPI as a Vehicle Examiner on 17 December 2007.¹¹⁰

2.3.4.1 Public Hearings and Investigative Material

[194] At a Commission public hearing on 19 February 2009 Mr Piercy admitted that he knew Ms Jabbour,¹¹¹ and that he certified cars as roadworthy for her without inspecting them. The following are some extracts from the public hearing transcript.

All right. Have you ever signed off on paperwork for her or anyone else without seeing the vehicle?---Yes, but a lot - lot later than this time period [2 September 2008] here that we're looking at now.¹¹²

...

Have you ever passed vehicles for Susan Jabbour without looking at the vehicle?---Yes, I have.

When has that happened?---I would say after these wheels, tyres [2 September 2008]. Probably two weeks.

After that date?---After that, yep.

Can you recall which cars they were?---No, I wouldn't have a clue what cars they were.

Were there a number of different cars?---There was - yeah, there's that many different cars you couldn't pick up on any particular one or anything.

What type of cars were these that you didn't look at that you passed for Susan?---I don't know. I'd say there's a mix but I really wouldn't recall.

Can you tell me if these were new cars or old cars?---Generally fairly new cars.

Generally but not all?---Not all but generally, yeah.

Were there any cars that were older than three years?---Probably, quite possibly, yeah.¹¹³

...

Can you give me an indication, Mr Piercy, of how many vehicles for Susan Jabbour that you passed without inspecting?---I was pretty disgusted with myself by this stage and I didn't keep a tally but I would put it maybe in the region of between 10 and 15 that were not seen at all, that was just paperwork.¹¹⁴

...

Was it a regular occurrence that she would bring you paperwork for vehicles, for you to action in respect of passing them, but you wouldn't see the vehicles?---Yes.

And then what would happen with the paperwork?---Well, I'd just process it and then have it sitting there until she came in with the next vehicle in the next couple of days or whatever or that day or whenever she wanted to pick it up.

Would there be occasions when Susan might drop off a lot of paperwork to you for several vehicles?---Not several but a couple at a time, yeah.

Would that be often that it would be more than one set of paperwork?---Yeah. It got that way in the end, that it was - you know, I kept saying, "You just can't keep doing this. We just can't do it." At the time I thought, "There's something funny going on here because there's - I'm getting more and more and more," and I keep saying to her, "I can't keep physically inspecting every vehicle that you bring through. It's just - it wouldn't be practical. It's just not - you know, for me to be seen to be doing this all the time," so.

THE COMMISSIONER: *You mean not physically - sorry, is what you are saying that you were getting the sense that she was giving you too many vehicles in this way - - -?---Yeah.*

- - - for you to explain - - -?---To anyone that asked - - -

- - - in the sense that you had actually physically examined them all?---That's right, yes.¹¹⁵

(emphasis added)

[195] Counsel Assisting questioned Mr Piercy about whether he had conducted inspections of vehicles at Eurotyres business premises.

Do you only inspect vehicles for Susan at the Welshpool pits?---I have only ever inspected vehicles for Susan at the Welshpool pits.

Have you ever inspected vehicles for her anywhere else?---No, I've never done it for anyone anywhere else, apart from the on-site inspections.

Have you ever conducted an on-site inspection for Susan Jabbour?---No.

Have you ever been to Eurotyres to inspect vehicles?---No.¹¹⁶

...

Your evidence is that you didn't inspect any vehicles at Eurotyres?---Not at Eurotyres.¹¹⁷

[196] Ms Jabbour during a public hearing on 17 February 2009 gave evidence that "John would come to Eurotyres ... occasionally". In response to a question from the Commissioner about whether this was "[t]o do inspections", Ms Jabbour stated that "[s]ometimes, not – very rare ... really rare times".¹¹⁸ Later in the hearing Ms Jabbour provided further evidence in relation to this matter:

You have given evidence before that John comes to Eurotyres?---Yes. He's come on a couple of occasions.

Is that in order to inspect cars for you?---There may have been one or two but very little, not very many at all.

Has he also come to Eurotyres to purchase tyres or - - -?---Yeah, I think he purchased four tyres.

But it's your evidence today that he has inspected one to two vehicles. Is that correct?---At our shop, yeah.

At Eurotyres. Is that correct?---Yes. Yeah, there's not very many.¹¹⁹

[197] Ms Jabbour's evidence somewhat contradicted Mr Piercy's evidence that he "didn't inspect any vehicles at Eurotyres". Mr Jabbour's evidence, given earlier in the day, supports the evidence given by Ms Jabbour.

Mr Jabbour [being shown a photograph by Counsel Assisting], is this a person, that you referred to as John, who comes to Eurotyres to inspect vehicles?---Yes.

Is this the person that you understand comes from the Welshpool licensing centre?---Yeah; yeah.¹²⁰

...

... I don't really remember exactly if he has come to check cars [Peter], but I remember that John [Piercy] and Brent [Kain] are the ones who have come for that purpose.¹²¹

[198] Counsel Assisting asked Mr Piercy whether he had ever received any money from the proprietors of Eurotyres or received free tyres in return for the preferential treatment that he had given in his capacity as a Vehicle Examiner. In summary, Mr Piercy's evidence was that he had received discounted tyres on one occasion, for which he made one down payment of \$100 on or about 29 September 2009,¹²² and intended to pay the full

cost of the tyres at a price to be determined by the Jabbours. The following extracts are from the transcript of the public hearing.

Have the Jabbours or Susan ever provided you with any benefits or favourable treatment?---The only thing – I mean, from day 1, when you sort of get to know Susie, she tells you what she does as a business which is, you know, supplying tyres and stuff and she has always said, "If you ever need tyres, we'll look after you. Come and see us" ...¹²³

...

Is it your evidence then, Mr Piercy, that you wanted to purchase a set of tyres from the Jabbours?---Yep.¹²⁴

*It's your evidence that you spoke to Susie about the cost of the tyres in respect of you having to budget and paying them off?---Yeah, that's what I'm saying. She'd got them in without really telling me that they're going to be this amount of money or anything and I said, "Well, you know, I can't pay you full money up-front for these." She said, "No. That's fine. That's what we've - that's what I've said, you can pay us off." So I said, "Okay. Well, how much do I owe you?" and I've never got a figure. It's always been, "Yeah. We haven't priced them out," or, "We'll get back to you," or - you know, all this sort of thing, but it was always going to be either at cost or a trade price, so.*¹²⁵

...

So your evidence today on oath is that you didn't get those tyres free, but you are in the process of a payment arrangement with the Jabbours. Is that correct?---That's correct.

Mr Piercy, did you receive those tyres - and at the moment you have paid only \$100 ...?---Yeah.

Did you receive those because of your position as a vehicle examiner and the assistance that you could give to Susan Jabbour?---Looking back on it now I'd say yes.¹²⁶

(emphasis added)

- [199] One example of a vehicle passed by Mr Piercy without inspection is a 1983 blue Mercedes Coupe ("Mercedes Coupe"). This vehicle was the subject of a "yellow sticker" (defect or compliance notice) and Mr Piercy passed this vehicle as roadworthy on 26 September 2008, as is evidenced by his signature on the DPI *Certificate of Inspection* (MR1). Mr Piercy's signature on the Certificate declares that "I certify that I have inspected this vehicle in accordance with the policies and procedures of the department [DPI] and that it is in a roadworthy condition".¹²⁷
- [200] The evidence establishes that Mr Piercy did not inspect the Mercedes Coupe and that certification was false. The evidence was derived principally from telecommunications interception material, and surveillance device and physical surveillance material, and DPI records.
- [201] At 12:18 p.m. on 26 September 2008 Susan Jabbour telephoned Mr Piercy. They discussed "an old Merc" with a "yellow sticker". Susan

Jabbour asked if she could “bring the paperwork over”, explaining that the “Merc” belonged to a “P-Plater”, had an exhaust, extractors, 20-inch alloys and a “very light tint”, but that the “copper … only picked him up for the … exhaust”. Mr Piercy initially seemed reluctant, but eventually said it “should be alright”. Susan Jabbour arranged to “come over” after lunch, about 1:30 p.m.¹²⁸

- [202] Shortly after, Susan Jabbour left Eurotyres in a yellow Honda Panel Van¹²⁹ and drove in the direction of the Welshpool Vehicle Examination Centre.¹³⁰ She arrived by 1:14 p.m., at which time she approached Mr Piercy, who was conducting an examination of a Mitsubishi Magna. Mr Piercy acknowledged her, and she sat in the public waiting area while he continued his examination of the Magna.¹³¹
- [203] When Mr Piercy returned from test driving the Mitsubishi Magna at 1:21 p.m. he walked towards the office. Susan Jabbour approached him. They had a brief conversation. She handed him several pieces of paper and left.¹³² She drove back to Eurotyres in the Honda Panel Van,¹³³ arriving by 1:36 p.m.¹³⁴
- [204] Between 1:38 p.m. and 1:51 p.m. Mr Piercy entered details of an examination of the Mercedes Coupe into TRELIS.¹³⁵ At 1:52 p.m. he entered details of that “examination” onto the *Daily Record of Vehicle Examinations* form (or MR23). They included that the vehicle had a Defect Notice and “Yellow Sticker”, and that it had passed the examination.¹³⁶
- [205] At 3:28 p.m. Susan Jabbour telephoned Mr Piercy and asked if the “Merc’s ready”. He told her “that one’s done, you can we can peel him off”.¹³⁷ That was a reference to the “yellow sticker”, which is supposed to be removed only by a Vehicle Examiner, after conducting a full examination of the vehicle.
- [206] As mentioned above (refer [199]) Mr Piercy signed a *Certificate of Inspection* (MR1) on 26 September 2008, certifying that he had inspected the Mercedes Coupe and that it “is in a roadworthy condition”. In addition he added written remarks to the Certificate as follows: “W/ORDER EA 749167 – STANDARD WHEELS + TYRES AT TIME OF INSPECTION – NOISE LEVEL OK”. In the Commission’s opinion these remarks were entered on the Certificate to overcome possible future problems. The removal of the “yellow sticker”, which had been issued, according to Ms Jabbour, purely on the basis of the “little exhaust”, and not 20 inch alloy wheels, was automatic once a vehicle had passed inspection. If another “yellow sticker” was issued on the basis of an excessively noisy exhaust or non-standard wheels (which did not comply with the *Road Traffic (Vehicle Standards) Regulations 2002*, *Road Traffic (Vehicle Standards) Rules 2002* and the *Australian Design Rules* (for date of manufacture and vehicle category), it could be asserted that the vehicle had been “unlawfully” modified subsequent to the 26 September 2008 inspection. However, Mr Piercy could not state that the Mercedes Coupe had

“standard wheels and tyres” and that the “noise level” was “OK’ without either inspecting or sighting the vehicle.

[207] Between 1 June 2004 and 2 December 2008 Mr Piercy certified 27 vehicles for Eurotyres; none were failed. Mr Howard had certified 49 over that period (no fails) and Mr Kain certified 20 (no fails). The next highest number was 13, of which that Vehicle Examiner failed three. Mr Burrows certified eight, with no fails. The next highest number was six – of which that Vehicle Examiner failed three.

[208] In the 11 months between 1 January and 2 December 2008 Mr Piercy certified 27 vehicles for Eurotyres, failing none. This compared to:

- Mr Howard – 32 certifications, with no fails;
- Mr Kain – 20 certifications, with no fails;
- another Vehicle Examiner – seven examinations, with one fail;
- another Vehicle Examiner – seven examinations, with three fails; and
- another Vehicle Examiner – five examinations, with one fail.

[209] Ms Jabbour was in the habit of talking to her Aunt, Ms Coralie (“Coco”) Ann Raphael, on the telephone about how successful she had been in manipulating Vehicle Examiners. In a conversation on 10 September 2008 she talked about Mr Piercy.

MS JABBOUR: *I've got you know that new licensing guy we got John.*

MS RAPHAEL: Yeah

MS JABBOUR: *He's godsent.*

MS RAPHAEL: *Is he really?*

MS JABBOUR: *He passes, he passes cars ah there's a car with the air bag light on and I told him I'm straight out with it and Jimmy says don't tell him I said no cause he's gonna drive it he's gonna see it and I don't want him to think we bullshit to him*

MS RAPHAEL: *Yep yeah.*

MS JABBOUR: *But yeah he had no problems as long as the air bag's not hanging out I'll pass it cause he goes I drove around with a car with the air bag light on [laughs].*

MS RAPHAEL: *Oh good yeah love that's great.*

MS JABBOUR: I'm a hundred percent honest with him everything. Air bag light's on this is this is what's wrong with it.

MS RAPHAEL: Yeah yeah yeah.

MS JABBOUR: He's know that's off me it's not like I never told him.¹³⁸

[210] Mr Piercy was asked about this in the public hearing.¹³⁹ He said that sometimes happens, but 99% of the time it is just a computer code error, not a fault with the air bag itself. He did agree it could be a fault with the air bag. His examination continued –

THE COMMISSIONER: I suppose the point about all of this is that the light we are talking about would be a warning light, wouldn't it?---Yeah.

That there's some problem potentially with the air bag? ---That's right.

And the point about that warning, I suppose, would be that the problem might be that the air bag might not deploy if there was an accident?---That's true. If I'm right with my recollection, I don't remember the car, but I think Susan said that this is the one that's got an air bag light that comes on and off, and I remember saying to her, "If it's not on when I see the car, it's not really a - I don't go any further with it."

Just to continue with the point I was trying to clear up a moment ago, from a safety point of view, ultimately the real issue is the possibility that the light is on because it is signalling that the air bag may not deploy if there's an accident?---That - yeah, I suppose true.¹⁴⁰

[211] As it happens, the records showed this particular vehicle was a former taxi which had been involved in an impact accident as a result of which it had been "written off" by the insurance company.

[212] Mr Piercy was then asked more questions about it –

COUNSEL ASSISTING: Is it your evidence that you passed the vehicle even though you were aware that a specialist had not looked at the air bag?---That's correct.

Is it correct that you passed this vehicle when it did have or could have potentially have had a faulty air bag?---It does appear that way.

What did you tell Susan to do with the car in respect of the air bag?---Well, she said, "He's got it booked in." I said, "Well, he has to get onto it straightaway," so that was all.

But you did not advise her to have that problem looked at and fail the vehicle as a result?---No. If you'd bought your car in and hadn't told me and the red light wasn't on, I would not look any further.

THE COMMISSIONER: If you hadn't been told and the red light wasn't on, you wouldn't know would you?---No. So - but, yeah, I - but I say the majority of the ones we've seen it's an error code, it's a flickering light. You know, if

that's all it's going to be it has to be reset at a place capable of resetting these codes in the computer system.

And would it have made any difference if, as things turned out - I'm not suggesting they did but the possibility presumably was there - would it have made any difference to your thinking about that if they didn't have it fixed, it was involved in an accident, the air bag didn't deploy and someone was killed or injured?---It could, yeah, but, I mean, we've got away with cars without air bags for years. I - you know, I think it was a minor possibility that at the time I passed it to the time that he actually got it supposedly fixed. It was not that much of a risk.

Do you know if it was ever fixed?---No, I can't say.¹⁴¹

- [213] There was evidence that Mr Piercy had some tyres fitted by Mr Jabbour, for which in the end he was not charged. However, there is no evidence that was related to any particular vehicle inspection and nor could the evidence lead to a satisfaction that it was intended or accepted as a benefit to Mr Piercy for passing vehicles without examining them.
- [214] Telephone conversations between Ms Jabbour and Mr Piercy reveal her familiarity with the system and the documentation the Vehicle Examiners were required to complete. In a conversation on 15 September 2008 about papers he had completed and returned to her she told him he omitted to put on "... the purple stamp that you stamp and then you sign". He agreed he had to stamp the document and that it would be "... probably safer if you bring it back up", which she subsequently did.¹⁴²

2.3.4.2 Commission Assessment and Opinions

- [215] The Commission is satisfied on the evidence that on at least 10-15 occasions Mr Piercy certified vehicles as roadworthy for Ms Jabbour without inspecting them, as was legally required.
- [216] What Mr Piercy did involved making false certificates, stating that he had inspected vehicles when he had not. He certified they were roadworthy without knowing that to be true.
- [217] In the opinion of the Commission, this conduct constitutes misconduct under section 4 of the CCC Act. Such conduct:
 - directly adversely affected the honest performance of the functions of a public authority (DPI) (section 4(d)(i));
 - constituted the performance of his functions in a manner that was not honest (section 4(d)(ii));
 - constituted a breach of the trust placed in him by reason of his employment as a public officer (section 4(d)(iii)); and
 - could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (section 4(d)(vi)).

[218] The Commission accepts that the evidence does not establish to the requisite degree that Mr Piercy received any benefit by way of money or discounted tyres from Ms Jabbour for certifying vehicles as roadworthy without inspection, nor that he attended Eurotyres for the purpose of either inspecting vehicles, or certifying them without inspection. The Commission also accepts that Mr Piercy and others worked under continual pressure in efforts to cope with the heavy demand for vehicle inspections and the resulting protracted queuing of vehicles awaiting inspection. However, none of these factors render the misconduct any less. The conduct was deliberate, repeated, struck at the integrity of the licensing system and could potentially have had serious consequences for road safety.

2.3.4.3 Recommendation

Recommendation 3: Mr John Francis Piercy

In the opinion of the Commission the conduct of Mr John Francis Piercy as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* ("CCC Act").

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Piercy.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Piercy, on 4 December 2009, for consideration.

The Commission notes that, following a disciplinary investigation and subsequent inquiry by DoT, Mr Piercy was found to have committed a serious breach of discipline. As a consequence DoT terminated his employment, effective 6 August 2010.

[219] What Mr Piercy did was essentially the same conduct as Mr Burrows and Mr Howard. As with them, it involved (amongst other things) false certification of vehicle examination records. For reasons similar to those expressed in relation to them, the Commission has considered whether or not it should make a recommendation pursuant to section 43(1)(a)(i) of the CCC Act that the Director of Public Prosecutions give consideration to the prosecution of Mr Piercy under section 85 of *The Criminal Code*.

[220] On balance, the Commission has come to the conclusion that it should not make such a recommendation. The reasons for that include:

- he received no payment nor any other personal benefit;

- the evidence does not show that he was motivated other than by pressure of work and to “help out” someone he knew;
- the Commission has previously recommended that consideration be given to the taking of disciplinary proceedings against him, and that was done, and he was found by DoT to have committed a serious breach of discipline, and his employment terminated;
- he did not initiate the conduct;
- although the Commission is satisfied on the evidence available to it that Mr Piercy falsely certified many vehicles for Eurotyres between 2007-2009, the presently available evidence which would be admissible in a criminal prosecution would support only a minimum number of charges, which would not be representative of his overall conduct;
- in the circumstances, there is no likelihood of a court imposing any substantial penalty; and
- the public interest in the exposure of his misconduct is better served by publication of it in this report than by a criminal prosecution.

[221] The Commission will return to consideration of Ms Jabbour’s position below.

2.3.5 Mr Brent Edward Kain and Ms Jabbour

[222] Mr Brent Edward Kain was employed as a Vehicle Examiner (No. 518) by the Licensing Services section of DPI during the period relevant to this investigation. He was located at the Welshpool Vehicle Examination Centre. Mr Kain had worked for DPI as a Vehicle Examiner since March 2007.¹⁴³

2.3.5.1 Public Hearings and Investigative Material

[223] At a Commission public hearing on 19 February 2009 Mr Kain admitted that he knew Ms Jabbour,¹⁴⁴ and that he certified cars as roadworthy for her without inspecting them. The following extracts are from the public hearing transcript.

*Did she ask you to pass vehicles without bringing the vehicle with her?---
Yes, she did.*

Can you indicate on how many occasions that would have happened?---I'm not a hundred per cent sure but yeah, way too many.

Can you give me any indication of how many?---No, not really; no.

Would it be more than 10 times?---I'd certainly hope not but yeah - I'd say no, because I think I only got pulled into her web in the last couple of months.¹⁴⁵

...

You have talked about how it started with her asking you to look at things around the side. Did it then progress to her simply bringing the paperwork?--After a while it did, yes.

And that was without the vehicle?---Yeah, that's correct.¹⁴⁶

[224] Counsel Assisting asked Mr Kain about whether he had received anything from Ms Jabbour in return for the preferential treatment that he had given in his capacity as a Vehicle Examiner.

Has Susan ever given you anything for you helping her?---No. I've taken no money or anything from her.¹⁴⁷

...

Mr Kain, have you ever asked Susan Jabbour for some wheels, mag wheels, for a Suzuki Sierra?---Yes, I rung them up and asked if they had some.

...

Is that your car?---It was. It's not mine now.

That is a Suzuki Sierra four-wheel drive?---That's correct.

Did the Jabbours help you with that?---They couldn't supply any mags for me, no.

