



CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

Misconduct Handling Procedures in the Western Australian Public Sector: Department for Community Development

5 February 2007

ISBN : 0 9775105 5 7

© 2007 Copyright in this work is held by the Corruption and Crime 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, etc. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968*, please write to the postal address below.

This report and further information about the Corruption and Crime Commission can be found on the Commission's 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 metropolitan Perth)
Facsimile	(08) 9215 4884
Email	info@ccc.wa.gov.au
Officer Hours	8.30 am to 5.00 pm, Monday to Friday

Hon Nicholas Griffiths MLC
President
Legislative Council
Parliament House
PERTH WA 6000

Hon Fred Riebeling MLA
Speaker
Legislative Assembly
Parliament House
PERTH WA 6000

Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, I am pleased to present the Corruption and Crime Commission's report into Misconduct Handling Procedures In The Western Australian Public Sector: Department For Community Development.

The opinions contained in this report are those of this Commission.

I recommend that the report be laid before each House of Parliament forthwith pursuant to section 93 of the *Corruption and Crime Commission Act 2003*.

Yours faithfully

A handwritten signature in black ink, appearing to read "KEVIN HAMMOND". The signature is fluid and cursive, with a prominent "K" at the beginning.

Kevin Hammond
COMMISSIONER

5 February 2007

FOREWORD

Sections 7A and 7B of the Corruption and Crime Commission Act 2003 (the ‘CCC Act’) specify the role of the Corruption and Crime Commission (‘the Commission’) as ‘to improve continuously the integrity of, and to reduce the incidence of misconduct in the public sector’. In doing so ‘The Commission is to help public authorities to deal effectively with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct’. Misconduct is defined by section 4 of the CCC Act. (See Appendix 1)

This report is about how the Commission views the Department for Community Development’s (DCD) approach to misconduct management and how this can be improved.

The Commission recognises that the primary responsibility for addressing misconduct matters within each Public Sector Agency lies with the respective Chief Executive Officer (CEO). In discharging its misconduct and corruption prevention and education functions, the Commission endeavours to support and assist CEOs in meeting these responsibilities and to develop the capability to deal with suspected misconduct within their own agencies. The Commission recognises that the way in which agencies respond to and manage misconduct issues – their approach and the structure and processes they apply – will reflect to some extent their size and the complexity of the matters they deal with. However, the Commission is of the view that it is essential that agencies address misconduct management as a whole of organisation management issue and develop the necessary strategies and mechanisms accordingly.

The Commission believes that the development of appropriate misconduct management strategies and mechanisms within agencies delivers two major benefits. First, it enables the full extent of misconduct matters across the agency to be assessed, enabling appropriate systemic changes that promote appropriate behaviour. Second, and connected to the first, it enables agencies to transform their view of misconduct from matters to be addressed singularly and disposed of as soon as possible, to one in which proper handling can contribute to the continuous improvement of the delivery of the agency’s services.

In that regard, the Commission has commenced a program of reviews to assess the ability of Public Sector agencies to deal with misconduct and, if required, to make recommendations.

The management and staff of DCD have cooperated and assisted the Commission’s conduct of this review. I am pleased to say that DCD has accepted the recommendations made in this report and has made a positive and constructive start to their implementation. The Commission greatly appreciates DCD’s responsiveness and the manner in which its staff have provided assistance.

Kevin Hammond
COMMISSIONER

TABLE OF CONTENTS

FOREWORD	1
EXECUTIVE SUMMARY	5
CHAPTER ONE - INTRODUCTION	7
1.1 Background	7
1.1.1 The Department	7
1.2 Purpose	9
1.3 Scope Of The Review	9
1.4 Limitations Of This Review	9
1.5 Guidelines, Support And Advice Regarding Misconduct	10
1.6 DCD's Response To The Draft Report	10
CHAPTER TWO – DCD'S MANAGEMENT OF MISCONDUCT	11
2.1 Introduction	11
2.2 Organisational Awareness Strategies	12
2.3 Individual Awareness	14
2.4 Identifying, Recording And Reporting Misconduct	14
2.5 Misconduct Notifications Received By The Commission	15
2.6 Investigations By DCD	17
CHAPTER THREE – CONCLUSION	19
3.1 The Commission's Assessment	19
3.2 Commission's Opinion	19
3.3 Recommendations	20
3.4 DCD Implementation	21
APPENDIX 1	23
APPENDIX 2	25
APPENDIX 3	27

EXECUTIVE SUMMARY

The Commission's review has assessed the Department for Community Development's (DCD) ability to manage misconduct and, specifically, the strategy and management mechanisms it has in place.

It is the Commission's opinion that although the issue of misconduct has been considered, and to some degree addressed, DCD does not have in place an integrated misconduct management mechanism. The Commission has formed its opinion for a number of reasons, including:

- Although DCD functions in a high risk environment its risk management plan does not identify the organisation's misconduct risks.
- There is no systematic approach to misconduct management.
- The 'discipline process' aside, there are few formal procedures in place to assist the organisation identify, report, record and manage misconduct.
- The number of the misconduct instances recorded and notified appears unrealistically low given DCD's size and responsibilities and the nature of the misconduct notified does not reflect the level of risk faced.
- DCD is not in a position to say with any certainty that it is able to identify existing misconduct.