Did you receive anything for that car from them?---I believe they put a couple of second-hand tyres on it, yeah, which I didn't ask for.¹⁴⁸

After showing Mr Kain an excerpt from a Surveillance Device Tape taken on 27 November 2008 Counsel Assisting asked Mr Kain further questions about the Suzuki Sierra.

Mr Kain, is that you at Eurotyres?---Yes, it is.

And you are collecting your vehicle. Is that correct?---That's correct, yes.

Was that car licensed?---No, it wasn't.

Where were you driving it to?---Back to Welshpool.

Did you have a permit to drive an unlicensed car?---I can't remember whether I'd paid for a temporary movement permit.

Did you or didn't you?---I can't remember.

You accept that that car was not licensed when you drove it away from Eurotyres?---That's correct.

Did you pay for the tyres that they provided to you?---No, I didn't.

How much were those tyres worth?---I've no idea.

...

Do you recall the actual registration number of that Suzuki after it was licensed or when the plates were on?---No, I don't because I sold it to a friend unlicensed and he licensed it.¹⁴⁹

- [225] In the opinion of the Commission, based on available evidence, including that outlined above, Mr Kain did not receive any money for passing cars without inspection for Ms Jabbour. He did, on one occasion, receive a couple of second hand tyres for his Suzuki Sierra, but the available evidence does not lead to a satisfaction that they were intended or accepted as a benefit to Mr Kain for passing any particular vehicle (or vehicles generally) without physical inspection.
- [226] On 28 November 2008 Mr Kain and Mr Howard worked as part of an on-site inspection team, and together inspected a total of 83 vehicles on that day.¹⁵⁰ In addition Mr Kain passed 10 additional vehicles, seven of which were unlicensed vehicles and three were trailers.¹⁵¹ During a public hearing on 19 February 2009 Mr Kain admitted that out of those 10 vehicles he had only inspected three, that is, the trailers, and had passed the seven unlicensed vehicles for Ms Jabbour "without sighting the vehicles", based on "paperwork" provided by Ms Jabbour.¹⁵²
- [227] Counsel Assisting showed Mr Kain his completed *Daily Record of Vehicle Examinations* form for 28 November 2008, and then questioned Mr Kain in relation to the 10 records detailed on it.¹⁵³

So you only examined three of those vehicles?---That's correct, physically examined, yes.

The other vehicles, what happened with those?---They were paperwork that Susie gave me, deciding whether to license without sighting the vehicles.

...

You recognise those as vehicles that she brought to you?---No, the paperwork.

They were vehicles that you passed without actually seeing the cars?---I believe so, yes.

...

So there's 10 on this list, three of them you actually inspected, seven of them were done on the papers that Susan Jabbour gave you?---I believe so, yes.

Yes.¹⁵⁴

(emphasis added)

- [228] During a public hearing on 19 February 2009 Mr Kain admitted that he had examined an imported vehicle, a 1966 Cadillac, on the premises of Eurotyres, which he subsequently passed without taking it for a test drive, putting it "over the hoist" or confirming the Engine Number. Imported vehicles are required to undergo a full inspection. Mr Kain also admitted

that he passed the vehicle without confirming that required work had been undertaken, work which he had identified during the on-site inspection.

Do you recall assisting Susan Jabbour with a black Cadillac?---Yes, I do.

What happened with that vehicle?---I examined that in front of Eurotyres and couldn't find the engine number on it ... I said to her that the tint was too dark and that they would have to take the wheels off it.

You examined it at Eurotyres?---Yes, that's correct.

Was that a full examination?---I didn't take it for a drive and it didn't go over the hoist, no.

You were trying to find the engine number. Is that right?---That's correct, yes.

How did they find the engine number eventually?---I think they ended up taking it to somewhere and they put it on a hoist and found it.

Were you with them then?---No, I wasn't. No.

And did they provide that to you by phone?---Yes, they did.

I understand this car is a 1966 Cadillac, imported car. Would that require a full inspection by you?---That has actually been registered in the Eastern States.

Does that require a full inspection?---Because it was bought by a person here in Western Australia, so yes.

It requires a full inspection?---Yes.

Did you fully inspect it?---I didn't put it on the hoist or road test it, no.

...

And you passed that vehicle?---That's correct.

THE COMMISSIONER: *You said a moment ago that you told them the tint was too dark and they would have to take the wheels off?---Yes, that's correct.*

Had that been done when you passed it?---I would hope that it had've been, but possibly not, Commissioner.

I'm just clarifying your evidence. Are you saying that you told them they would have to do that but it had not been done at the time of your inspection?---That's correct.

And you passed it anyway?---Yes, I did.

COUNSEL ASSISTING: *Did you take their word that that was going to be done?---Unfortunately, yes, I did.*¹⁵⁵

(emphasis added)

[229] At public hearings held on 17 February 2009 the Jabbours gave evidence to the effect that Mr Kain had inspected vehicles on the premises of

Eurotyres and Ms Jabbour gave evidence to the effect that such inspections were an “unofficial arrangement”. On-site inspections had not been authorised by DPI to occur on the premises of Eurotyres and, hence, could not be considered to be legitimate inspections.

Mr Jabbour

Has he [Mr Kain] ever come to Eurotyres to inspect vehicles?---Yes.

...

Does he come often or not so often?---When we are busy, as far as I understand, my wife contacts him and tells him to bring the car to our place. Not to bring the car, but if he come and check the car at our place and our workshop.

As far as you're aware, does he simply look at the car at Eurotyres, and does that car then go back to licensing?---What happens is that he comes and checks the car at our yard.¹⁵⁶

Ms Jabbour

... Brent and John would come to Eurotyres. Is that correct?---That's correct, occasionally.

To do inspections?---Some. Sometimes, not - very rare. Like really rare times.¹⁵⁷

...

Do you have a formal arrangement with the licensing department for the inspectors to come to Eurotyres?---No.

So is it an unofficial arrangement?---Yeah, you could say that; yeah.¹⁵⁸

2.3.5.2 Mr Kain

2.3.5.2.1 Commission Assessment and Opinions

- [230] On the evidence the Commission is satisfied that on occasions, probably more than 10, Mr Kain certified vehicles as roadworthy for Ms Jabbour without inspecting them, as was legally required.
- [231] What Mr Kain did involved making false certificates, stating that he had inspected vehicles when he had not. He certified they were roadworthy without knowing that to be true.
- [232] In the opinion of the Commission, this conduct constitutes misconduct under section 4 of the CCC Act. Such conduct:
 - directly adversely affected the honest performance of the functions of a public authority (DPI) (section 4(d)(i));
 - constituted the performance of his functions in a manner that was not honest (section 4(d)(ii));

- constituted a breach of the trust placed in him by reason of his employment as a public officer (section 4(d)(iii)); and
- could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment as a public service officer under the PSM Act (section 4(d)(vi)).

[233] The Commission accepts that the evidence does not establish to the requisite degree that Mr Kain received any benefit by way of money or discounted tyres from Ms Jabbour for certifying vehicles as roadworthy without inspection. The Commission also accepts that Mr Kain and others worked under continual pressure in efforts to cope with the heavy demand for vehicle inspections and the resulting protracted queuing of vehicles awaiting inspection. But these considerations do not make the misconduct any less. The conduct was deliberate, repeated, struck at the integrity of the licensing system and could potentially have had serious consequences for road safety.

2.3.5.2.2 Recommendation

Recommendation 4: Mr Brent Edward Kain

In the opinion of the Commission the conduct of Mr Brent Edward Kain as outlined in this report constitutes misconduct under section 4 of the *Corruption and Crime Commission Act 2003* ("CCC Act").

Pursuant to section 43(1)(a) of the CCC Act the Commission recommends that the Department for Planning and Infrastructure (now the Department of Transport (DoT)) give consideration to the taking of disciplinary action against Mr Kain.

The Commission notified DoT under section 152(4)(a) and (b) of the CCC Act of its opinion and recommendation relating to the alleged misconduct by Mr Kain, on 4 December 2009, for consideration.

The Commission notes that, following a disciplinary investigation and subsequent inquiry by DoT, Mr Kain was found to have committed a serious breach of discipline. As a consequence DoT terminated his employment, effective 6 August 2010.

[234] Again, what Mr Kain did was essentially the same conduct as Mr Burrows, Mr Howard and Mr Piercy. As with them, it involved (amongst other things) false certification of vehicle examination records. For reasons similar to those expressed in relation to them, the Commission has considered whether or not it should make a recommendation pursuant to section 43(1)(a)(i) of the CCC Act that the Director of Public Prosecutions give consideration to the prosecution of Mr Kain under section 85 of *The Criminal Code*.

[235] On balance, the Commission has come to the conclusion that it should not make such a recommendation. The reasons for that include:

- he received no payment nor any other personal benefit;
- the evidence does not show that he was motivated other than by pressure of work and to “help out” someone he knew;
- the Commission has previously recommended that consideration be given to the taking of disciplinary proceedings against him, and that was done, and he was found by DoT to have committed a serious breach of discipline, and his employment terminated;
- he did not initiate the conduct;
- although the Commission is satisfied on the evidence available to it that Mr Kain falsely certified many vehicles for Eurotyres between 2007-2008, the presently available evidence which would be admissible in a criminal prosecution would support only a minimum number of charges, which would not be representative of his overall conduct;
- in the circumstances, there is no likelihood of a court imposing any substantial penalty; and
- the public interest in the exposure of his misconduct is better served by publication of it in this report than by a criminal prosecution.

2.3.5.3 Ms Jabbour

[236] It is appropriate at this point to give further consideration to Ms Jabbour’s position.

[237] Ms Jabbour was well familiar with the requirements for the certification of vehicles by Vehicle Examiners as roadworthy. She was familiar with the documentation. She knew the Vehicle Examiners were obliged to physically inspect the vehicles and then sign a formal certificate certifying they had done so and the vehicles were roadworthy. She knew those details had to be entered into TRELIS.

[238] Ms Jabbour deliberately and actively set out to suborn Vehicle Examiners from their duty, well knowing what she was doing. She did so for financial gain. She preyed upon the vulnerability which she recognised pressure of work, long queues of people wanting their vehicles examined and inordinately long waiting times for inspection created.

[239] On 21 August 2008 in a telephone conversation with her Aunt (“Coco” Raphael) Ms Jabbour explained –

MS JABBOUR: *I licensed two cars this morning.*

MS RAPHAEL: *How many?*

MS JABBOUR: *Two.*

MS RAPHAEL: Ah good. Who for?

MS JABBOUR: [suppressed] and [suppressed].

MS RAPHAEL: Okay. That's good love, did they go through quickly?

MS JABBOUR: One of them was very easy and the other one was a bit dicey. But 'cause I did the easy one first I spoke to the guy there who said just make sure you get me, it's a new guy. And I got him and he passed it for me, so he says whenever you come through if there's something a bit dicey come and see me. So now I got a new one, so I've got Peter and a new one.

MS RAPHAEL: Okay, okay that's good.

MS JABBOUR: ... now and once I get a few of them it'll be good Coco.¹⁵⁹

[240] Ms Jabbour's objective in her dealings with the Vehicle Examiners was twofold: she wanted to avoid having to wait in line; and she wanted her vehicles to be passed as roadworthy whether they were defective or not. She explained this to Ms Raphael in a telephone conversation on 27 August 2008 –

MS JABBOUR: I hope we haven't had a fight with Dad again. We asked him to license us a car Dad keeps going on and on about all his friends are at Welshpool. I said take

MS RAPHAEL: Right.

MS JABBOUR: this car and license there's nothing wrong with the car. Car's

MS RAPHAEL: Yeah.

MS JABBOUR: got one hundred percent nothing wrong with it.

MS RAPHAEL: Yeah.

MS JABBOUR:but I won't pass a hundred percent I said why are we paying you a hundred dollars. He said your mates are there can you pass it or not he goes nuh I don't know maybe not. I said well leave it let me take it.

MS RAPHAEL: Yeah.

MS JABBOUR: And well I had to come a special trip to do it I said sorry but I need it to pass he said I can't guarantee it I said don't worry. I've taken it I've been I skipped the whole line went and saw John come and did it and he's passed it already. And Dad's got no one there.

MS RAPHAEL: Well, but but why would you have

MS JABBOUR: ...

MS RAPHAEL: a fight with him love?

MS JABBOUR: But he's probably uhm I didn't fight with him but he's probably gonna be upset that I made him come to the workshop and not even give him the job.

MS RAPHAEL: But he said he couldn't do it.

MS JABBOUR: He said he he said he can't a hundred percent pass it. I needed him to hundred percent pass it. It's fair enough isn't it?

MS RAPHAEL: But did he go away and no don't worry just leave it don't panic about it sweetie.

MS JABBOUR: I ...

MS RAPHAEL: Don't worry

MS JABBOUR: dramas anymore it seemed like Mum was pissed off but I need it to pass a hundred percent I said where's Billy well Billy not there when does he come back I can give you jobs then. He goes he's not gonna be doin' it anymore he's got no one. I don't need him to go drivin' there just to fail with him.

MS RAPHAEL: No well don't ask him to do some runs until you ... stop with something then.

MS JABBOUR: I'm just gonna do 'em myself look Coco how I went I've only been a half an hour I skipped the line there was 20 people in the line skipped a whole line parked on the side called John did it, did the paperwork and I'm on my way back and the people that I've skipped in front of haven't even been touched yet.

MS RAPHAEL: Yeah yeah.

MS JABBOUR: I don't need him to do it anymore really.

MS RAPHAEL: *No well don't don't ah just don't ask him but if he says he can't do it and you've got someone waiting for it you have to try and do it yourself alright so don't*

MS JABBOUR: *...*

MS RAPHAEL: *you can't*

MS JABBOUR: *He can*

MS RAPHAEL: *you can't have a fight over that love.*

MS JABBOUR: *He can take it to the pits but he can't pass it a hundred percent I need it to pass a hundred percent why people, the guy's paid us five hundred dollars.*

MS RAPHAEL: *Yeah yeah yeah.*

MS JABBOUR: *We want to pass.*¹⁶⁰

[241] On 1 September 2008 Mr Piercy telephoned Ms Jabbour. She told him the tyres were ready for him. He said he would come and collect them in his lunchtime. She told him "there's a couple of things here I dunno if you could have a look at for me".¹⁶¹ He agreed.

[242] At 11:35 a.m. that day Ms Jabbour mentioned this in a telephone conversation with her Aunt.

MS JABBOUR: *The guy for Licensing's coming to our shop 'cos we had a couple of cars, he's gunna come and do 'em in the workshop.*

MS RAPHAEL: *Oh my god.*

MS JABBOUR: *[laughs].*

MS RAPHAEL: *Alright. Alright.*

MS JABBOUR: *... going on a trip.*

MS RAPHAEL: *Hey?*

MS JABBOUR: *He even saves me taking a trip to drop the paperwork off.*

MS RAPHAEL: *[laughs].*

MS JABBOUR: *Hm.*

MS RAPHAEL: *Alright love. Okay*

MS JABBOUR: *But he's he's a very good one he even gives me his mobile number and everything so he's gunna be ten times better than Peter.*

MS RAPHAEL: *Mm. Well okay well just ah, just be careful with everything alright?*

MS JABBOUR: *Yeah but it's good to have a second one, like now I've got two.*

MS RAPHAEL: *Yeah. Well don't play 'em against each other or anything, don't let the other one know what you're doin' with the other one.*¹⁶²

[243] The same thing happened the following day, 2 September 2008. Ms Jabbour telephoned Mr Piercy at 12:24 p.m.

MR PIERCEY: *Hello?*

MS JABBOUR: *Yeah hi John it's Susan, how are ya?*

MR PIERCEY: *Good, how are you?*

MS JABBOUR: *Yeah not too bad. Uhm, I've got a, a couple of cars, I'm just bringing one down now, uhm I dunno if you could help me out with a couple of other ones as well? Once uhm, yeah I'll come I'll see you anyway once I get there.*

MR PIERCEY: *Yeah uhm, I'm just gunna go and pick those tyres up in about, uh those rims up in about twenty minutes or somethin' too so.*

MS JABBOUR: *Oh okay*

MR PIERCEY: *He's just finished 'em so. I'm*

MS JABBOUR: *Yep.*

MR PIERCEY: *here 'til then.*

MS JABBOUR: *Yep.*

MR PIERCEY: *So yeah.*

MS JABBOUR: *Okay, should I uh, or do you wanna meet me at my shop and do 'em all there?*

MR PIERCEY: *Uhm*

MS JABBOUR: *Would that be*

MR PIERCEY: *Yeah.*

MS JABBOUR: *easier?*

MR PIERCEY: *Yeah okay.*

MS JABBOUR: *Okay no problems. I'll I'll*

MR PIERCEY: *I'll get, I'll get these rims and uhm,*

MS JABBOUR: *Yep.*

MR PIERCEY: *I'll catch up catch up with ya.*

MS JABBOUR: *No problems that'd be good. Thanks*

MR PIERCEY: *Okay.*¹⁶³

[244] Just over an hour later Ms Jabbour called Mr Piercey again. He told her he had been held up at work and would be over in 10 minutes.

[245] Eighteen minutes later Ms Jabbour called her Aunt ("Coco" Raphael).

MS JABBOUR: *Guess what?*

MS RAPHAEL: *What?*

MS JABBOUR: *I have three cars to license.*

MS RAPHAEL: *Eh?*

MS JABBOUR: *I've got three cars to license.*

MS RAPHAEL: *Yeah.*

MS JABBOUR: *I ring up John, he comes here, de tick tick tick, don't even have to drive down and he's dropping me off the paperwork on his way home [laughs].*

MS RAPHAEL: *It's amazing isn't it.*

MS JABBOUR: *But he, he*

MS RAPHAEL: *Don't tell everyone all this sort of stuff ...*

MS JABBOUR: *No, because*

MS RAPHAEL: *I wouldn't even trust your Dad with it. You know?*

MS JABBOUR: *Nah, I'm not gunna tell him, coz he, he would, make out that he got him.*

MS RAPHAEL: *Well, the the thing is that he could talk.*

MS JABBOUR: *Yeah.*

MS RAPHAEL: *Y'know? So, yeah. Just be, just be careful.*

MS JABBOUR: *Dad's dangerous.*

MS RAPHAEL: *I know he's dangerous.*

MS JABBOUR: Because you know what he did, he found out who was help, he knows George is

MS RAPHAEL: Yeah, and he told em off didn't he, because they...

MS JABBOUR: Yeah

MS RAPHAEL: not to do it for him. I know, it it it's, Susan it's ah, it's it's very bad. Yeah. So ah, yeah, you gotta just make out you're not doing much.¹⁶⁴

[246] In the same conversation Ms Jabbour made it quite clear the benefit she was getting.

MS JABBOUR: ... cars for me, there's three cars Coco, takes me like half a day.

MS. RAPHAEL: Oh yeah.

MS JABBOUR: Cause he's done em here,

MS. RAPHAEL: Mm.

MS JABBOUR: it saves me bloody four hours. And

MS. RAPHAEL: Well

MS JABBOUR: one car we've taken seven hundred and fifty dollars, other car we've taken four hundred, and the other one we took three hundred.¹⁶⁵

(emphasis added)

[247] On 10 September 2008 she had the conversation with her Aunt about Mr Piercy passing the car with the air bag light on.

[248] It seems the number of vehicles which were being certified for Ms Jabbour was starting to generate some comment in early October 2008. On 3 October 2008, when she telephoned Mr Piercy to ask if he could pass a Mercedes for her without her having to wait in line, he told her he had been going to suggest she actually bring cars through.

MS JABBOUR: Yeah? Uhm I'm just uhm just around the corner here. I was I was gunna line up with this car 'cause this car is practically clean but it's just people [laughs] lined up out to the gates almost, I dunno if you'd be able to help me out uhm with this one? It's just a, a oh one Merc.

MR PIERCEY: Oh okay I was gunna say you're probably gunna have to bring 'em through 'cos uhm, someone made a comment the other day that was all [laughs].

MS JABBOUR: *What was that, oh did they really?*

MR PIERCEY: *Yeah. Going oh who's doing Suzie out there? Oh, as I walked out the door I thought I'm not saying nothin' so better just make 'em (clears throat) so it looks like we're uh, actually comin' through you know what I mean, so.*

MS JABBOUR: *Oh okay, uhm*

MR PIERCEY: *What. What colour is it?*

MS JABBOUR: *Its uh like a silvery-goldy-colour. It's like a brand new Merc.*

MR PIERCEY: *Okay. I'll try and get to ya but I might not be able to that's all.*

MS JABBOUR: *Oh okay yep no problems.*

MR PIERCEY: *Okay, sorry.*

MS JABBOUR: *Alright*

MR PIERCEY: *Uhm. Yeah but we just, better just make it look like that that was all.*

MS JABBOUR: *Oh okay yep. Uhm just a couple of cars probably can't bring down uhm,*

MR PIERCEY: *Yep*

MS JABBOUR: *but, but yeah with the ones that I can I'll just bring 'em through.*

MR PIERCEY: *Yeah, yeah that way it just keeps everything looking good and*

MS JABBOUR: *Yeah. I might come back a bit later on then 'cause the line looks pretty huge.¹⁶⁶*

(emphasis added)

[249] On 13 October 2008 Ms Jabbour had a problem. Both Mr Howard and Mr Piercey were out on the road doing vehicle inspections and so were not available to certify her vehicles. The extent of calculation in what she was doing is apparent from a telephone conversation she had with her Aunt that day.

MS JABBOUR: *Both of them.*

MS RAPHAEL: *They, they what, can't help ya?*

MS JABBOUR: *Yeah. They do it on the road. And then they go inspect cars on the road. The two of them*

are in that car. That's, that's why I wanted two because I thought there's no chance that two of them are gonna be on the road. They're both on the road for two weeks.

MS RAPHAEL: And what, you got stuff to do?

MS JABBOUR: Yeah.¹⁶⁷

(emphasis added)

[250] This did not remain a problem for long. It took Ms Jabbour only two days to resolve it. That she was very aware of what she was doing and that she was engaged in it not only deliberately, but enthusiastically, was made starkly apparent in a telephone conversation with her Aunt on 15 October 2008.

MS RAPHAEL: Hello.

MS JABBOUR: Hello. Guess what?

MS RAPHAEL: What.

MS JABBOUR: I corrup

MS RAPHAEL: You're mad and I'm not.

MS JABBOUR: [laughs]. I corrupted another pits guy. I got three now that do paperwork [laughs].

MS RAPHAEL: Oh oh god.

MS JABBOUR: [laughs].

MS RAPHAEL: Well I hope they don't

MS JABBOUR: I'm excited Coco.

MS RAPHAEL: talk to each

MS JABBOUR: I said to him, it's Brent, he always calls me darling every time I come in.

MS RAPHAEL: ...

MS JABBOUR: And he knew ... he really likes me. And I always joke with him. I said Brent I got this car I need to do. I said it looks a bit rugged. It drives very well. Nothings wrong with the car it just ran out of rego but it drives really rugged. He said when you bring it down I'll look after you with it.

MS RAPHAEL: Mm.

MS JABBOUR: I said yeah it just looks really rugged. And he goes yeah he goes I'll look after you with it. Like that right.

MS RAPHAEL: Mm.

MS JABBOUR: I said can I give you the paperwork for it instead of bringing it down. He goes yep [laughs]. So he was waiting for me to ask him. He was never going to suggest it. He waited for me to ask him.

MS RAPHAEL: Oh god. Alright well take it easy don't

MS JABBOUR: ..

MS RAPHAEL: don't go don't go being too smart, you know.

MS JABBOUR: So now I've got John, Peter and Brent.

MS RAPHAEL: Oh alright well.

MS JABBOUR: [laughs].

MS RAPHAEL: Just be careful alright.

MS JABBOUR: And the bad ones we've got George [laughs].

MS RAPHAEL: Eh?

MS JABBOUR: And the bad ones we got George.

MS RAPHAEL: Oh for the bad ones you got ...

MS JABBOUR: But Coco I just made five hundred dollars off one [hicups] and the other one three hundred dollars. Eight hundred dollars.

MS RAPHAEL: For nothing.

MS JABBOUR: For and it cost us eighty three thirty per pass. So what's that?

MS RAPHAEL: Yeah yeah.

MS JABBOUR: A hundred and fifty bucks hundred and seventy bucks.

MS RAPHAEL: Yeah that's where you're making your money isn't it with these things.

MS JABBOUR: Yeah and one of them's cash. And I like the cash ones because the cash ones who the hell would know.

MS RAPHAEL: Yeah exactly.

MS JABBOUR: Who

MS RAPHAEL: It'll never come back at ya.

MS JABBOUR: Why ... bother. Who can prove it?

MS RAPHAEL: Yeah exactly.

MS JABBOUR: And because a lot of them are in the books we've a lot of it's two hundred dollars for car yards. That's in the books.

MS RAPHAEL: Yeah yeah.

MS JABBOUR: ... licence.

MS RAPHAEL: Yeah [Sighs]. Alright so you're having a good day?

MS JABBOUR: Yeah I'm I'm lovin' it at the moment. I'm really excited.

MS RAPHAEL: Mm.

MS JABBOUR: 'Cause I was pretty peeved off that John and Peter. I rung up John on his mobile and uhm he was with Peter. He said oh with Peter on the road when ah we can't help ya. They're both on the road. And they were laughing. They thought it was funny that they were both on the road.

MS RAPHAEL: Mm.

MS JABBOUR: Now who's laughing? Now I got a third one.

MS RAPHAEL: Yeah well don't be smart with it. And don't tell anyone else what you're doing with things. You know.

MS JABBOUR: John and Peter know each other. But

MS RAPHAEL: Yeah.

MS JABBOUR: ... tell them if he want's to tell them. You know what I mean.

MS RAPHAEL: Yeah well you don't say anything because er this fella might be sussin' you out to report on the others or something you know.

MS JABBOUR: Yeah.

MS RAPHAEL: You better be careful.

MS JABBOUR: This one's, this one's good. This one's uhm really nice guy.

MS RAPHAEL: Yeah. Yeah well just be careful love.

MS JABBOUR: Yeah ...

MS RAPHAEL: Alright darlin'.

MS JABBOUR: and why I knew I could do it is I brought four or five cars this week for him. All he's done is check the indicators uhm glanced underneath the car and never driven them. Just sort of glanced at them and went in ... done the paperwork for me. Like he's not testing the cars a hundred percent.

MS RAPHAEL: Mm.

MS JABBOUR: Like he's not looking for a fault. So he's looking to pass it.

MS RAPHAEL: Yeah. ...

MS JABBOUR: So that's why I had a strong heart to ask him.

MS RAPHAEL: Yeah. That's good baby.

MS JABBOUR: Coco that's where our money is and that's what we need. Look how much time. And now I can give say two or three a week to each one. That's nine cars no pressure on them and it's better because then it's not all John not all Peter not all Brent.

MS RAPHAEL: Yeah.

MS JABBOUR: All different names.

MS RAPHAEL: Yeah. Good one babe.

MS JABBOUR: Yeah I'm excited I love it.¹⁶⁸

(emphasis added)

[251] The arrangement was better organised by the end of October 2008. Ms Jabbour now had three Vehicle Examiners willing to either give her preferential treatment for inspections without her queuing, or certifying vehicles without seeing them. And the concern about someone noticing more of her vehicles were being certified than were being presented for inspection had been addressed. She explained it to her Aunt in a telephone conversation on 1 September 2008.

MS JABBOUR: *Hi, just driving on my way now. When I went to the workshop again the guy from licensing was there.*

MS RAPHAEL: Yeah.

MS JABBOUR: *And I started talking to him and he says, yeah I'll do all the cars for you, but make sure you come down yourself sometimes because I don't want them to keep giving you paper work and they'll, they will notice that you never waiting in the line*

MS RAPHAEL: Oh yeah, you have to do it yeah

MS JABBOUR: Yeah ... but all the easy ones I'll go wait in line and all the hard ones I'll give to him.

MS RAPHAEL: Yeah, yeah, yeah exactly. Yeah go, but go a bit more often you think, okay

MS JABBOUR: Yeah and he said Peter's back and I said oh good, I said I can dish them off between you if you like, he goes yeah that'd be good [Giggle].¹⁶⁹

(emphasis added)

[252] In a conversation with Ms Raphael on 21 October 2008 Ms Jabbour spoke about a fourth Vehicle Examiner she could use if she needed to –

MS JABBOUR: *And Billy was there and Billy sort of stood around waiting for me to ask him that's Billy's number four. Billy helped Dad but I'm not gonna get Billy involved with with him because I've got three now and Billy helps Dad so I'll let Dad do it for him.*

MS RAPHAEL: Yeah but your father's not doing it anymore is he?

MS JABBOUR: Yeah he does he did two today.

MS RAPHAEL: Oh did he? Yeah but what what happened with uhm the the result?

MS JABBOUR: I don't know I have to ring up Mum this afternoon she's gonna know.

MS RAPHAEL: Oh this afternoon 'cause ah yeah.

MS JABBOUR: But

MS RAPHAEL: Alright.

MS JABBOUR: ... I can easily get Billy because he's done it for me in the past.¹⁷⁰

2.3.5.3.1 Opinion and Recommendation

[253] In the Commission's opinion there is legally admissible evidence that Ms Jabbour counselled or procured Vehicle Examiners Howard, Piercey and Kain to commit an offence or offences contrary to section 85 of *The Criminal Code* (WA). Accordingly, the Commission makes the following recommendation in relation to Ms Jabbour.

Recommendation 5: Ms Susan Evelyn Jabbour

The Commission recommends pursuant to section 43 of the *Corruption and Crime Commission Act 2003* that the Director of Public Prosecutions give consideration to the prosecution of Ms Susan Evelyn Jabbour under sections 7 and 85 of *The Criminal Code* (WA), for offences relating to Mr Peter David Howard, Mr John Francis Piercey and Mr Brent Edward Kain.

2.3.6 Other Department for Planning and Infrastructure Authorised Vehicle Examiners

[254] Subsequent to the hearings conducted by the Commission during December 2008, and January and February 2009, the investigation by the Commission focused on whether the known unlawful certification of vehicles by Messrs Tanner, Burrows, Howard, Piercey and Kain was more widespread, based on prior activity by other Vehicle Examiners and/or done in collusion with one another or other Vehicle Examiners. Investigation by the Commission revealed that the practice may have existed in various forms over a number of years and that there was an historic connection to Messrs Raphael and Roufail in this regard. Also the practice may have caused inexperienced Vehicle Examiners to believe that it was acceptable to "cut corners" and adopt inappropriate procedures. However, in the opinion of the Commission, based on available evidence, there was no collusion between Vehicle Examiners with respect to unlawful certification of vehicles, that is, each appears to have been acting independently and for the most part without the knowledge of the others.

2.3.6.1 Mr Robert Alexander Cugley and Mr James Munro Spence

[255] Mr Robert Alexander Cugley was employed as a Senior Vehicle Examiner by the Licensing Services section of DPI and was Team Leader Vehicle Operations at the O'Connor Vehicle Examination Centre in April 2006 when a notification of suspected misconduct was received by the Commission from DPI, in accordance with section 28 of the CCC Act. The notification was based on allegations made by a complainant. At the time Mr Cugley was authorised as an examiner under the *Road Traffic (Licensing) Regulations 1975* and a public officer. The notification raised a number of allegations.

[256] The notification received by the Commission from DPI in April 2006 also alleged that Mr James Munro Spence, a Vehicle Examiner, had passed a vehicle at the O'Connor Vehicle Examination Centre without inspection for Mr Raphael, and that Mr Cugley, his supervisor, had knowledge that this had occurred, but failed to take action. The incident was alleged to have occurred prior to Mr Spence's retirement in July 2005. At the time Mr Spence was authorised as an examiner under the *Road Traffic (Licensing) Regulations 1975* and a public officer.

2.3.6.2 Matter Referred to DPI for Action

[257] In accord with section 33 of the CCC Act, the Commission referred the matter back to DPI for investigation. The investigation did not elicit corroborative evidence of the various allegations, except in relation to Mr Cugley's operation of an undeclared private business. Mr Cugley was reprimanded for engaging in secondary business interests without DPI consent. DPI subsequently relocated Mr Cugley to the Warwick Vehicle Examination Centre in September 2007, because by then he had been at Warwick for more than 10 years. No action was taken by DPI in relation to Mr Spence, as he had retired.

[258] The complainant was interviewed as part of the DPI investigation of the matter, and as a result his identity became known and, as a consequence, he needed to be relocated to another Examination Centre.

[259] During the 2008 period of the Commission investigation, that is, on 30 July 2008 and a number of occasions thereafter, lawful telecommunications interceptions revealed that Mr Raphael was acquainted with Mr Cugley, and also, through references to other persons, Mr Spence.

[260] DPI records illustrate that prior to retirement in July 2005 Mr Spence inspected all vehicles presented for examination at the O'Connor Vehicle Examination Centre by Mr Raphael, and that he inspected 199 such vehicles between September 2004 and July 2005.¹⁷¹ Further, the records illustrate that during the period July 2005 to late 2007 vehicles presented by Mr Raphael for examination at the O'Connor Vehicle Examination Centre were predominantly inspected by Mr Cugley, and that after the relocation of Mr Cugley to the Warwick Vehicle Examination Centre in September 2007 Mr Raphael ceased using the O'Connor Vehicle Examination Centre.

2.3.6.3 Private Hearings During September 2009

[261] Mr Raphael was called to give evidence during September 2009 private hearings in order to determine whether there was any substance to the allegations concerning Mr Cugley and Mr Spence. In addition, Mr Desmond Arthur Lawry, Team Leader Vehicle Operations, O'Connor Vehicle Examination Centre, Mr Cugley and Mr Spence were also called.

[262] Mr Raphael failed to confirm information that he had provided to investigators during informal interviews conducted subsequent to the February 2009 public hearings, including statements made to the effect

that he would leave paperwork (required for certification) for other vehicles in the vehicle presented for inspection, thereby enabling those other vehicles to be certified as roadworthy without inspection. However, Mr Raphael did give evidence that most, in fact 90%-95% of, vehicles passed by Mr Spence had been presented for inspection (with 5%-10% not having been presented), and that all vehicles had passed inspection. The following are extracts from the private hearing on 15 September 2009.

So on occasions is it true that Jim Spence would not see the vehicle at all and you would do the paperwork up?---No, I never do that, never.

It's not the case that you would take one car to O'Connor and give him the paperwork for a couple more as well?---Look, I did run most of the cars through. I did run them through.

*Most of them but not all of them. Is that right?---Yeah. Probably (indistinct) maybe 90 per cent of them, 95 per cent ...*¹⁷²

...

(emphasis added)

Counsel Assisting showed Mr Raphael a chart which depicted examination of vehicles inspected by Mr Spence on his behalf, based on data obtained from TRELIS, during the period 1 September 2004 to the time that Mr Spence retired in July 2005.

... *Yeah, yeah, 199, yeah, yeah.*

...

... *there's 199 examinations there with no failures. Do you see that?---Yeah, I did, yeah.*¹⁷³

...

Did he ever fail your vehicles?---No, he didn't.

*So how can that be, can you explain why he never failed you?---He would tell me what to fix up and I would fix it. We had trust, you know ... Yeah. Well, he'll tell me what's with it and I'll go and fix it. Normally I would check them before I go anyway or sometimes - you can't do everything, you know what I mean?*¹⁷⁴

(emphasis added)

[263] Mr Lawry gave evidence at a private hearing on 15 September 2009. Mr Lawry had worked under the supervision of Mr Cugley at the O'Connor Vehicle Examination Centre and assumed the position of Team Leader Vehicle Operations upon Mr Cugley's relocation to the Warwick Vehicle Examination Centre in September 2007. Mr Lawry gave evidence that Mr Cugley had provided preferential treatment to Mr Raphael, was often absent from the Centre during working hours without explanation and did not operate in accord with recognised procedures. Mr Lawry also gave evidence that persons other than Mr Raphael were given preferential treatment, for example, allowing unauthorised on-site inspections.

[264] Mr Spence also gave evidence at the 15 September 2009 private hearing. He denied any suggestion that he had passed vehicles without inspection, claimed that Mr Cugley had asked him to "look after" Mr Raphael, that is, "to give him preference at sort of doing his vehicles".¹⁷⁵ He could not explain why he had inspected nearly all vehicles presented by Mr Raphael during the period 1 September 2004 to the time that he retired in July 2005, despite the supposed random allocation of vehicles to examiners, or why none of the 199 vehicles that he had inspected for Mr Raphael between 1 June 2004 and July 2005 had failed inspection, given that the average rate of failure otherwise was about 25%. Mr Spence confirmed that he undertook on-site inspections of vehicles at Safeway, and claimed that this was authorised by Mr Cugley.

[265] Mr Cugley gave evidence at a private hearing on 16 September 2009. He denied asking Mr Spence to look after or give preference to Mr Raphael or authorising Mr Spence to attend the Safeway premises to undertake on-site inspections, and acknowledged that vehicles inspected by Mr Spence for Mr Raphael were "clearly not random" (that is, were not allocated to Mr Spence on a random basis according to standard procedure).¹⁷⁶ When provided with statistical evidence relating to inspection of vehicles by Mr Spence (that is, daily inspection and failure rate), Mr Cugley conceded that Mr Spence may not have followed required procedures, but stated that was done without his knowledge. Mr Cugley did, however, confirm that he was aware that Mr Spence had on one occasion certified a vehicle without inspection and claimed that he had reprimanded Mr Spence for doing so, but "didn't tell anyone higher" and "told him not to do it again and [that] he shouldn't have done it".¹⁷⁷ Mr Cugley also confirmed that he had destroyed the *Certificate of Inspection* (MR1) and "did something on the computer so you can't produce another one and print it off", but said that he "wasn't covering ... up" for Mr Spence's conduct. He conceded that Mr Spence was "difficult to control" and that supervision of him was "hard work",¹⁷⁸ and (by inference), was not as adequate as Mr Cugley had considered it to be.

[266] Following the presentation of statistical evidence that Mr Cugley had only failed one in 51 vehicles which he had inspected for Mr Raphael, that is, 2% when the average was about 25%,¹⁷⁹ he admitted that he had allowed Mr Raphael to rectify defects identified in a "first inspection" prior to the vehicle being presented for a "reinspection" which was then treated as the official first inspection. Mr Cugley also admitted that he had given Mr Raphael preferential treatment.

*But is it the case, Mr Cugley, that you would give him a checklist of things that he would have to fix and he could go away and fix it and then you would pass it once you had reinspected it, and that is why very few failed?--
-That - but not on every occasion, but that did happen on - on the back of his receipt when we did the - did the - did the source document, right, and if he had a left-hand rear tyre and a globe then - then I would write that on - write that on the back of his receipt and say, "Listen, George, get that done and get back."*

...

... He never presented to me anything that had - that had, you know, major blatantly - you know, that needed major, major work, you know, it was rusted out or things falling off it or anything like that. This was all - from my perspective all part of keeping things flowing in the station, but it - it - as I said, with an axle bearing or something like that that had to be repaired, he'd get it done and drop it straight back.¹⁸⁰

...

All right. ... do you still adhere to your earlier evidence that you did not give George Raphael any greater preferential treatment than the sort of treatment you would extend to other people from time to time?---Well, obviously I would - I would like to say that with those figures now I've seen that that possibly that - that that is the case, maybe - maybe I shouldn't have been so liberal, to use the word, in him saying, "Look, I'll be back in - I'll be back. I'll get a tyre and I'll be back in half an hour. I'll be back, I'll be back, I'll be back," and it's a bit like how he was, and I'm not making any excuses here on his behalf in saying, "I'll be back and I'll get that done straightaway. Just hang onto the paperwork." Maybe in hindsight, sir, that - that shouldn't have been the case.¹⁸¹

(emphasis added)

- [267] When Counsel Assisting asked Mr Cugley whether or not he had disclosed licensing information to unauthorised third parties he replied “[u]nder oath I'd have to probably say yes”, but “in the 33 years I've been in the job, sir, I don't know of any ... Vehicle Examiner that probably hasn't passed on a bit of information at some time in their career when they shouldn't have”.¹⁸² At the conclusion of the private hearing Mr Cugley stated “in hindsight there are some practices ... that could've been managed a lot better”.¹⁸³
- [268] The evidence in relation to the activities of Mr Cugley and Mr Spence was not sufficiently particular nor cogent to lead the Commission to an opinion of misconduct within section 4 of the CCC Act, to the necessary degree of satisfaction. The Commission notes that neither Mr Cugley nor Mr Spence are any longer employed by DPI, retiring in August 2009 and July 2005 respectively. The Commission makes no recommendations in relation to them.

2.3.6.4 Others

- [269] Subsequent to the September 2009 private hearings further investigation by the Commission and inquiries by DPI (or DoT) resulted in the admission by a Vehicle Examiner located at the Kelmscott Vehicle Examination Centre that he had certified a vehicle as roadworthy without inspection. The inspection receipt for the vehicle had been purchased by Mr Roufail. As a consequence DPI redeployed the Vehicle Examiner to another area within DPI pending the outcome of internal disciplinary action. The Commission was notified of this action by DPI on 5 January 2010.
- [270] Whether the admission by the above mentioned Vehicle Examiner indicates that other Vehicle Examiners who inspected a significant number of vehicles presented by Mr Roufail could also have engaged in

misconduct pursuant to section 4 of the CCC Act is not known. However, due regard should be given to the fact that Ms Jabbour did make reference, during an intercepted telephone call to at least one other Vehicle Examiner, who she claimed “looked after her”. This Vehicle Examiner was located at the Welshpool Vehicle Examination Centre and is known to have inspected 32 vehicles presented by Mr Roufail during the period June 2004 to December 2008, without any vehicle having failed inspection. Whether this reference by Ms Jabbour to a Vehicle Examiner is indicative of misconduct on the part of that Vehicle Examiner or if his association with Ms Jabbour can be related to an association with Mr Roufail is unconfirmed.

2.3.7 Other Non-Public Officers

2.3.7.1 Mr Jimy Jean Jabbour and Ms Susan Evelyn Jabbour

- [271] In the opinion of the Commission available evidence is insufficient to recommend consideration be given to charging either Mr Jabbour or Ms Jabbour with bribery contrary to section 82 of *The Criminal Code* (WA), whereby “... any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years”. There is no evidence that they either offered or gave a bribe to any Vehicle Examiner for passing vehicles without inspecting them.
- [272] The Commission has already made recommendations in this report that consideration be given by the Director of Public Prosecutions to the prosecution of Ms Susan Evelyn Jabbour for offences contrary to sections 7 and 85 of the *The Criminal Code* (WA), for offences with respect to Mr Peter David Howard, Mr John Francis Piercey and Mr Brent Edward Kain.
- [273] As neither Mr Jabbour nor Ms Jabbour are or were public officers during the period relevant to this investigation, the Commission makes no further recommendations in relation to them.

2.3.7.2 Mr Abraham Merched Roufail

- [274] For the reasons explained earlier in this report the Commission does not recommend that consideration be given by the Director of Public Prosecutions to the prosecution of Mr Abraham Merched Roufail under sections 7 and 85 of *The Criminal Code* (WA), for offences in relation to Mr William Brian Burrows.
- [275] As Mr Roufail is not or was not a public officer during the period relevant to this investigation, the Commission makes no recommendation in relation to him.

2.3.8 Issues Identified by the Commission Investigation

- [276] The Commission investigation identified a number of issues emanating from weaknesses in policies, practices and procedures as they apply either generally at a systemic level or specifically to the inspection, licensing and registration of motor vehicles in this State by DPI officers. These are summarised below.

- (1) The potential consequences of certifying a vehicle as roadworthy without inspection are very serious, and potentially more serious if the vehicle is subject to a “yellow sticker” (that is, defect of compliance notice). It may mean that an unroadworthy vehicle, being driven on the road under the auspices of being certified as roadworthy, is the cause of a road accident or even a fatality due to its unroadworthy condition. Studies have shown that vehicle defects are a contributing factor in about 6-12 per cent of motor vehicle accidents. Furthermore, if a vehicle is passed without inspection, there is no way of knowing whether it is a stolen or rebirthed vehicles as there is no opportunity for an identity check, that is, to verify the Vehicle Identification Number and Engine Number.
- (2) The practice which allows an individual to purchase multiple transferable inspection receipts (MR numbers), either in person or via telephone using a credit card, can be exploited to facilitate the process whereby vehicles are certified as roadworthy without inspection.
- (3) Investigations by the Commission and other anti-corruption agencies have repeatedly demonstrated that agencies, or sections within agencies, with regulatory functions are particularly vulnerable to corruption and misconduct. The risk factors identified (refer [110]) apply in the case of the DPI Licensing Services section, where Vehicle Examiners, who are generally mechanics by trade, are likely to have strong bonds with those employed in the motor vehicle industry, inspect vehicles autonomously without peer review, are trusted to follow procedures and are also relatively moderately paid.
- (4) Vehicle Examiners conducting on-site inspections of vehicles on the premises of businesses that are not DPI Authorised Inspection Stations, whilst purporting to have conducted a legitimate inspection.
- (5) Protracted queuing at Vehicle Examination Centres (Welshpool and O’Connor) that do not require customers to pre-book a vehicle examination, that is, operate on a “first-come first-served basis”, resulted in significant stress and pressure, causing Vehicle Examiners to be more vulnerable to the temptation to circumvent practices and procedures, and provide preferential treatment to certain regular customers in an effort to expedite the inspection and certification process.
- (6) The seeming failure by DPI management to recognise that high rates of vehicle inspection coupled with a nil, or negligible, failure rate in relation to vehicle inspections conducted by a particular Vehicle Examiner for a particular customer could be the result of inappropriate practices, including preferential treatment and circumvention of policies and procedures.
- (7) A complainant who had made official allegations about particular Vehicle Examiners, at a particular Vehicle Examination Centre,

upon identification as the source of the allegations, was subjected to serious victimisation and, as a result, was relocated to another Vehicle Examination Centre. The complainant, by making official allegations, was in effect “whistleblowing”, that is, “... the disclosure by organisation members (former or current) of illegal, immoral or illegitimate practices under the control of their employers to persons that may be able to effect action”.¹⁸⁴ After taking such action the complainant’s anonymity should have been retained, he should have been protected from reprisals, and should not have been personally disadvantaged.

- (8) The practice of circumventing practices and procedures in order to expedite the inspection and certification process and/or to provide preferential treatment to certain regular customers may have caused inexperienced Vehicle Examiners to believe that it was acceptable to “cut corners” and adopt such inappropriate conduct.
- (9) In addition to the aforementioned there are a number of other misconduct risk factors that should be considered by DPI in order to mitigate against and reduce the incidence of misconduct, thereby protecting and promoting the integrity of, and services provided by, DPI. These are the practices of:
 - leaving paperwork (required for certification) for other vehicles in the vehicle presented for inspection or handing such paperwork to a Vehicle Examiner whilst at a Vehicle Examination Centre for the purpose of having another vehicle inspected, thereby readily enabling those other vehicles to be certified as roadworthy without inspection;
 - providing vehicle details and MR numbers (inspection receipts) by telephone to a complicit Vehicle Examiner;
 - allowing members of the public to have access to inspection areas, to be in the vicinity of the pits and to have contact with Vehicle Examiners before completion of inspection process;
 - preferential treatment being given to particular customers by Vehicle Examiners;
 - Vehicle Examiners being responsible for both the manual recording of inspection and certifying details on a *Certificate of Inspection* (MR1) and entering those details into TRELIS, without independent oversight;
 - allowing a customer to rectify defects identified in a “first inspection” (or “pre-inspection”) and treating the reinspection as the “first inspection”, thereby depriving DPI of revenue that would otherwise be collected; and
 - not reconciling vehicle bookings with the number of vehicles actually presented for inspection, using instead a “no booking” figure to reconcile the difference between vehicles recorded as presented or booked and others (which could be those certified as roadworthy without inspection).

- (10) Work outside DPI, outside working hours, by Vehicle Examiners without appropriate authorisation, which may influence the performance of their public duties.
- (11) Certification of vehicles inspected by the attendant Vehicle Examiner, as opposed to an independent overseer, providing opportunities to circumvent policies and procedures, and to give preferential treatment to particular customers, due to a lack of immediate supervision or oversight.
- (12) Perceived lack of, or insufficient, training for prospective Vehicle Examiners, and lack of ongoing training and support (particularly in relation to use of TRELIS and existence of procedural manuals).
- (13) The particular vulnerability of Vehicle Examiners to customers who are intent on receiving preferential treatment, that is, improper influence. If improper influence is not recognised and responded to appropriately it can lead to the misuse (or abuse) of authority and discretion on the part of a public officer that gives rise to misconduct. The existence, risk and impact on the operations of DPI of improper influence are considered in detail in Chapter Three of this report.

[277] The Commission notes —

- In response to the Commission advising DPI in early December 2008 of concerns arising from the Commission investigation into alleged public sector misconduct by Vehicle Examiners, DPI reacted quickly to protect road users. DPI immediately notified owners of vehicles that may have been declared roadworthy without proper examination that their vehicles needed to be presented for inspection at a Vehicle Examination Centre or other such facility authorised by DPI. Statistics relating to inspection of affected vehicles provided to the Commission by DoT on 10 September 2010 are set out below.

Description	Number
Vehicles of Interest	1,177
Vehicles with Lapsed Registration or Deregistered by Owners	374
Vehicles Requiring Inspection	803
Vehicles Inspected and Passed (Either First Time or at Subsequent Inspections)	788
Vehicles that Failed Inspection (and Issued with a "Work Order")	9
Vehicles to be Inspected ^{vi}	6

- The Osborne Park Vehicle Examination Centre, which opened in October 2009, has a work-flow process that virtually eliminates any customer contact with vehicle examiners before the inspection process has been completed.¹⁸⁵

^{vi} Currently being finalised by DoT.

- DoT is addressing a number of training and information issues through the development of a Knowledge Management System which will provide all licensing staff with equal access to the same legislative, policy, training and compliance information.¹⁸⁶

2.3.8.1 Recommendation

Recommendation 6

In order to protect and promote the integrity of the Department of Transport (DoT) and the services provided by DoT, it is recommended that DoT conduct a systemic review of policies, practices and procedures as they apply to the inspection, licensing and registration of motor vehicles in this State by DoT officers in order to address the issues identified by the Commission investigation (refer [276]) including those relating to:

- practices which enable the certification of vehicles as roadworthy without inspection;
- purchase of multiple transferable inspection receipts (MR numbers);
- particular vulnerability of Vehicle Examiners to corruption, misconduct and improper influence;
- on-site inspection of vehicles on premises of businesses that are not DPI Authorised Inspection Stations;
- protracted queuing at Vehicle Examination Centres that operate on a “first-come first-served basis”, that is, Welshpool and O’Connor, as customers are not required to pre-book vehicle examinations;
- “whistleblowing”;
- flow-on effect of inappropriate conduct by certain Vehicle Examiners to others;
- access to inspection areas by members of the public and contact with Vehicle Examiners before completion of inspection process;
- oversight of Vehicle Examiners; and
- training and support (particularly in relation to use of TRELIS and existence of procedural manuals) provided for Vehicle Examiners.

By doing so, DoT would be in a better position to reduce the incidence of misconduct by eliminating those factors that foster misconduct.

CHAPTER THREE

REVIEW OF IMPROPER INFLUENCE RISK

3.1 Background

[278] Section 7A of the CCC Act specifies the main purposes of the Commission, and section 7B specifies how these purposes are to be achieved. One purpose of the Commission is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”. One of the ways the Commission does this is by helping public authorities to increase their capacity to deal effectively and appropriately with misconduct, that is, to prevent, identify and manage misconduct. The Commission may conduct reviews to assess this capacity, and has done so in the case of several public authorities, for example, a report on the review of WA Health was tabled in the Parliament of Western Australia on 22 April 2010.¹⁸⁷

[279] In February 2009, further to the investigation by the Commission of alleged public sector misconduct by employees of DPI in relation to the inspection, licensing and registration of motor vehicles (which highlighted the vulnerability of Vehicle Examiners to improper influence), the Commission commenced a review of the major licensing functions of DPI to identify the presence of improper influence as a misconduct risk. The review was conducted pursuant to sections 17 and 18 of the CCC Act.

[280] The issue of “improper influence”, as highlighted by the Commission’s misconduct investigation, involved behaviour whereby clients endeavoured to improperly affect the outcome of a business activity or process to gain preferred treatment or a benefit to which they were not entitled. In the context of DPI, improper influence-related misconduct might involve the certification of a motor vehicle as roadworthy without inspection; or granting a *Learner’s Permit* to a person who did not pass the required Learner’s Permit Theory Test. Common methods of improper influence include bribery, threats, offers of gifts or benefits, and claims to special treatment based on personal association or friendship. Whatever method of attempting improper influence is used, it can result in the misuse (or abuse) of authority and discretion on the part of a public officer. It is this misuse (or abuse) of authority and discretion by the public officer that gives rise to misconduct.

[281] The purpose of the improper influence review was three-fold. First, to establish whether the cases highlighted in the January and February 2009 public hearings were anomalies or whether improper influence-related misconduct was widespread throughout licensing areas within DPI. Secondly, if improper influence-related misconduct risk was widespread, to determine the capacity of DPI to protect itself from this risk. Thirdly, to consider the potential impact improper influence-related misconduct had on the achievement of DPI organisational goals.

3.2 Commission Review

- [282] The Commission review was comprehensively documented in a working paper entitled *Misconduct Handling Procedures in the Western Australian Public Sector: Review of Improper Influence in the Vehicle Examination, Driving Assessment and Regional Transport Functions of the Department for Planning and Infrastructure*, January 2010.
- [283] With the restructure of DPI, which occurred subsequent to the completion of the review process, the licensing operations of DPI were transferred to DoT, effective 1 July 2009. However, it was considered appropriate by the Commission to provide both the Director General of DoP, Mr Eric Lumsden, and the then Acting Director General of DoT, Mr Alastair Bryant, with a copy of the working paper for consideration and comment. Accordingly a copy of the working paper was forwarded to each on 2 February 2010, with a covering letter from the Commissioner inviting comment.
- [284] Comment was received by the Commission on 16 March from Mr Lumsden by letter dated 12 March 2010 and on 19 March from Mr Bryant by letter dated 18 March 2010.
- [285] Both Mr Lumsden and Mr Bryant indicated that they agreed with the recommendations in the working paper. Mr Bryant, on behalf of DoT, further advised that some of the recommendations were already being progressed and provided examples of reform initiatives commenced during and since the review. Mr Bryant stated in his letter that “[f]rom an overall management perspective, Transport is re-examining and restructuring its governance model to improve efficiency of the licensing business ... to ensure the deficiencies identified by the CCC are removed”.
- [286] Mr Bryant raised a number of issues with regard to the accuracy and completeness of some comments made in the body of the working paper. As a consequence, sections of the working paper, where considered appropriate, have been modified. In addition, some explanatory footnotes have been included in this chapter. The modifications have been made to clarify the views of the Commission.

3.2.1 Scope and Methodology

- [287] The improper influence review focused on the licensing roles of Vehicle Examiners, Assessors and RTOs.
- [288] Vehicle Examiners are responsible for licensing motor vehicles as roadworthy for use on public roads. DPI only employs Vehicle Examiners in the metropolitan area. In regional areas this function is outsourced to private contractors. Assessors (metropolitan and regional) are responsible for assessing the competence of members of the public to drive all classes of motor vehicles on public roads. RTOs perform a regulatory, licensing and education role in relation to land, sea and air transport policies and

services. All of these roles have a high degree of discretion, responsibility and authority.

- [289] Interviews were conducted with 90 staff including Vehicle Examiners, Assessors, RTOs, team leaders and senior licensing managers at 13 metropolitan Licensing Centres, Vehicle Examination Centres and regional business centres.
- [290] Interviewees were given the opportunity to provide their views about whether improper influence was an issue in their different work environments, about related management issues and to discuss the basis for their views. Quotes taken from the interviews are used without revealing the identity of those involved. The Commission has used the quotes to highlight a specific issue or to reflect a general view. The interviews in which these comments were made were intentionally informal in order to engage in open and meaningful dialogue. Quotes are italicised or placed in inverted commas, and are referred to in the context of the relevant discussion.

3.3 Outcomes of Review

- [291] The risk of improper influence was found to be significant across the sites visited. For Vehicle Examiners and Assessors, and to a lesser extent RTOs, attempts to influence were commonplace occurrences. Most Licensing Officers gave examples of such occurrences.
- [292] Improper influence was not recognised by either Licensing Officers or management as a misconduct risk.
- [293] DPI's approach to managing the Assessor and Vehicle Examiner business functions heightened its exposure to improper influence, and therefore the likelihood of improper influence-related misconduct occurring.
- [294] There is a high probability improper influence-related misconduct is widespread in DPI's licensing operations and as a consequence is likely to be systematically diverting DPI from its organisational licensing goals.

3.4 Risk of Improper Influence

- [295] Improper influence risk exists in licensing operations because of the authority exercised on behalf of DPI by Licensing Officers. This provides an opportunity and motive for unethical individuals to approach Licensing Officers with the intention of manipulating licensing activities to their advantage.
- [296] Licensing Officers have complex tasks which involve considerable responsibility. Decisions made by Licensing Officers directly influence outcomes which have significant financial and social impacts on individuals, families and businesses.

[297] The Operations Division of DPI was comprised of eight semi-autonomous business units, one of which was Licensing. It is stated in the *DPI Annual Report 2008-2009* that DPI, “through its Licensing Business Unit, has a primary focus of ensuring the State has safe drivers driving safe vehicles” on Western Australian roads (emphasis added) and “collected \$1,465,581,227 in revenue” during 2008-2009, which included “motor driver’s licence and vehicle registration fees”. Some service delivery highlights are listed in the Annual Report, such as “the number of practical driver assessments has increased by 1.7 per cent to 127,800 in 2008-2009” and “the number of vehicle licences issued increased by 7.4 per cent to more than 2.3 million”. According to DoT, a total of 618,566 vehicles were examined, in metropolitan Vehicle Examination Centres, during the 2002-2009 Financial Year periods, with 79.71% of those vehicles being passed as roadworthy.¹⁸⁸ The table below provides a breakdown of the number of vehicles examined and passed in each year during this period.¹⁸⁹

Year	Total Number of Vehicles Examined	Total Number of Vehicles Passed as Roadworthy	%
2002-2003	74,736	57,312	76.69
2003-2004	77,808	60,923	78.30
2004-2005	87,873	69,962	79.62
2005-2006	98,759	78,626	79.61
2006-2007	105,575	85,407	80.90
2007-2008	90,666	75,554	83.30
2008-2009	83,149	66,157	79.56
TOTAL	618,566	493,941	79.71

[298] According to Licensing Officers improper influence manifested itself in a variety of ways, both subtle and explicit, and include:

- offers of cash and other bribes;
- an offer of a gift or beneficial “arrangement”;
- emotional pressure relating to personal needs or hardship;
- intimidation and threats; or
- a favour on the basis of assumed friendship or associations.

[299] With very few exceptions Vehicle Examiners and Assessors gave accounts of clients attempting to improperly influence them or recounted the experiences of colleagues who had been the subject of attempted improper influence from clients. RTOs did not as readily identify improper influence as a risk. However, in discussing their responsibilities and authority it was clear RTOs had also faced situations where improper

influence was an issue, if not as frequently as Vehicle Examiners and Assessors.

... my first bribe offer here [as a Vehicle Examiner] was for \$300, that was my first day on the job and the last was for \$50 and that was only two days ago ... it was his way of saying thanks for helping him out ...

... I encountered a customer who became aggressive after his vehicle was failed and he threatened he would come and get me after work. He threatened to hit me ... we [Vehicle Examiners] are under emotional pressure from (clients) every day ...

... I [Assessor] have clients that give stories to try and influence my assessment ... it has happened ... not bribery, it's more like emotional pressure ... one time there was a pregnant candidate who was in tears, her father was going to hit her if she didn't pass and get her licence ...

... first you have ethnic people whose lifestyle revolves around payments and second you have young girls dressed [to influence] ... Many people tell stories, how badly they need the licence for their job ... they try to pressure the Assessors...

...when they [Assessors] go to [a remote location], because they are only up there occasionally it becomes a local social event and it comes down to how they manage matters on the spot ... the greatest risk is reward for favour ... how do we teach them [the clients] it is wrong ... how do you maintain that level ... you can slip ... it is such a difficult one ...

... yeah we've [Assessors] had a couple of old ladies, it comes down out of the blue actually and sometimes from people you wouldn't expect ... there was a German lady who offered "I do this for you" and I just told her "no you don't do anything for me" ...

... I [RTO] was looking at this application for this bloke who wanted to start this business in [tourist/fishing centre] ... the guy said "do you want to come out in my boat, I'll run you up by the cliffs ... give you a feed of crays" ... I'm sure he was just doing it to be friendly! ...

... [RTOs] infringe people on water, they are not happy about it and they do say things to try to get out of it ...

[300] On the evidence of the comments made during the interviews, it might sometimes be difficult for Licensing Officers to distinguish between improper influence attempts and people simply, and genuinely, expressing their gratitude.

3.5 Dealing with Improper Influence

[301] Within licensing areas of DPI and amongst Licensing Officers, improper influence incidents were dealt with in a variety of ways depending on the public officer involved. Licensing Officers stated it was an individual choice as to how they responded to improper influence attempts as there was no standard practice or management strategy to guide them. These individual responses included:

- ignoring the approach or offer;
- deflecting the approach through a passive response;
- strongly worded response to the person that it was not acceptable; or
- reporting the incident to a team leader.

[302] The majority of Licensing Officers stated that improper influence risk had not been formally identified by DPI management and was not raised with them during the course of their employment. Most felt that DPI had not prepared them for improper influence situations. In the absence of any standard practice or management strategy responses to improper influence attempts were *ad hoc*, with Licensing Officers doing the best they could, guided largely by their own personal values and beliefs about what was an appropriate response. Some Licensing Officers dealt with these situations better than others. The impact of improper influence attempts on individual Licensing Officers also varied with some being quite unaffected and dismissive, whereas others were moved or troubled.

[303] While in the main Licensing Officers agreed that improper influence attempts by clients should be reported, generally there was no clear understanding about when to report, how to report, who they should report to or why it was necessary. Decisions to report or not were based on the individual Licensing Officers past experience or their sense of what was appropriate in the circumstances.

... you're not told anything about it ... you are not told if you are offered a bribe do this. There wouldn't be anyone that hasn't been offered a bribe at some time. The problem is the department [DPI] doesn't back us up ever ... how you handle it is the problem, there is a two way learning curve between the examiner and the client ...

... I [Vehicle Examiner] reported this [assault threat] to my supervisor and DPI provided me with counselling because I felt threatened and provoked ... I still have difficulty following this incident and there was no procedure in place to deal with a situation like this, either when it occurred or now ...

... I [RTO] haven't seen any forms, structure of what you are supposed to do ... how to report it or anything ...

... you [Assessor] can make a mountain out of a molehill, you can escalate these things or not ... some people get desperate ...

...we're [Vehicle Examiner] really duty bound to take it to my immediate supervisor ... [Asked, your idea or a procedure?] ... it's probably there deep in the print but no it hasn't been addressed [by DPI] ...

... If they did [attempt to improperly influence me] I would go to the Senior Examiner, a team leader, I certainly would go and whisper to him ... [Asked is that a personal decision?] Yes, nothing from the department [DPI] ...

... what I [RTO] would want to know if that happened to me is how do I report this? ... what I would do is get on the phone and ask one of my seniors ... that's just common sense isn't it? ...

[304] With regard to reporting situations where they believed a colleague may have been improperly influenced Licensing Officers were less certain about what they would or should do. Many questioned whether they would be in a position to identify such events and for most there was a reluctance to report unless they were absolutely certain and/or had spoken to the person first. Not wanting to "dob" on a colleague and the reaction of co-workers were raised as issues of concern. Some Assessors held the view, based on past reporting experiences, that there was little value in reporting as nothing would be done.

... I [Assessor] don't know, I would be very shocked ... these are good guys ... its something important, there needs to be some sort of structure, a system so I know what I am doing ...

... it depends on the circumstances. You can do things in many ways ... if I saw money being exchanged, I guess I would bring it to the Senior Examiner ... I want to do this job until retirement so want what's best for the job ...

... I'd be approaching the person first, get it straight from the Examiner to the person manipulating them ... I've never been given a structured way of reporting but it is common sense really ... cover my [back] ...

... I [Assessor] would [report]. My values my ethics I'm no shrinking violet I would tell but I would have to have evidence ...

... really there is nothing ... process-wise that tells us how to handle this situation ... I decided to approach him [fellow Assessor] ... he was only assessing young females ... he was back in 20 minutes [for a 35 minute assessment] and they would all pass ... I got the blame for his resignation ... I definitely would do things differently ... and it would have to be pretty good proof! ...

[305] Regional Assessors and RTOs were found by the review to be more likely to report improper influence incidents than their metropolitan counterparts, reflecting the more supportive working arrangements at regional business centres. However, given that RTOs as a group also tended to have less understanding and awareness of improper influence risk, there is no

guarantee that RTOs would actually identify these events in the first instance.

3.6 Management and Supervision

- [306] The interviews with Licensing Officers revealed that improper influence risk was not well managed within the Licensing Services section of DPI. That is, it was not formally recognised, there were no agreed processes to deal with the problem (or at least Licensing Officers interviewed were unaware of processes) and Licensing Officers, with the exception of RTOs, were not convinced about the level of support on offer from DPI should they report attempts to improperly influence them.
- [307] How Licensing Officers were themselves managed and supervised was also found by the review to contribute to DPI's exposure to improper influence risk.
- [308] Management and supervision arrangements varied between regional and metropolitan centres. In the metropolitan area, Vehicle Examination Centres and Licensing Centres were separate, with different management arrangements, including those locations where the Vehicle Examination Centre and the Licensing Centre were physically adjacent.
- [309] In regional centres the Assessor and RTO functions were integrated within the overall business activities of the business centre.
- [310] For metropolitan Vehicle Examiners and Assessors, these management arrangements were found to heighten their exposure to improper influence risk.^{vii}

3.6.1 Metropolitan Vehicle Examiners

- [311] Vehicle Examination Centres and their operations were controlled centrally by DPI. Following the Commission investigation a "team leader" position was developed for these sites. This person was a Senior Vehicle Examiner who exercised the daily administration and supervisory responsibilities for the Centre and was expected to provide technical advice to Vehicle Examiners as required. At sites where examinations were not booked through DPI's central booking system the team leader was also responsible for overseeing daily work flow. Team leaders had limited availability to conduct vehicle examinations.
- [312] Prior to appointing team leaders technical advice and support for Vehicle Examiners at the site level was provided by a "designated" Senior Vehicle Examiner. The Senior Vehicle Examiner did not have the same general

^{vii} DoT in providing comment to the Commission about the working paper expressed the view that changes made to the arrangements for the management and supervision of Assessors and Vehicle Examiners were positive improvements. These changes have been noted. However, the Commission's view remains that there has been no significant improvement in the quality of day-to-day management of these officers. Letter to the Commissioner of 18 March 2010 from the then Acting Director General of DoT, Mr Alastair Bryant [CCC 75511].

administration and supervision responsibilities as the team leader. Effectively there was little local level management at Vehicle Examination Centres at that time. Any oversight and support was primarily the responsibility of an area coordinator located at DPI Head Office. Coordinator positions no longer exist.

[313] With regard to the team leader position Vehicle Examiners considered that their administrative responsibilities and lack of management training undermined the team leader's ability to provide effective oversight of examination activities.

... now that it is the team leader position it is very different, more paperwork and managerial, but the problem is that there is no one out there [in the pits] ... their job isn't to inspect vehicles anymore ... you really need someone in between [the team leader and the Vehicle Examiner] ...

... [Asked so how were you prepared for the job as team leader?] ... Senior Examiner's job was given a new name, a new level and they forced some other things onto us ...

[314] Generally speaking, Vehicle Examiners and team leaders expressed the view that Vehicle Examiners and Vehicle Examination Centres were isolated from the organisation, and that management and supervision arrangements for Vehicle Examiners and Vehicle Examination Centres were unsatisfactory.

... what we have is seat warmers who play musical chairs and I don't even bother learning their names because as soon as I do they're gone, but if someone said here's our direction, here's where we will be in two years then I'm on ...

... my biggest gripe is we just do not have stability in management and to make matters worse we have no managers that have worked at the coalface and they have no idea what we face ...

... yes it's [supervision and management] there if you need it ... we've been a bit short staffed so there's queues ... it's different from station to station, how things are done ... Midland to Welshpool, even the forms are different ... should be the same ...

... the Department [DPI] has never supervised examiners. We're the blue collar workers of the Department [DPI], the evil you have to have ...

[315] In terms of management from the Department centrally, Vehicle Examiners said central management was distant and disconnected from Vehicle Examination Centres, uncaring of Vehicle Examiners and the vehicle examination function, and principally concerned with productivity. Vehicle Examiners expressed very little trust or belief in management.

... you walk your own line. DPI doesn't back you up; they don't back the staff up. You're like a shag on a rock ...

... DPI do not care for staff ... management won't come here unless there is a problem ...

...we don't trust management ... [suppressed] keeps lying to us...

... they are more focused on productivity. They just want to whip us and get more out of us. They care more about productivity, more than if we are doing the job properly ...

[316] Some Vehicle Examiners believed that DPI management had been complicit in the behaviour exposed during the Commission investigation of alleged public sector misconduct involving DPI Vehicle Examiners.^{viii} They said that management had been aware of many of the contributing factors existing at Vehicle Examination Centres but did nothing about it.

... what went on at Welshpool you can see. Blind Freddy could see that they had a problem. They were pumping cars through there and it was pointed out to [management] and the bloke who told them got told to pull his head in ... it was management's fault and they didn't care ... they did detect it, they were told, they knew about it ... the number of vehicles going through ... and the "[off]-site" lists – it was obvious ... [Vehicle Examiners] could see statistics, so everybody knew ...

[317] Despite the seriousness of the events brought to light by the Commission investigation, Vehicle Examiners interviewed were of the view that DPI management had not yet formally addressed the situation, either with them directly or by improving systems and procedures. Recently increased administration responsibilities for Vehicle Examination team leaders and rotating Vehicle Examiners and team leaders across Vehicle Examination Centres were not considered as positive initiatives or viewed as part of any wider organisational strategy for addressing the issue of misconduct risk.^{ix}

3.6.2 Metropolitan Motor Drivers Licence (MDL) Assessors

[318] Previously, Assessors carried out the driver assessment function separately from the Licensing Centre and with significant autonomy. While they are now responsible to the centre manager and a supervisory

^{viii} DoT in providing comment to the Commission about the working paper expressed the view that the statement "Licensing management knew but did nothing" was both "wrong and unacceptable" in that it failed "to record the actions taken by Licensing to seek assistance from the then [G]overnment to deal with the many and varied problems". The working paper presented the views of the people interviewed, and the statement was written in this context. In order to ensure clarity of the Commission's view, the statement has been rewritten as a paraphrase of quotes by the Vehicle Examiners. Letter to the Commissioner of 18 March 2010 from the then Acting Director General of DoT, Mr Alastair Bryant [CCC 75511].

^{ix} DoT in providing comment to the Commission about the working paper stated that a "program of on-going rotation of motor [V]ehicle [E]xaminers and [t]eam [l]eaders" was considered to be an "important initiative" designed "to ensure that complacency and familiarity" do not occur. The purpose of the statement is to illustrate that those interviewed considered that rotation was not a positive initiative. Letter to the Commissioner of 18 March 2010 from the then Acting Director General of DoT, Mr Alastair Bryant [CCC 75511].

arrangement is being developed within Licensing Centre operating structures, they were formerly managed centrally by area coordinators. Under that arrangement there was no daily management oversight, direction or support for Assessors.

[319] A number of Assessors said there was more support and supervision under the former management arrangement. Although not on site, area coordinators were considered by some Assessors to be experienced and more readily accessible.

... coordinators used to be Assessors. They knew the job and understood what that entailed. The branch managers do not have the same experience or understanding of the Assessor's job ...

[320] Assessors did not feel valued within the organisation.

... we are just the bottom feeders and not so important ...

... we're a very isolated group, the last to be told or involved, any requests for information is rejected, you get no positive feedback, only complaints ... you harden up, you cover your [back] ...

... as a rule we stick together, what is spoken in the office stays in the office ... there is an understanding that if anyone walks in we all shut up, it's between ourselves ...

[321] According to managers interviewed, the driver assessment function and Assessor group was seen within certain management areas of DPI as an unwanted, dysfunctional and problematic area of operation. Despite the new management arrangement it appeared this negative view about the Assessor group persisted. Some managers expressed a reluctance to accept responsibility for this area. Generally, there seemed to be a tentative and somewhat reactive approach to managing the area.

... these guys were almost like a wart...there is a culture there that is, I think, still a bit ordinary ...

... they're belligerent, anti-establishment and disruptive within their business units ...

... the previous history of central management of MDL Assessors, rather than at branch level, is a factor in the negative culture issues ...

... if you went to a branch manager in the past and asked about MDL Assessors they would claim no responsibility for them, now I have told them "those [expletives] are yours" ...

[322] The consensus view among managers was that bringing Assessors under their control was an endeavour to make them more accountable for their time and to increase Licensing Centre efficiencies by making use of Assessor downtime for the performance of other duties. Assessors said they received no advice from DPI management about the basis for the

change and whatever information was provided was lost in the system of emails.

- [323] There was no evidence of a strategy aimed at providing proactive support and direction for Assessors, including either how to deal with improper influence risk within the driver assessment function or the level of responsibility that was assigned to Assessors.
- [324] Within DPI, Assessors continued to make assessments about driving competency over routes they designed, with almost complete autonomy. There was little or no day-to-day management scrutiny over assessments and assessment results.^x Audits of assessments were conducted centrally and appeared to focus on identifying Assessors who were operating at the extremes of the pass-fail spectrum.

3.6.3 Regional MDL Assessors and Transport Officers

- [325] Regional business centres varied in terms of size, but all had a manager, supervisors, senior customer service officers, customer service officers, Assessors and RTOs. A supervisor or senior customer service officer was responsible for Assessors and the driver assessment function. Where RTOs performed a driver assessment function, that aspect of their work was supervised by the responsible senior customer service officer or driver assessment supervisor.
- [326] The driver assessment function was integrated within the overall business activities of the business centre. There was a strong sense of cohesion between Assessors and their business centres and clear evidence of coordination and supervision of their assessment activities within the wider business activities of centres. This was a significant difference to the metropolitan centres, positively influencing how most regional Assessors perceived themselves within the organisation, and how they were managed.

... Yeah, they're an integral part of that [business centre] team, they're physically located ... [It] forces them to interact ... monthly staff meetings where issues are discussed, so they know they're part of the team ...

... the branch has a "one-stop-shop" focus ... all staff have become multi-skilled ... being a small office helps because [Assessors] have to sit among the supervisors and customer service officers ...

... they are fully integrated into the branch. They mix, talk and work the same as other staff ...

^x DoT in providing comment to the Commission about the working paper disputed this conclusion stating "Assessors and their assessment results are monitored closely by centre management and by the Licensing Driver Standards Unit". This view was not supported by the information provided to the review team which consistently reflected that managers were unable to provide close monitoring and assessment audits were limited. Letter to the Commissioner of 18 March 2010 from the then Acting Director General of DoT, Mr Alastair Bryant [CCC 75511].

... there are regular meetings and discussions, the group shares information on locals to ensure the group has the knowledge of what may occur during an assessment. The group also shares lessons, what reaction is best practice and when not to react in a certain way, so that all know what to do in future situations ...

... it works for me. I can see the risk factor involved but I carry a phone and can speak to my supervisor, if issues arise. I talk to the supervisor and can get feedback as required, I also carry a diary and note certain situations down until I get back and can report them ...

- [327] RTOs were directly responsible to the regional manager, who provided limited oversight. (A new position of Operations Manager has been created with a view to providing more day-to-day support and direction for regional staff generally, including a responsibility in respect of RTOs.) RTOs interviewed believed regional managers to be easily accessible and readily available to respond to issues raised by RTOs. The management approach relied on trust, open communication and RTOs engaging with the manager as needed.
- [328] For both regional Assessors and RTOs, however, there was no formal strategy to provide proactive support and direction, particularly in respect of managing misconduct risk. What processes did exist were local, developed *ad hoc*, and depended on the individual manager and business centre. Even so, these arrangements and the general encouragement of communication at regional business centres were seen to increase opportunity for Assessors and RTOs to discuss improper influence incidents and raise concerns.

3.7 Training

- [329] While experience varied, most Licensing Officers indicated they had received some training, usually at commencement. Most Licensing Officers did not consider the training had prepared them for their work environment, their responsibilities or the risk of improper influence which received only limited attention. Assessors, for example, reported that the issue of bribery had been flagged in their training. For RTOs and Assessors, training had a strong technical content.

... it's not maintained in training [Assessor] ... the training does cover if a bribe or inducement is offered ... it's brought up in general but not covered in depth, there aren't any scenarios ...

... you're [Vehicle Examiner] not told anything about [misconduct]. You hear things but you are given nothing. You are not told "if you are offered a bribe do this" ...

... the manner in which the [work] environment was raised was along the lines of "if you get offered a bribe, for God's sake don't take it", but there was no specific training to address it ... there was a certain

assumption that we [Assessor] would know what to do if it happened

...

... most or all staff do the TRELIS training and corporate induction ... [improper influence is] all covered in the training ... there's never been any issues raised until something like [the Commission investigation of alleged public sector misconduct involving Vehicle Examiner] happens ... it's all explained in the Code of Conduct and we all got copies ... seeing you guys have come and explained why you're are doing what you are doing, maybe something more formal in the training ... maybe something a bit more structured ... I [Assessor] think that is how it is in DPI, you don't get a lot of training

...

... I [Vehicle Examiner] did go for a one-day induction thing. I thought it was a waste of time and to me was totally irrelevant. That was about it. I was given authority on the computer and away you went ...

... [I] received two weeks induction training ... I [RTO] read all about integrity stuff it came into everything ... it was in it all ... prosecutions, marine safety, all of it ... you might get an offer ... how to deal with the media ... what not to say ... what to say ...

3.8 Conclusions

[330] The review found that the risk of improper influence was both widespread and significant in licensing areas of DPI. Vehicle Examiners and Assessors, and to a lesser extent RTOs, are regularly faced with improper influence incidents including bribes, threats and intimidation, emotional pressure and requests for favour based on assumed friendship or association.

[331] Comments made during the review demonstrated the following.

- (1) In general, neither management nor staff recognised improper influence as a misconduct risk.
- (2) In general, neither management nor staff recognised the significance of the authority, discretion and responsibility exercised by Assessors, Vehicle Examiners and RTOs and the relationship between that authority and discretion and improper influence risk.
- (3) DPI management provided no focus on improper influence in any organisational management strategy, policy or procedure, either centrally or locally. In direct consequence of that Licensing Officers:
 - (i) had varied perceptions about the seriousness and implications of improper influence;

- (ii) dealt with improper influence incidents involving themselves or colleagues according to their personal values and/or as they believe their peers expect them to act, rather than in accordance with organisationally determined responses;
- (iii) generally had little understanding about why it was necessary to report improper influence, including how, when and to whom such reports should be made;
- (iv) were deterred from reporting improper influence incidents because they were concerned about either adverse responses from the organisation or from their peers, or both; and
- (v) who overcame this deterrence were thwarted by uncertainty about how and to whom improper influence incidents should be reported.

(4) Overall, metropolitan Assessors and Vehicle Examiners are distrustful and resentful of DPI management believing that DPI does not value either them (as individuals) or the licensing function which they perform – a view not without foundation based on comments by Licensing Centre managers.

[332] Insofar as DPI's exposure to improper influence is concerned these management issues are a serious problem. They demonstrate that not only did DPI effectively ignore improper influence risk, it managed the people most exposed to that risk in ways which made them feel unwanted and isolated from the organisation. This effectively created a motive for them to respond to improper influence attempts by engaging in misconduct (by taking bribes, for example) and heightening the organisation's exposure to improper influence risk.

CHAPTER FOUR

REVIEW OF MISCONDUCT MANAGEMENT

4.1 Background

- [333] As mentioned previously, section 7A of the CCC Act specifies the main purposes of the Commission, and section 7B specifies how these purposes are to be achieved. One purpose of the Commission is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”. One of the ways the Commission does this is by helping public authorities to increase their capacity to deal effectively and appropriately with misconduct, that is, to prevent, identify and manage misconduct. The Commission may conduct reviews to assess this capacity, and has done so in the case of several public authorities.
- [334] In January 2008 the Commission commenced an organisational review of misconduct management by DPI. The review was conducted pursuant to sections 17 and 18 of the CCC Act and focused on the operational and corporate functions of DPI.
- [335] Chapters Two and Three of this report addressed, respectively, alleged public sector misconduct by employees (Vehicle Examiners) of DPI in relation to the inspection, licensing and registration of motor vehicles and the exposure of DPI licensing operations to improper influence-related misconduct risk. This chapter will examine the capacity of DPI systems and processes to effectively manage misconduct risk generally. Focusing on the adequacy of policies, procedures and structures within DPI to prevent, manage and appropriately respond to misconduct events, this chapter will provide a broader organisational context for understanding how DPI dealt with its misconduct risks.
- [336] Given the size, diversity and impact of activities by DPI in the wider community it is reasonable to suppose that the organisation’s misconduct risks do not end with improper influence, nor that they exist within the Licensing Services section alone. Misconduct can occur in any area of an organisation’s operation and can involve a broad range of behaviours. Because of this it is important to establish the effectiveness of wider organisational systems in dealing with and managing misconduct.
- [337] Some of the themes that emerged from the Commission investigation of alleged public sector misconduct by Vehicle Examiners and review of improper influence risk, that is, absence of misconduct policies, lack of awareness about misconduct risk, inadequate supervision, and over-reliance on staff integrity, are relevant not only to DPI licensing operations, but have the potential to impact more broadly across the organisation (now DoT) and in relation to other types of misconduct risk.

- [338] By virtue of its activities, DPI was exposed to high levels of misconduct risk, both in terms of the possibility of misconduct occurring and the consequences of misconduct when it did occur.
- [339] The review examined the capacity of the systems within DPI to identify misconduct risks and deal with misconduct suspicions. It found that despite a clear commitment by Executive to building the organisation's capacity to manage misconduct this had not been effectively communicated throughout the organisation. Approaches across business units were inconsistent, driven by the views of individual managers, and DPI staff generally were sceptical about management commitment to dealing with misconduct. There was poor understanding about what constituted misconduct and the identification of corporate misconduct risks was embryonic. In the absence of a strategic approach to the development of a whole-of-agency misconduct management mechanism, the systems, processes and policies in place were *ad hoc* and uncoordinated. DPI had some considerable way to go before it could be said to be effectively managing its misconduct risk exposure.

4.2 Commission Review

- [340] The Commission review was comprehensively documented in a working paper entitled *Misconduct Handling in the Western Australian Public Sector: Operational and Corporate Functions of the Department for Planning and Infrastructure*, April 2009.
- [341] A copy of the working paper was forwarded to the Director General of DPI, Mr Lumsden, on 2 April 2009 with a covering letter from the Commissioner inviting comment.
- [342] Comment was received by the Commission on 21 May 2009 from the Director General by letter dated 19 May 2009. Mr Lumsden strongly supported all recommendations in the working paper and expressed an intent to ensure that the issues identified were addressed as part of a wider organisational review process associated with the formation of DoP (and DoT), effective 1 July 2009.
- [343] A copy of the working paper was subsequently forwarded to the then Acting Director General of DoT, Mr Bryant, on 2 February 2010, together with the improper influence working paper referred to in Chapter Three. A covering letter from the Commissioner invited comment, which was received by the Commission from Mr Bryant on 19 March by letter dated 18 March 2010. Mr Bryant stated in his letter that DoT agreed in principle with the recommendations in the review working paper, except in relation to the proposed involvement of the Internal Audit Unit in reviewing the misconduct management process. The Commission has not pursued that recommendation.

4.2.1 Methodology

- [344] The review process involved the following:

- identifying the business objectives and structure of DPI;
- considering and assessing legislation, policies, systems and procedures relating to conduct or misconduct by DPI employees;
- analysing relevant DPI corporate documents, publications, audit reports, data and files;
- examining a sample of disciplinary files held within the Human Resources Branch (HR) of DPI in order to determine how misconduct matters were handled;
- visits to 10 metropolitan and two regional sites; and
- conducting interviews and a perceptions survey.

[345] Interviews were held with about 60 managers from the Operations Division and Strategic Corporate Support of DPI, and about 30 managers and staff from regional and metropolitan Licensing Centres. Largely, the staff interviewed were in key areas or positions, had some responsibility (assumed or specific) for detecting, preventing or managing misconduct, and/or were staff with knowledge of specific DPI misconduct matters.

[346] Quotes taken from the interviews are used without revealing the identity of those involved. The Commission has used the quotes to illustrate views expressed during the review and where relevant to support the Commission's overall assessment. Quotes are italicised or placed in inverted commas, and are referred to in the context of the relevant discussion.

[347] The purpose of the perceptions survey, conducted by an independent market research company on behalf of the Commission, was to obtain information about attitudes to and awareness about a range of issues connected with misconduct management and reporting, by DPI employees. A total of 1,898 employees were given the opportunity to participate (anonymously) in the survey (1,368 via online and 530 via post). A total of 538 useable responses were received (28.3%), which is higher than the usual response rate to perceptions surveys (by the public), which are typically between 10-15%.

4.3 Leadership and Misconduct Management

4.3.1 Workplace Culture

[348] Multiple workplace cultures were observed to have flourished within DPI, at the expense of a strong unifying corporate culture and system. The primary influence in the development of these multiple cultures appeared to be historical, deriving from the amalgamation of various business units within other departments to form DPI. The review found that some business units, including their managers, continued to identify themselves as being different from the greater DPI organisation. This was because they believed their roles and functions were somehow unique.

... DPI is still a mish-mash of systems, attitudes and cultures. It's large and sprawling ...

... culturally, DPI is an unusual organisation ... it is still struggling to merge the distinct cultures of the old land, transport, marine, planning and licensing departments, which is disappointing when you consider we are five, six years down the track ...

... this organisation isn't dysfunctional it's disjointed ...

[349] Although the appropriateness of multiple workplace cultures is an issue for DPI to determine, from a misconduct prevention and management perspective, the overriding impression was that it was a contributing factor in the differing approaches to misconduct between business units. Some corporate guidance was required to ensure minimum acceptable approaches across DPI to the prevention, identification and management of misconduct.

4.3.2 Executive Leadership

[350] The Executive of DPI demonstrated a clear commitment to improving the organisation's capacity to manage misconduct. Prior to the review the Executive had identified gaps in DPI's governance framework, including aspects directly relevant to misconduct management, and had commenced a process of organisational change. This included:

- implementation of a range of misconduct resistance initiatives, such as developing and releasing DPI's Misconduct Management Framework;
- establishment of a Governance and Organisational Development Unit resourced to provide focus for DPI's governance strategies, including the strengthening of misconduct management;
- identification of corporate-wide business risk management systems as a key area for development;
- marked increase, compared to previous years, in the level of reporting on misconduct, corruption and ethics issues in the *DPI Annual Report 2006-2007*;
- emphasis on good corporate governance (that is, "doing the right thing, at the right time, the first time") with this message being reflected in a range of DPI publications;
- revision of DPI's Code of Conduct to include a section on the appropriate way to deal with lobbyists; and
- misconduct resistance being a theme among the 2007-2008 business plans for Strategic Corporate Support and within that Finance and Procurement, and the Licensing Business Unit, located in the Operations Division.

4.3.3 Senior and Middle Management

- [351] The interviews reflected a picture of inconsistency amongst managers in relation to their commitment to managing misconduct and engaging staff in building misconduct resistance. Commitment was mostly locally driven, with some areas of strong practice and other areas where managers were virtually silent on this issue. There was no evidence of an organisational systems-based approach to managing misconduct.
- [352] In one business unit, where the manager had a clear commitment to effectively managing misconduct, there was a good understanding of what misconduct was, supported by strategies to treat identified risks. Management's commitment to addressing misconduct risk was regularly communicated to staff and formal training in this area had also been provided. The result was a business unit culture of strong accountability and professionalism as part of the delivery of broader service objectives.
- [353] This type of approach was, however, much less common than the approach which failed to overtly demonstrate a commitment to the management of misconduct. In these business units there was a poor understanding of misconduct, managers gave no apparent thought to specific misconduct risks and there was no documentation of business risks generally. Communication of policies to staff, apart from technical directives, was limited and there was a total attention on service outcomes.
- [354] While few managers claimed to have communicated with staff about the link between policy, compliance and misconduct, some good initiatives were observed. For example, one manager stated:

... I think it's of paramount importance that I talk to my staff about ethics, confidentiality and conflict of interests. I explain why it's important, that it can ruin your career, we discuss tricks that stakeholders can use to pressure you and how ethics are vital in what we do ...
- [355] Another manager who had introduced a quality systems approach said:

... the quality systems approach is to ensure robust processes are in place to govern how everyone does what they do ... incorporating risk management. Staff initially found the process a little difficult. It's a complete cultural change for them ... it makes everyone look at what they do, removes duplication, bottle necks, improves service delivery ...
- [356] Managers commonly reported that DPI was "getting really serious" about some specific conduct issues, such as declaring conflicts of interest. However, this message did not appear to have filtered down to all managers below the general manager level (third highest management tier). Some front line managers interviewed were unable to call to mind any programs, training or other activity, being implemented within their business units in order to address those issues.

[357] One manager commented that there was little communication from management and Executive around the subject of misconduct.

... My perception is that staff understand what misconduct is but there has been no management discussion around it, only corporate newsflashes etc ... DPI could improve communications with the business units ...

4.3.4 Staff Attitudes and Beliefs

[358] The review found that many staff were sceptical about the commitment of Executive and managers to ethical conduct. This view was based on staff witnessing management acting contrary to organisational values and/or breaching corporate policy, including a failure to respond to allegations of misconduct.

... how can the organisation expect anything of staff when everyone sees the manager bending the rules ...

... it's a running joke to some ... it should be renamed the Department of Nepotism ...

... you don't have to have a degree or come from the CCC to know what's right or wrong ...

[359] Twenty-nine per cent of respondents to the perceptions survey believed DPI Executive/managers did not demonstrate a commitment to preventing and managing misconduct. This would indicate that the rhetoric of ethics and misconduct management may not be being reinforced by the actions of managers and Executive.

[360] Fifty-four per cent of respondents to the perceptions survey who believed Executive and managers demonstrated a commitment to misconduct management based this on misconduct management initiatives in areas of policy, discussion and training. Demographic information about respondents indicates that these initiatives are achieving greater traction among managers and supervisors than among employees generally.

4.4 Dealing with Misconduct

[361] According to the DPI Register of Disciplinary Matters, 66 matters involving possible misconduct had been reported to HR since 2003, some of which were handled as grievance issues even though they involved behaviour, in the opinion of the Commission, sufficient to form a reasonable suspicion of misconduct, and the Commission had not been notified of all those matters required to be notified by section 28 of the CCC Act. In some matters the allegations of misconduct were not sustained by preliminary investigations and were dealt with as administrative/human resources issues and, in relation to another matter, no action was taken, following an internal inquiry, due to the resignation of the public officer who had been the subject of the inquiry.

[362] Examples of matters which may have concerned misconduct and of which the Commission should have been notified included:

- a woman complaining that a colleague assaulted her by “grabbing her buttocks”;
- a Licensing Officer who misled a fellow officer to avoid paying the applicable stamp duty for a vehicle that he was registering; and
- the unauthorised access of TRELIS by an employee.

[363] A number of managers interviewed said they had not had to deal with any misconduct issues in the workplace, yet when asked if there had been any performance management issues, case examples often included behaviour that appeared to involve misconduct.

[364] Of those managers who had dealt with misconduct issues, the majority said that on receipt of an allegation of suspected misconduct, they notified either HR or their line manager in the first instance. Following this, managers undertook a preliminary investigation (at the direction of HR) and either resolved the issue or reported the matter back to HR with the expectation that HR would then report the matter to the Commission, if required.

[365] This action was in adherence to the reporting process detailed in DPI Policy 4.29 *Disciplinary Procedures*, which contained a flow chart instructing managers to undertake preliminary investigations to gather available facts when there was “suspected inappropriate behaviour identified”. HR would not decide whether to become involved and/or notify the Commission prior to the manager conducting these preliminary investigations.

[366] One of the consequences of this approach was that some managers were confused as to whether they should report a matter before investigating it.

[367] A deterrent to reporting to HR raised by some managers was the cost of external investigators being borne by the reporting business unit, which impacted on their operating budget. Therefore, whenever possible, they preferred to deal with matters involving staff behaviour themselves.

... they employ Pls [Private Investigators] to investigate serious matters. The PI decides on misconduct but they can only take it to a point. Are Pls authorised persons for that purpose? I don't know ... what is the annual cost of Pls, where is the policy or decision on using them? ... For this reason a lot is dealt with at management level ...

[368] The combination of a policy that required managers to conduct preliminary investigations in the first instance and the requirement for the costs of investigations to be borne by the reporting business units, appeared to have resulted in the majority of staff behavioural issues not being reported to HR and, in turn, not being notified to the Commission. As a result, misconduct was often being dealt with by line managers as administrative or performance issues.

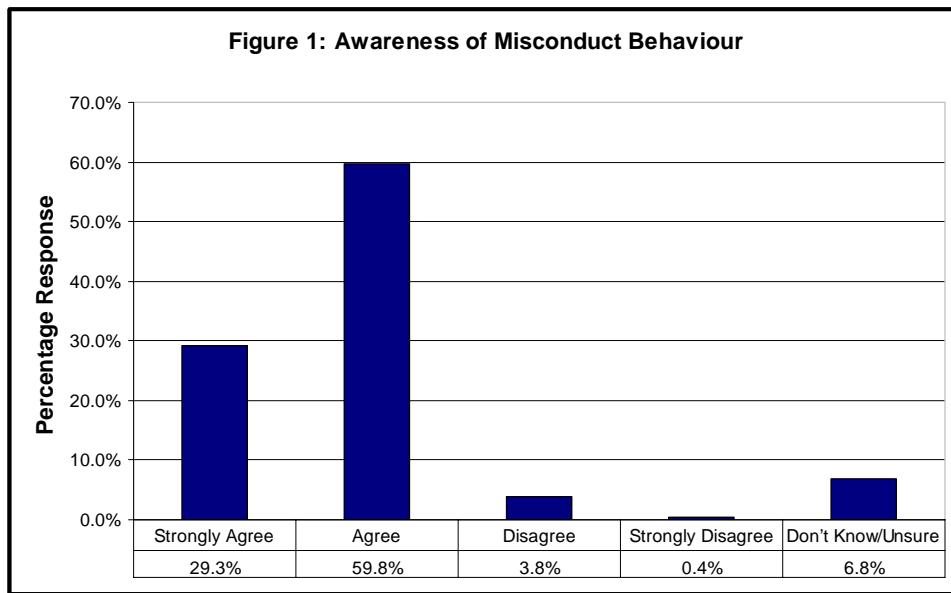
[369] A large proportion of managers said that when dealing with minor disciplinary issues involving behaviour which may constitute low-level misconduct, they attempted to manage the situation within the business unit without involving HR. This was particularly so when the behaviour appeared to be a one-off incident or there were understandable circumstances.

[370] Few managers used the word “misconduct” when describing such behaviour even though the examples used included behaviour such as:

- unauthorised access to confidential information;
- misuse of corporate credit cards to purchase alcohol; and
- unauthorised use of organisation assets to run private businesses.

[371] Staff awareness of what behaviour might constitute misconduct and their willingness to report misconduct were two of the issues addressed in the perceptions survey.

[372] Figure 1 below illustrates that 89.1% of respondents considered they were aware of what behaviours might constitute misconduct. This result conflicted with the comments made during interviews and discussions where few were able to describe the specific misconduct behaviours and risks associated with particular activities of business units. This became more understandable when looking at how staff obtained their awareness, that is, 62.8% reported learning about misconduct through general knowledge.



[373] Similarly, while 63.8% of respondents said they would report misconduct, over 33% were either unsure about reporting or would not report, and nearly 50% of respondents did not know or were unsure about whether DPI was serious about protecting those who reported misconduct.

- [374] In terms of staff perception about how DPI handled misconduct, 43.6% of respondents to the survey said they did not know or were unsure about whether DPI dealt with misconduct in a consistent and fair manner. This response was consistent with interview comments and together indicated that misconduct cases were not dealt with in an effective, transparent or accountable way.
- [375] From an organisational perspective, the absence of a corporate approach in favour of *ad hoc* local approaches means there is unlikely to be any consistency in terms of the management and outcomes of reported misconduct.

4.5 Misconduct Management

4.5.1 Identification of Misconduct Risk

- [376] Senior managers within DPI advised that the management of risk at a corporate level was at an “embryonic” stage. Risk had been addressed through business unit plans and misconduct risk had not necessarily been part of the risk management regime. In 2007 some efforts were made at a corporate level to identify general risk, with misconduct identified as one of DPI’s business risks, although not addressed in detail. In 2008 DPI’s Audit Committee expanded its scope to include risk management and some efforts were made to standardise risk assessments and to include these in the business plans of the individual business units. Templates asked for each business unit to take responsibility for identifying misconduct risks in their own area, with scope for treatment plans and internal controls for the mitigation of these risks to be developed when necessary.
- [377] By way of example, the Strategic Corporate Support business plan identified some aspects of misconduct as business risks. The business plan for the Licensing Business Unit referred to exposure to fraudulent activity, particularly relating to identity fraud and the creation of false licence documents as risks requiring the development of treatment strategies.
- [378] Managers observed that despite the inclusion of misconduct risk in the business plans for some business units, there was still inconsistent translation of business and misconduct risk into all business plans.

... DPI's centralised corporate functions are still immature. Some areas don't even have a business plan and those that do don't review them regularly. It can't be said with any confidence that project managers are conducting sound risk assessments ...

... with immature corporate systems, effective management relies on good managers. You just have to trust that managers are on top of things. It's worrying that with attrition a lot of corporate knowledge is being lost ...

[379] With impetus given to corporate governance systems at the time of the review, DPI was working in conjunction with Riskcover to more accurately identify its risks and develop a treatment plan to address these risks. Without appropriate identification and treatment of misconduct risk, DPI was both exposed to misconduct occurring and limited in its ability to develop an effective misconduct management mechanism for the organisation as a whole.

4.5.2 TRELIS and Internal Audit Unit

[380] Due to its business activities, DPI had extensive systems to automate its business practices, such as TRELIS, reported to be the largest database in the Western Australian public sector. DPI employees using TRELIS had the power to undertake and record such actions as:

- creating, amending and deleting licences;
- taking and waiving fees;
- creating and deleting endorsements; and
- creating, amending and deleting personal records.

[381] TRELIS had a variety of built-in system controls to manage, track and audit data and transactions. These system controls were designed to mitigate business risk and pick up some instances of misconduct. The review found these controls were relied upon by managers to detect a wide range of misconduct risk.

[382] Some managers in Licensing Centres said they relied on daily audits of a sample of TRELIS transactions against “Hyperion” reports to detect improper behaviour. “Hyperion” reporting provided the manager with standard reports about TRELIS transactions. Such reporting was utilised by managers to reconcile transactions made on TRELIS with the appropriate paperwork.

[383] The TRELIS reconciliation process did not, however, alert managers to all misconduct matters. For example, while TRELIS addressed some types of misconduct risk due to its name matching capability, such as detecting that an employee had accessed their own record, it did not detect instances where a person accessed the record of a close relative with a different surname and address from that of the DPI employee.

[384] Despite this, reliance on TRELIS system controls was found to be commonplace. The review considered this reliance by managers was misplaced as the system was not set up to detect all of the types of misconduct to which business units are prone. These systems were developed to manage a high volume of transactions, but were instead being used as a cure-all for detecting all types of misconduct. This resulted in complacency that misconduct would be detected.

[385] Managers also relied heavily on the Internal Audit Unit to detect misconduct by conducting audits in misconduct risk areas. As with in-built

system controls, this method raised a number of concerns. The frequency and sample size of audits in key misconduct risk areas was constrained by the Internal Audit Unit's resources (four staff), significantly limiting the capacity of audits to perform an effective misconduct management function.

- [386] The review analysed 16 audit reports in order to gain a better understanding of the Internal Audit Unit's function within DPI. There is potential for a properly resourced internal audit function to contribute to effective misconduct management.
- [387] Themes, relevant to misconduct, arising from this review of audit reports included:
 - a reluctance by business managers to address non-compliance;
 - poor communication of policies and procedures;
 - staff unaware or not adhering to the proper procedures or responsibilities;
 - poorly defined and/or communicated job responsibilities, and unclear policies and procedures; and
 - a priority on operational functions over sound governance and accountability.

4.5.3 Policy

- [388] DPI had a number of policies relevant to managing misconduct which were considered as part of the review.
- [389] Overall, DPI policies relevant to managing misconduct did not constitute an integrated framework. They appeared to be a collection of essentially *ad hoc* responses to changes in DPI's external environment over time and without any apparent assessment as to how these changes affected day-to-day business operations.
- [390] The *ad hoc* nature of these policies meant they were unlikely to complement one another, albeit that they could have assisted DPI to respond to isolated (most likely serious) cases of misconduct.
- [391] In addition to specific misconduct related policies, DPI had an extensive general policy framework involving some 391 policies, guidelines and manuals. The review analysed 81 of these policies and found that misconduct risk issues were not identified.
- [392] While a register of policies existed it was not well maintained and some policies were not up-to-date. Some had references to outdated policies, repealed legislation and government authorities that no longer existed. Others contradicted each other, and a significant number had no review dates.

[393] Communication of new policy initiatives was also not fully effective and, in the opinion of the Commission, strengthening of communication initiatives needed to be undertaken. Staff and managers reported that communication about policies was *ad hoc* with great reliance placed on staff being able to retrieve relevant policies from the intranet. Many staff noted that postings were easy to ignore.

... just click “x” and you can ignore them ...

... they are only posted for a week anyway and are easy to miss ...

... lots of important information gets lost on the DPI intranet. Lots of staff don’t even read updates to policies as staff are constantly overloaded with information ...

[394] Staff awareness of DPI’s misconduct management policies was tested in the perceptions survey. Over half (54.6%) of survey respondents indicated they were aware of such policies, although the demographics indicate that awareness was higher among those in supervisory or senior positions.

4.5.4 Supervision and Training

[395] Few managers said they discussed misconduct risks and issues with members of staff in a preventative context. Managers made assumptions that staff would know what to do and that policies about misconduct prevention would be understood. The majority of managers relied on staff reading policies on the intranet, on corporate induction training and on trust in the personal integrity of individuals not to engage in acts of misconduct, particularly with long-term employees who by virtue of service were considered beyond reproach.

... I trust my staff, they just wouldn’t do that ...

... we rely on the fact employees are public servants, the “honour system” – an innate trust in the ideal of public service – and the fact people here are reasonably experienced [to not engage in misconduct] ...

[396] Some managers expressed their feelings of disbelief and betrayal upon discovery of misconduct by long-standing staff members. In each instance, after the fact, these managers recognised the deficiency of relying solely on the personal integrity of staff and implemented a more process driven approach to managing misconduct.

[397] Poor supervision and an over-reliance on trust in staff to do the right thing was considered by some managers to have resulted in a lack of enforcement of management processes. Examples were provided by managers.

- In early 2007 a directive was issued by the Director General that all DPI staff complete a timesheet. A manager raised the issue of non-

compliance with this directive with senior managers, but no action was taken.

- Some staff were reported taking leave without submitting the appropriate forms. When the leave was taken, the line manager could not check how much leave was taken and no leave was deducted from the staff member's file by HR.
- When information about a person is accessed from TRELIS, the system returns a scroll-list detailing individual names, dates of birth and current addresses. There is no suppression, for example, of addresses, and an employee could access information about one person, but claim they were actually concerned with obtaining the details about someone else on the scroll-list.

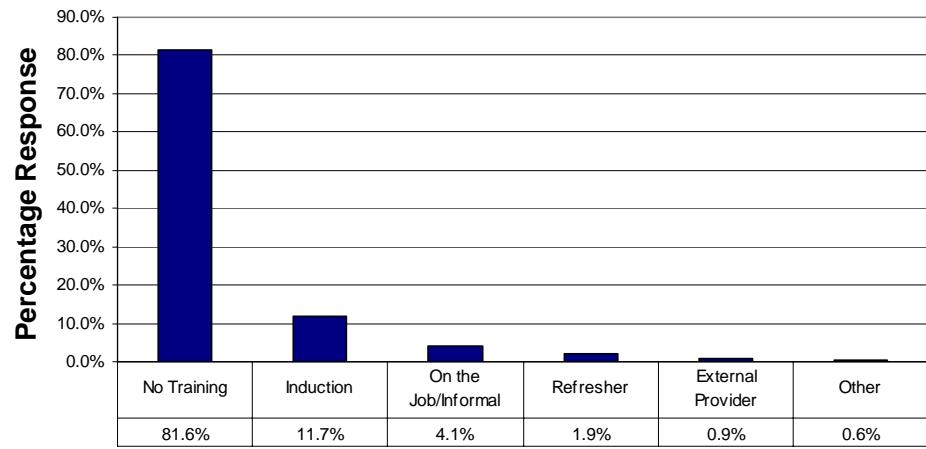
[398] DPI's induction policy and training was designed to promote DPI values and ethos to new employees. During 2008 a two-day compulsory induction program replaced the former one-day recommended program. The induction training consisted of the *Building Networks* agenda, which focused on DPI's corporate values and acceptable workplace behaviours. The *Crossing the Line* session dealt with possible misconduct risks employees may face whilst working for DPI. The session provided a good introduction to misconduct and DPI-specific risk areas for new employees, but was limited in scope and depth.

[399] Inductees were also provided with a *DPI Corporate Induction Manual*, containing important information on employee obligations and responsibilities. It covered topics such as accepting gifts, confidentiality and conflict of interests, and contained copies of policies as well as where to find the policies on the intranet.

[400] Some business units also had their own induction program, complementing the corporate induction program. The Licensing Business Unit, for example, commenced its own induction program in the middle of 2008, to provide information specific to the Unit's business.

[401] The majority of managers indicated a heavy reliance on the DPI induction training programme to educate staff about misconduct. The results of the perceptions survey revealed this reliance was misplaced with 81.6% of survey respondents who answered the question on misconduct management policies stating that they had not received misconduct training. This is illustrated by Figure 2 below. This result was consistent with responses to the question about staff awareness of misconduct, where only 22.9% of respondents said they had learnt about misconduct from training.

Figure 2: Training Received in Misconduct Management



[402] Demographic analysis of responses revealed that those least likely to have received training were long-term employees, those in higher-level jobs or supervisory positions.

4.6 Conclusions

[403] In order to manage misconduct effectively, an organisation must have an appropriate mechanism with organisation-wide reach, which is centrally overseen and driven. Such a mechanism is embodied in a system which provides for the means to prevent, identify, report, handle and, as required, investigate misconduct.

[404] Although DPI had moved some way towards implementing misconduct resistance measures, it had some considerable way to go until a whole-of-agency misconduct management mechanism was in place. The misconduct management measures within DPI could be described as *ad hoc*, and dependent on a range of existing corporate initiatives which operated somewhat independently.

[405] Within individual business units some managers had ensured that their own business and misconduct risks were addressed and managed. These approaches were, however, in the minority and suggested that the inadequacy of corporate initiatives and the lack of a strategic approach to the development of an organisation-wide misconduct management mechanism have led to local solutions developing in an attempt to bridge the gap. In general, a focus on business functions and service delivery has prevailed over consideration of misconduct management and the detrimental impact of misconduct on business and service.

[406] The Executive of DPI indicated that it was committed to building organisation capacity to manage misconduct, but this commitment was not translated into meaningful outcomes. Several major issues needing to be tackled were identified.

- (1) Integration of misconduct management needed to be clearly linked to an organisation-wide and centrally oversighted misconduct management system.
- (2) Commitment and knowledge shown by the Executive was not as readily evident among non-Executive managers. At the non-Executive level, such commitment appeared to be patchy.
- (3) A significant proportion of DPI staff did not believe management were committed to:
 - preventing and managing misconduct;
 - protecting people who reported misconduct; and
 - dealing with misconduct consistently and fairly.
- (4) Multiple workplace cultures resulted in different business units perceiving themselves as unique, which in turn resulted in different philosophies and approaches to misconduct management.
- (5) DPI's systems and policies did not effectively recognise and treat misconduct risks.
- (6) Policies relevant to misconduct existed, but they did not work together cohesively or systematically. A significant proportion of DPI staff were unaware of these policies and some policies were out-of-date.
- (7) There was a diverse range of understandings about misconduct, as well as approaches to misconduct management and risk mitigation.
- (8) Management of misconduct risk was not evident in corporate policies and practices, with little proactive management of misconduct risk. Few business units addressed misconduct risk as part of their overall risk management program.
- (9) There was an unrealistic reliance on audit trails and systems controls to identify misconduct.
- (10) Although misconduct was covered in induction training, there was an over-reliance on such induction training as the primary means of educating and communicating with staff about misconduct in the long-term.

4.7 Future Implications and Recommendations: Reviews of Improper Influence Risk and Misconduct Management

[407] The review of misconduct management by DPI found a strong management focus on business functions and service delivery that prevailed over consideration of misconduct risk management issues and the detrimental impact of misconduct on business and service. This issue

was also identified by the review of improper influence-related misconduct risk, where staff expressed the view that management were more concerned with efficiency performance measures (for example, numbers of vehicles examined) than with maintaining quality of service. In an agency with high and growing demands for its services such a focus may well be both understandable and necessary. Yet, as the investigation of alleged public sector misconduct by Vehicle Examiners highlighted, an emphasis on outputs in isolation to complementary service quality measures can expose the agency to unintended misconduct risks and result in other business risks arising from a compromise or ignoring of service standards in the name of efficiency.

Recommendation 7

That the Department of Transport ensure licensing goals and performance measures support organisational outcomes relating to the provision of a safe transport system for the community, where road users meet required driver competencies and vehicles meet required standards.

- [408] Perhaps not surprisingly given its history of organisational restructure the Commission reviews of DPI found an absence of a strong, unifying corporate culture. Instead, multiple workplace cultures and systems had developed within business units, contributing to and maintaining a sense of isolation or separation from the greater DPI organisation by those in some areas. The operation of unique workplace cultures and the sense of isolation and disengagement from the wider organisation, experienced by some groups of Licensing Officers, were identified as a significant issue of concern in the examination of improper influence.
- [409] For metropolitan Vehicle Examiners and Assessors this feeling of isolation had also given rise to significant levels of distrust and resentment of DPI management.
- [410] In relation to DPI's exposure to improper influence-related misconduct risk, the absence of an inclusive culture and the active alienation of some staff groups is seen to be a serious problem requiring urgent attention. Left unmanaged these issues are likely to increase the organisation's exposure to misconduct risk. Licensing Officers as a group are exposed to high levels of misconduct risk and need to be managed in a way that engages them in the organisational agenda as opposed to creating a motive for them to engage in misconduct.

Recommendation 8

That the Department of Transport establish a corporate culture that values, and is inclusive of, all staff and operational areas.

[411] Despite a very clear commitment by DPI executive to improve the organisation's capacity to manage misconduct the review found that this had not yet translated into a strategic corporate approach to the management of misconduct. This commitment had also not been effectively communicated within the organisation to managers and staff. Some managers claimed they were uninformed of the Executive approach, and that they had seen little evidence of such an approach.

[412] As with the corporate culture, local business unit strategies and practices had developed in place of a corporate approach resulting in inconsistent misconduct management practices across the agency. Similarly, while DPI had implemented some discrete misconduct management systems and policies, these tended to be *ad hoc*, uncoordinated and inadequate. In a practical sense DPI did not have the capacity to identify, prevent or manage misconduct risks across the organisation.

[413] This lack of practical capacity was evidenced through both the Commission investigation of alleged public sector misconduct and review of improper influence-related misconduct risk where:

- improper influence was not recognised either by staff or management as a misconduct risk;
- management provided no focus on improper influence in any organisational management strategy, policy or procedure;
- in the absence of corporate guidance, Licensing Officers responded to improper influence attempts based on their individual values and beliefs as to what was appropriate;
- Licensing Officers were unclear about misconduct reporting requirements and processes; and
- individual Vehicle Examiners were able to improperly certify vehicles as roadworthy without the breach of procedures and policy being detected by the organisation's control systems.

[414] As a result, DoT needs to develop a strategy that builds its capacity to prevent and manage misconduct across the organisation. It needs an identifiable "whole-of-DoT" misconduct management mechanism that enables it to reliably prevent, identify, manage and report misconduct.

Recommendation 9

That the Department of Transport develop a corporate strategy for managing misconduct, including a mechanism that gives it practical effect.

- [415] DPI was an agency that by virtue of the services it provided was exposed to high levels of misconduct risk. Management of business risk at a corporate level was, however, reported to be at an embryonic stage, with misconduct risk not yet forming a part of the risk management regime. There was little understanding of organisational misconduct risks by management and limited evidence of any proactive attempts at misconduct risk management.
- [416] Management of misconduct risk was not evident in corporate policies and the few policies relevant to managing misconduct management were inadequate to deal with this risk. Staff awareness of the organisation's misconduct policy framework was also relatively poor.
- [417] In terms of misconduct risk mitigation there was an over reliance on audits and system controls to pick up misconduct issues, and a trust by managers that staff would do the right thing.
- [418] These general conclusions were replicated in the review of improper influence where there was complete lack of awareness of improper influence as a misconduct risk and almost nothing in place by way of policies, procedures or systems controls to manage this risk.

Recommendation 10

That the Department of Transport identify its misconduct risks as part of the corporate risk management process and ensure appropriate controls are put in place to mitigate these risks.

- [419] One important organisational strategy in managing misconduct risk is the effective operation of a robust internal reporting mechanism. DPI did not have such a mechanism in place. Staff, as reflected by both the review of misconduct management and the review of improper influence risk, were generally confused about who to report to, how to report, when to report or what to report. Further, while staff said they were willing to report misconduct, they had little confidence that matters reported would be dealt with appropriately or in a consistent and transparent way. Some staff indicated reluctance to "dob" because of potential personal ramifications.
- [420] DPI policies exacerbated this confusion and lack of confidence, especially in relation to managers because of "pre-investigation" requirements and investigation costs being held against individual business unit budgets.

[421] Low levels of staff awareness about what constituted misconduct were also a factor undermining effective internal reporting. The review of improper influence risk in particular revealed that Licensing Officers had a poor level of understanding regarding the authority and discretion associated with their role and the related misconduct risks.

[422] Both the Commission investigation of alleged public sector misconduct and the review of improper influence risk demonstrated that improper influence was an area of significant and widespread risk for DPI, and that in addressing this risk in the future Licensing Officers needed to:

- better understand improper influence;
- understand the circumstances under which improper influence attempts arise; and
- know organisational expectations about how Licensing Officers should deal with attempts to improperly influence, including situations where it is considered that a Licensing Officer may have been influenced.

[423] DoT needs a more robust internal misconduct reporting mechanism, to address the issue of confidence, and to ensure that all staff understand both the process and their expected role in the process.

Recommendation 11

That the Department of Transport review internal reporting processes with a view to implementing a mechanism that will support staff reporting suspected misconduct, and ensure incidents are notified to the Commission, consistent with section 28 of *the Corruption and Crime Commission Act 2003*, and are dealt with appropriately.

[424] Improper influence-related misconduct represented a significant misconduct risk area for DPI both in terms of how widespread it was in licensing areas and how commonly it occurred.

Recommendation 12

That the Department of Transport develop policies, procedures and systems that assist licensing officers to identify and appropriately respond to improper influence.

[425] The Commission investigation of alleged public sector misconduct and reviews of improper influence risk and misconduct management revealed there was limited understanding by staff (and management) of misconduct

risks and misconduct related behaviour within DPI. Training was inadequate in this regard and did not address misconduct related issues.

[426] Given the low level of staff understanding about what behaviours constitute misconduct and specific misconduct risks in the workplace, DoT need to give priority to the education and training of staff to increase their knowledge about misconduct. This would include misconduct risks in the workplace, relevant policies and procedures, how to report, and learning to recognise misconduct. This training needs to be given both at induction and revisited over time, as once-off training was not effective.

Recommendation 13

That the Department of Transport implement staff development strategies aimed at raising and maintaining awareness about misconduct and related staff responsibilities.

5.4 Conclusion

[427] The Commission has established a Team within the Corruption Prevention Directorate whose objectives include assisting DoT to address the issues identified in this report. The Team will:

- (1) monitor and evaluate the progress of the implementation of recommendations contained in this report;
- (2) provide feedback to assist DoT to improve systems for preventing and managing misconduct through assessment, monitoring and review of DoT misconduct notifications and investigations; and
- (3) provide ongoing advice to DoT.

[428] The Commission again acknowledges and records its appreciation for the invaluable assistance, cooperation and support provided by DPI and in particular by the then Director General, Mr Eric Lumsden PSM,¹⁹⁰ during the periods relevant to the investigation of alleged public sector misconduct, and reviews of improper influence risk and misconduct management, and subsequently by both DoT and DoP.

APPENDICES

APPENDIX 1

Notifications of Adverse Matters Under Section 86 of the *Corruption and Crime Commission Act 2003*

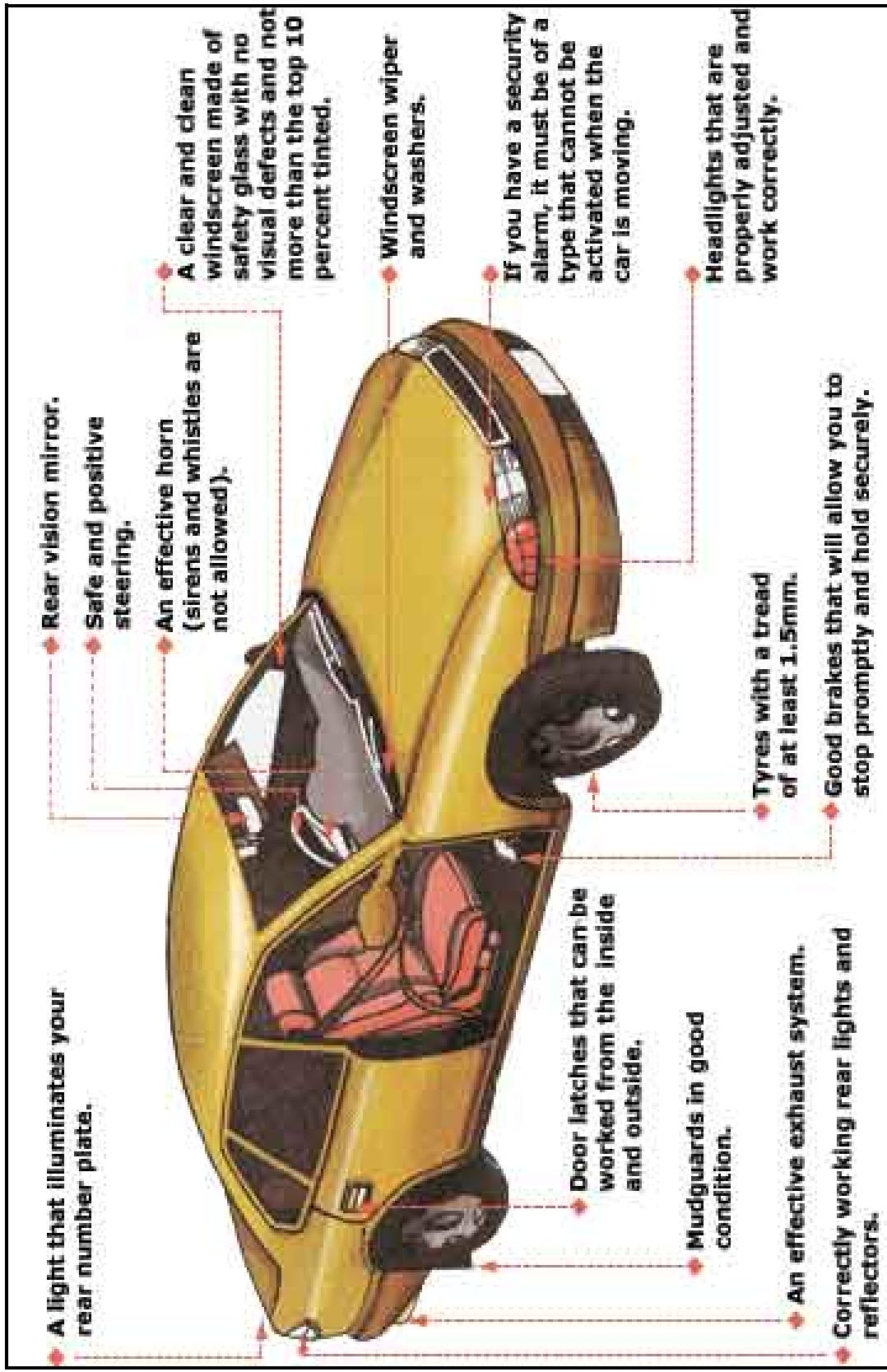
Notifications of Adverse Matters

No.	Recipient of Section 86 Notification	Date of Notification	Date of Representations	From
Public Officers (during the period relevant to the investigation).				
1.	Mr William Brian Burrows	29 July 2010	No Response	-
2.	Mr Robert Alexander Cugley	29 July 2010	8 August 2010 (Received by the Commission on 12 August 2010.)	Mr Robert Alexander Cugley
3.	Mr Peter David Howard	29 July 2010	Received by the Commission on 16 August 2010.	Mr Peter David Howard
4.	Mr Brent Edward Kain	29 July 2010	9 September 2010	Mr Brent Edward Kain
5.	Mr John Francis Piercey	29 July 2010	No Response	-
6.	Mr James Munro Spence	29 July 2010	No Response	-
7.	Mr Barry William Tanner	29 July 2010	No Response	-
Non-Public Officers				
8.	Ms Susan Evelyn Jabbour	29 July 2010	No Response	-
9.	Mr Badih (George) Raphael	29 July 2010 (Attempts to deliver the Section 86 Notification to Mr Raphael were unsuccessful, as his actual whereabouts are unknown.)	-	-
10.	Ms Coralie Ann Raphael	29 July 2010	9 August 2010 (Received by the Commission on 12 August 2010.)	Ms Coralie Ann Raphael
11.	Mr Abraham Merched Roufail	29 July 2010	No Response	-

APPENDIX 2

**Diagram Illustrating Components of Vehicle Examined,
and Criteria for Examination of a Vehicle,
by Authorised Vehicle Examiners**

Components of Vehicle Examined, and Criteria for Examination of a Vehicle, by Vehicle Examiners



APPENDIX 3

Department for Planning and Infrastructure
Certificate of Inspection (MR1) for
1995 Mitsubishi Triton Utility (1BRE 038)



Certificate of Inspection

MR 560733

OWNER DETAILS (To be completed by Applicant)

Name in Full: Family Name / Business Name <i>CUSCUNA</i>	Given Names	Date of Birth	
Driver's Licence Number	Australian Company Number (if applicable)	Organisation Code (if applicable)	Plate Number (Current or Previous) <i>IBRIE038</i>
Residential Address (Must be completed)		Suburb	Postcode
Postal Address (If different from above)		Suburb	Postcode
Garaging Address (Mandatory for heavy vehicles)		Suburb	Postcode

Applicant's or Agents Signature
GR M P

Date

VEHICLE DETAILS (To be completed by Examiner)

SVC	YEAR	MAKE	MODEL	SEATING CAPACITY
BODY TYPE <i>UTB</i>				

01	Passenger Vehicle, Motor Car, Ambulance, School Bus	05	Motorcycle over 250cc	09	Plant Trailer	13	Mobile Crane (Hire)
02	Goods Carrying Motor Wagon, Tow Truck, Mobile Caravan	06	Motor Carrier	10	Tractor	14	Motor Car – Rotary
03	Omnibus (Regular route service bus or TC plates only)	07	Caravan (Trailer Type)	11	Tractor Plant, No load other than accessories	15	Semi Trailer
04	Motorcycle under 250cc	08	Trailer	12	Mobile Crane (Private)	16	Prime Mover

CYL *4* FUEL *P* AXLES *2* TRANS *M* M/CYCLE ENG CAPENGINE No *4054A21125* PRIMARY COLOUR *WHT*VIN/ CHASSIS No *JNFMJ3H23\$T011095* SECOND COLOURTARE *1230* AGGREGATE *2286* GCM *3285* MANUFACTURERS GCM *3285*VEH CLASS *A* MRC *7285* SPV CODE *7285* IMMOBILISER FITTED Yes *No*

CONDITION CODES

TRAILER INFORMATION		COMPLIANCE PLATE		ODOMETER	
Size of Chain		Fitted:	Month/Year	Compliance Category	
Tow Hitch Capacity		Yes	No		
Types of Brakes	Nil O/Ride Electric				
Overall Length	Width	Height	"S" Dimension	Drawbar Length	
Articulated Length	Rear Overhang	W-B for Rear Overhang		Load Space Fwd	

TYRE AND RIM DETAILS		W/BRIDGE		INSPECTION	
	Single Wheels	Dual Wheels	Bridge Number	1	2
	Front	Back	Front	Back	
No of Axles	<i>1</i>		Docket Number	3	4
Size of Tyres			DEPARTMENTAL CODE		
Ply Rating/ Load Index			A B C D E F H I		
		SEE MR 23			

RECEIPT DETAILS		PLATE NO ISSUED	
Receipt No	Date	Receipt No	Date

NOT VALID UNLESS
STAMPED AND SIGNED
BY AN AUTHORISED EXAMINER
DEPARTMENT FOR PLANNING & INFRASTRUCTURE
VEHICLE PASSED
Date *30/07/04*
No. *224*

To
*M. Munes*Examiner
M. Munes

PASS FAIL

GROUP	ITEM	ITEMS REQUIRING ATTENTION
DRIVE LINE	Engine Exhaust Transmission & Differential Speedometer & Speed Limiter Vehicle Performance Fuel & Oil Leaks	
ELECTRICAL (Lights)	Wiring, Battery, Connectors etc. Head, Driving & Parking Indicators Stop, Tail & Number Plate Reflectors & Reverse End out line & Side Marker	
IMMOBILISER (Please tick)	Horn, Dash Lights, Heater/Demister Screen Wiper/Washer	
Yes <input type="checkbox"/> No <input type="checkbox"/>		
BODY WORK	Number Plates & Registration Label Panels, Mudflaps, Tare, Aggregate & Combination White Stripe, Rear Markers Corrosion/Rust Seats and Seat Belts Pedal Pads, Dangerous Items Interior Trim, Glass, Mirrors Doors/Windows & Controls	
CHASSIS & SUSPENSION	Damage Corrosion/Rust Suspension & Shock Absorbers Tow Bar, Turn Table, Pin	
STEERING	Box, Linkage Ball Joints & King Pins, Wheel Bearings Performance	
BRAKES	Lines & Hoses, Reservoir Service/Foot Brake Hand/Parking Brake Warning Lights Performance	
TYRES & RIMS	Fluid/Air Leaks Serviceability, Compatibility, Acceptability	
MODS & ADR		

Remarks

VEHICLE REJECTED	VEHICLE REJECTED
AVE Number _____ Signature _____ Date _____	AVE Number _____ Signature _____ Date _____

THIS FORM IS VALID FOR RE-INSPECTION UP TO 30 DAYS FROM THE DATE OF THE FIRST INSPECTION

VEHICLE PASSED

I certify that I have inspected this vehicle in accordance with the policies and procedures of the department and that it is in a roadworthy condition.

Name of AVE _____

AVE Number _____ Signature _____ Date _____

ENDNOTES

¹ Motor Drivers Licence.

² *Department for Planning and Infrastructure Annual Report 2008-2009*, available on the DPI Website at <http://www.dpi.wa.gov.au/705.asp>, viewed 29 April 2010.

³ Department of Transport Website, <http://www.dpi.wa.gov.au/705.asp>, viewed 29 April 2010.

⁴ *Department of Planning Strategic Plan 2009-2014*, available on the DoP Website at <http://www.planning.wa.gov.au/DoP%20strategic%20plan%202009-2014.pdf?id=2051>, viewed 29 April 2010.

⁵ *Disciplinary Procedures Guide*, Department of the Premier and Cabinet, Government of Western Australia, November 2007, p.9.

⁶ *Ibid*, p.28.

⁷ USLegal, Inc Website at <http://definitions.uslegal.com/i/improper-influence/>, viewed 30 June 2010.

⁸ *Corruption and Crime Commission Act 2003*, p.114.

⁹ *Ibid*.

¹⁰ *Ibid*, p.116.

¹¹ *Ibid*.

¹² *Ibid*, p.117.

¹³ State legislation (the *Telecommunications (Interception) Western Australia Act 1996* (“the Western Australia Act”) gives the Corruption and Crime Commission (“the Commission”) its status as an intercepting agency. The Western Australia Act is an Act to enable the Commission to be declared an agency for the purposes of the *Telecommunications (Interception and Access) Act 1979* of the Commonwealth and for related purposes.

¹⁴ *Telecommunications (Interception and Access) Act 1979* (Commonwealth), p.17.

¹⁵ Butterworths Concise Australian Legal Dictionary (Third Edition), Lexis Nexis Butterworths, Australia 2004, p.42.

¹⁶ Briginshaw v Briginshaw (1938) 60 CLR 336 per Dixon J at 361-363; Rejzek v McElroy (1965) 112 CLR 517; Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd (1992) 110 ALR 449.

¹⁷ See Martin CJ (with whom Newnes AJA agreed) in Ex parte West Australian Newspapers Ltd [2008] WASCA 209 at [51].

¹⁸ Shorter Oxford English Dictionary, Sixth Edition, p.529; Macquarie Dictionary, 2nd Revised Edition, p.417.

¹⁹ R v Gallagher (1987) 29 A Crim R 33.

²⁰ Willers v R (1995) 81 A Crim R 219 per Malcolm CJ at 224.

²¹ Willers v R, *supra*, per Malcolm CJ at 225; Rowland J at 231; Application by DPP (C'th) for a Superannuation Order in Respect of Hogarth (1995) 93 A Crim R 452 per Higgins J at 454-5.

²² Williams v R (1979) 23 ALR 369 per Franki J at 381.

²³ Transcript of Proceedings, Public Examination, Closing Remarks by Commissioner on 19 February 2009, p.726.

²⁴ Transcript of Proceedings, Private Examination (made public) of Mr Glenn Raymond Cooper on 23 October 2009, p.19.

²⁵ *Department for Planning and Infrastructure Annual Report 2008-2009*, available on the DPI Website at <http://www.dpi.wa.gov.au/705.asp>, viewed 29 April 2010.

²⁶ Department of Transport Website, <http://www.transport.wa.gov.au/licensing/licensingcentres/1453.asp#dot1>, viewed 29 April 2010.

²⁷ Department of Transport Website, <http://www.transport.wa.gov.au/licensing/1375.asp>, viewed 6 May 2010..

²⁸ Transcript of Proceedings, Public Examination of Mr Allan Roy Jenner on 27 January 2009, p.29.

²⁹ *Ibid*, p.41.

³⁰ *Ibid*, p.29.

³¹ *Ibid*, p.42.

³² *Ibid*, p.18.

³³ *Ibid*, pp.46-47.

³⁴ Transcript of Proceedings, Public Examination, Opening Address by Counsel Assisting on 27 January 2009, pp.7-8.

³⁵ Department of Transport Website, <http://www.transport.wa.gov.au/licensing/1375.asp>, viewed 6 May 2010.

³⁶ Transcript of Proceedings, Public Examination, Opening Address by Counsel Assisting on 27 January 2009, p.8.

³⁷ *Ibid*, p.9.

³⁸ Transcript of Proceedings, Public Examination of Mr Barry William Tanner on 27 January 2009, pp.55-56.

³⁹ *Ibid*, p.57.

⁴⁰ *Ibid*, pp.57-58.

⁴¹ *Ibid*, p.65.

⁴² *Ibid*, p.67.

⁴³ *Ibid*, p.70.

⁴⁴ Telecommunications Intercept, T 2068 and T 2070, 15 July 2008.

⁴⁵ Transcript of Proceedings, Public Examination of Mr Barry William Tanner on 27 January 2009, p.72.

⁴⁶ *Ibid*, p.73.

⁴⁷ Telecommunications Intercept, T 2073, 25 August 2008.

⁴⁸ Transcript of Proceedings, Public Examination of Mr Barry William Tanner on 27 January 2009, p.81.

⁴⁹ *Ibid*, pp.94-95.

⁵⁰ *Ibid*, p.123..

⁵¹ *Ibid*, p.130.

⁵² *Ibid*, p.65.

⁵³ TRELIS report, CCC 01073-2008-0424.

⁵⁴ WAPOL, Incident Management System report, CCC 01073-2008-0425.

⁵⁵ Transcript of Proceedings, Public Examination of Mr Barry William Tanner on 27 January 2009, p.725.

⁵⁶ TRELIS report, CCC 01073-2008-0424.

⁵⁷ Presstik Red and Blue Exercise Book, CCC 01073-2008-0845.

⁵⁸ *Ibid*.

⁵⁹ Transcript of Proceedings, Public Examination of Mr William Brian Burrows on 18 February 2009, p.503.

⁶⁰ *Ibid*, pp.511-512.

⁶¹ *Ibid*, p.519.

⁶² Transcript of Proceedings, Public Examination of Mr Abraham Merched Roufail on 18 February 2009, pp. 466-469.

⁶³ *Ibid*, p. 470.

⁶⁴ *Ibid*, pp. 470 and 472.

⁶⁵ Department for Planning and Infrastructure, *Certificate of Inspection* (MR1) [CCC 01073-2008-1182].

⁶⁶ Transcript of Proceedings, Public Examination of Mr Abraham Merched Roufail on 18 February 2009, pp. 472-473.

⁶⁷ *Ibid*, p. 471.

⁶⁸ *Road Traffic (Vehicle Standards) Regulations 2002*, Regulation 65(2)(a).

⁶⁹ Transcript of Proceedings, Public Examination of Mr William Brian Burrows on 18 February 2009, p.521.

⁷⁰ *Ibid*, p.520.

⁷¹ *Ibid*, p.521.

⁷² Transcript of Proceedings, Public Examination of Mr Abraham Merched Roufail on 18 February 2009, p.474.

⁷³ Transcript of Proceedings, Public Examination of Mr Peter David Howard on 19 February 2009, p.575.

⁷⁴ *Ibid*, p.564.

⁷⁵ *Ibid*, pp.565-566.

⁷⁶ *Ibid*, p.567.

⁷⁷ *Ibid*, p.570.

⁷⁸ *Ibid*, p.577.

⁷⁹ *Ibid*, pp.577-579.

⁸⁰ *Ibid*, p.565.

⁸¹ *Ibid*, p.550.

⁸² Transcript of Proceedings, Public Examination of Ms Susan Evelyn Jabbour on 17 February 2009, pp.354-355.

⁸³ *Ibid*, p.350.

⁸⁴ *Ibid*, p.352.

⁸⁵ Transcript of Proceedings, Public Examination of Mr Abraham Merched Roufail on 18 February 2009, p. 481.

⁸⁶ Transcript of Proceedings, Public Examination of Mr Peter David Howard on 19 February 2009, p.558.

⁸⁷ Transcript of Proceedings, Public Examination of Ms Susan Evelyn Jabbour on 17 February 2009, p.332.

⁸⁸ Department for Planning and Infrastructure, *Certificate of Inspection* (MR1) [CCC 01073-2008-1167].

⁸⁹ Transcript of Proceedings, Public Examination of Mr Peter David Howard on 19 February 2009, p.572.

⁹⁰ Department for Planning and Infrastructure, *Certificate of Inspection* (MR1) [CCC 01073-2008-1167].

⁹¹ Telecommunications Intercept, T 2376, 11 November 2008.

⁹² TRELIS report, CCC 01073-2008-1159.

⁹³ Telecommunications Intercept, T 2366, 2 November 2008.

⁹⁴ Surveillance Device Tape, 12 November 2008, 10:08 a.m.

⁹⁵ *Ibid*, 10:09 a.m.

⁹⁶ *Ibid*, 10:53 a.m.

⁹⁷ *Ibid*, 10:55 a.m.-11:37 a.m.

⁹⁸ Telecommunications Intercept, 12 November 2008.

⁹⁹ Surveillance Device Tape, 12 November 2008, 11:44 a.m.-11:51 a.m.

¹⁰⁰ *Ibid*, 11:58 a.m.

¹⁰¹ *Ibid*, 11:54 a.m.

¹⁰² TRELIS report.

¹⁰³ *Daily Record of Vehicle Examinations*, MR23 [01073-2008-1158].

¹⁰⁴ Surveillance Device Tape, 12 November 2008, 12:02 p.m.

¹⁰⁵ Telecommunications Intercept, T 2370, 12 November 2008.

¹⁰⁶ Telecommunications Intercept, T 2371, 12 November 2008.

¹⁰⁷ Telecommunications Intercept, T 2372, 12 November 2008.

¹⁰⁸ *Ibid*.

¹⁰⁹ Surveillance Device Tape, 12 November 2008, 2:30 p.m.-2:38 p.m.

¹¹⁰ Transcript of Proceedings, Public Examination of Mr John Francis Piercy on 19 February 2009, p.595.

¹¹¹ *Ibid*, pp. 604 and 610.

¹¹² *Ibid*, p.620.

¹¹³ *Ibid*, pp.621-622.

¹¹⁴ *Ibid*, p.624.

¹¹⁵ *Ibid*, p.641.

¹¹⁶ *Ibid*, p.611.

¹¹⁷ *Ibid*, p.621.

¹¹⁸ Transcript of Proceedings, Public Examination of Ms Susan Evelyn Jabbour on 17 February 2009, p.350.

¹¹⁹ *Ibid*, p.355.

¹²⁰ Transcript of Proceedings, Public Examination of Mr Jimy Jean Jabbour on 17 February 2009, p.277.

¹²¹ *Ibid*, p279.

¹²² *Ibid*, p.613.

¹²³ *Ibid*, p.611.

¹²⁴ *Ibid*.

¹²⁵ *Ibid*, p.612.

¹²⁶ *Ibid*, p.615.

¹²⁷ Department for Planning and Infrastructure, *Certificate of Inspection* (MR1) [CCC 01073-2008-1184].

¹²⁸ Telecommunications Intercept, T 2142, 26 September 2008.

¹²⁹ Surveillance Device Tape, 26 September 2008, 1:03 p.m.

¹³⁰ Physical Surveillance Log, 26 September 2008, 1:11 p.m.

¹³¹ *Ibid*, 1:14 p.m.

¹³² *Ibid*, 1:21 p.m.

¹³³ *Ibid*, 1:22 p.m.

¹³⁴ *Ibid*, 1:22 p.m.

¹³⁵ TRELIS report.

¹³⁶ *Daily Record of Vehicle Examinations*, MR23 [01073-2008-1207].

¹³⁷ Telecommunications Intercept, T 2143, 26 September 2008.

¹³⁸ Telecommunications Intercept, T 2139, 10 September 2008.

¹³⁹ Transcript of Proceedings, Public Examination of Mr John Francis Piercey on 19 February 2009, p.625.

¹⁴⁰ Transcript of Proceedings, Public Examination of Mr John Francis Piercey on 19 February 2009, pp.626-627.

¹⁴¹ Transcript of Proceedings, Public Examination of Mr John Francis Piercey on 19 February 2009, p.635.

¹⁴² Telecommunications Intercept, T 2141, 15 September 2008/

¹⁴³ Transcript of Proceedings, Public Examination of Mr Brent Edward Kain on 19 February 2009, pp.689-690.

¹⁴⁴ *Ibid*, p.699.

¹⁴⁵ *Ibid*, p701.

¹⁴⁶ *Ibid*, p.702.

¹⁴⁷ *Ibid*, p.703.

¹⁴⁸ *Ibid*, p.716.

¹⁴⁹ *Ibid*, pp.718-719.

¹⁵⁰ *Daily Record of Vehicle Examinations*, MR23 [CCC 01073-2008-1216].

¹⁵¹ *Daily Record of Vehicle Examinations*, MR23 [CCC 01073-2008-1217].

¹⁵² Transcript of Proceedings, Public Examination of Mr Brent Edward Kain on 19 February 2009, p.723.

¹⁵³ *Daily Record of Vehicle Examinations*, MR23 [CCC 01073-2008-1217].

¹⁵⁴ Transcript of Proceedings, Public Examination of Mr Brent Edward Kain on 19 February 2009, p.723.

¹⁵⁵ *Ibid*, pp.713-714.

¹⁵⁶ Transcript of Proceedings, Public Examination of Mr Jimy Jean Jabbour on 17 February 2009, pp.300-301.

¹⁵⁷ Transcript of Proceedings, Public Examination of Ms Susan Evelyn Jabbour on 17 February 2009, p.349.

¹⁵⁸ *Ibid*, p.340.

¹⁵⁹ Telecommunications Intercept, T 2156, 21 August 2008.

¹⁶⁰ Telecommunications Intercept, T 2159, 27 August 2008.

¹⁶¹ Telecommunications Intercept, T 2132, 1 September 2008.

¹⁶² Telecommunications Intercept, T 2133, 1 September 2008.

¹⁶³ Telecommunications Intercept, T 2134, 2 September 2008.

¹⁶⁴ Telecommunications Intercept, T 2136, 2 September 2008.

¹⁶⁵ Telecommunications Intercept, T 2137, 2 September 2008.

¹⁶⁶ Telecommunications Intercept, T 2144, 3 October 2008.

¹⁶⁷ Telecommunications Intercept, T 2169, 13 October 2008.

¹⁶⁸ Telecommunications Intercept, T 2162, 15 October 2008.

¹⁶⁹ Telecommunications Intercept, T 2163, 1 September 2008.

¹⁷⁰ Telecommunications Intercept, T 2165, 21 October 2008.

¹⁷¹ DPI adopted TRELIS in June 2004. Prior to that period vehicle inspection statistics are not available.

¹⁷² Transcript of Proceedings, Public Examination of Mr Badih (George) Raphael on 15 September 2009, pp.33-34.

¹⁷³ *Ibid*, p.21.

¹⁷⁴ *Ibid*, p.19.

¹⁷⁵ Transcript of Proceedings, Private Examination of Mr James Munro Spence on 15 September 2009, p.104.

¹⁷⁶ Transcript of Proceedings, Private Examination of Mr Robert Alexander Cugley on 16 September 2009, p.194.

¹⁷⁷ *Ibid*, p.216.

¹⁷⁸ *Ibid*, pp. 216-217.

¹⁷⁹ *Ibid*, p.188.

¹⁸⁰ *Ibid*, p.190.

¹⁸¹ *Ibid*, p.193.

¹⁸² *Ibid*, p.218.

¹⁸³ *Ibid*, p.222.

¹⁸⁴ Select Committee on Public Interest Whistleblowing, *In the Public Interest*, Senate, Canberra, 1994, p.3.

¹⁸⁵ Letter to the Hon. Len Roberts-Smith, RFD, QC, Commissioner of the Corruption and Crime Commission, of 18 March 2010 from the then Acting Director General of the Department of Transport Mr Alastair Bryant [CCC 75511].

¹⁸⁶ *Ibid*.

¹⁸⁷ Corruption and Crime Commission, *Misconduct Handling Procedures in the Western Australian Public Sector: WA Health*, 22 April 2010.

¹⁸⁸ The percentage of vehicles passed as roadworthy includes all examinations, that is, initial examinations and any subsequent re-examinations.

¹⁸⁹ Letter to the Hon. LW Roberts-Smith, RFD, QC, Commissioner of the Corruption and Crime Commission, of 23 August 2010 from Mr R Waldock, Director General, Department of Transport [01073-2008-1723].

¹⁹⁰ Subsequent to the restructure of the Department for Planning and Infrastructure on 1 July 2009 Mr Eric Lumsden became the Director General of the Department of Planning.