As a result of its review, the Commission has made 5 recommendations to the Department. These are that the Department:

1. develops a misconduct management plan for the prevention and management of misconduct across the organisation.
2. reviews its risk management plan and clearly identifies and details the misconduct risks that exist.
3. develops a whole of organisation misconduct management mechanism.
4. develops a function within its structure that has standards of conduct as its primary responsibility, overseen by a senior executive directly responsible to the Director General.
5. in conjunction with the Commission, develop an education and training package about misconduct prevention and response. This package needs to raise and maintain awareness among all DCD staff and managers of their obligations and responsibilities when dealing with misconduct matters.

A draft version of this report was provided to DCD on 27 June 2006. Consequently, DCD have developed an action plan to implement the Commission's recommendations. A copy of this action plan is attached at Appendix 3 to this report. DCD proposes to report quarterly on implementation between now and December 2007.

The Commission has been impressed by the Department's willingness to acknowledge deficiencies in its processes and to take proactive steps to address them and it looks forward to working with DCD to assist in the further development of the Department's misconduct management capacity.

CHAPTER ONE - INTRODUCTION

1.1 *Background*

1.1.1 The Department

The Department for Community Development ('DCD') is responsible for the support and protection of a vulnerable section of the community – children, young people and families throughout the State. As such, it represents a very important part of the Government's provision of services to Western Australians. In performing its function, among other things, DCD's span of activities includes:

- Providing one-to-one support and consultancy services. In 2004/05, DCD provided this support directly to 41,000 individual clients and, through funding to not-for-profit support bodies, provided further services to approximately 125,000 clients;¹
- Delivering services to clients who face varying degrees of crises and who are often emotional;
- Making decisions with far reaching consequences for the everyday lives of people in the community. For example, in 2004/05, 355 children were apprehended for welfare reasons, 281 children became wards of the state and approximately 2,700 children and young people were in the care of the Department at some time during the year;²
- Dispensing considerable financial and material assistance to individuals, families and support organisations. In 2004/05, DCD allocated approximately \$66 million in recurrent funding to 320 not-for-profit organisations; and³
- With regard to childcare, it issues licences and oversees the operation of commercial enterprises. At 30 June 2005, this extended to 1412 licensed childcare services throughout the state providing places for approximately 70,000 children up to 6 years old.

The services it provides, funds and/or oversees are characterised by:

- necessarily close, albeit professional, relationships between DCD staff and their clients, especially those experiencing crisis; and
- the capacity for decisions of staff to exert considerable influence on their clients' lives - their emotional and physical well-being and material or financial consequence.

In December 2004, Parliament passed the Children and Community Services Act 2004 to replace and consolidate the objects of the previous Child Welfare Act 1947, Welfare and Assistance Act 1961 and the Community Services Act 1972 (includes

¹ DCD Annual Report 2004/05

² Ibid

³ Ibid

Community Services (Child Care) Regulations 1988 and Community Services (Outside School Hours Care) Regulations 2002 in relation to child care services). The Children and Community Services Act 2004 was proclaimed in February 2005. It is under this legislation that DCD now exercises its responsibility for the protection, guidance and maintenance of children in need of care and protection and its broader statutory responsibilities for promoting the wellbeing of children, families and communities.

DCD administers the Adoption Act 1994 and Adoption Regulations 1995, which cover both local and overseas adoptions.

DCD has additional responsibilities under Acts administered by other authorities. The most significant of these include Children's Court of Western Australia Act 1988, Family Court Act 199, Immigration (Guardianship of Children) Act 1946 (Commonwealth), Justices of Peace Act 2004, Legal Representation of Infants Act 1977, School Education Act 1999, Supported Accommodation Assistance Act 1994 (Commonwealth), and the Young Offenders Act 1994.

DCD also has responsibility for the staged implementation of the provisions of the Working with Children (Criminal Record Checking) Act 2004 that commenced on 1 January 2006.

DCD is also a notifying authority as defined in section 3 of the CCC Act, and the Director General of DCD is obliged to notify the Commission of all matters she reasonably suspects may involve misconduct of relevance or concern to her in her official capacity. This obligation is currently delegated to DCD's Human Resources Directorate and is the responsibility of the Manager of Employee Services. DCD's Employee Services Section is the primary point of contact between the Commission and DCD.

Allegations and notifications are assessed to determine the Commission's jurisdiction and what, if any, action is warranted. The Commission refers the majority of matters regarding DCD to DCD's Employee Services Section for action.

DCD's role places it in a position of considerable power and authority with regard to its clients. Where such power and authority exists so does a heightened risk of misconduct. The consequences of misconduct for DCD's clients are potentially severe, especially for the most vulnerable members of our community, most often children and young people.

It is also important to point out that in these circumstances where such influence, need, and closeness of working relationship are significant elements in the operating environment, there is always the prospect that staff may be compromised by clients who are desperate for their wants to be met. This may well see staff coerced or threatened into misconduct.

The DCD environment is such that even single incidents of misconduct can have severe consequences for the individuals involved, as well as eroding public confidence in the Department and Government.

Consequently, DCD requires policies, procedures and structures to enable it to reduce the risk of misconduct occurring and the means to address misconduct incidents comprehensively and appropriately when they do occur.

The Commission acknowledges the interest in and support shown by DCD to this review exercise and the assistance provided. The Commission is mindful that the

introduction of new governing legislation and DCD's efforts to respond to a number of recent reviews into various aspects of its operations has resulted in considerable organisational change within DCD.

1.2 Purpose

The Commission reviewed the ability of DCD to deal with misconduct and formed an opinion as to the adequacy of its policies, procedures and structures with regard to the management of misconduct.

The review was conducted pursuant to section 18(2)(d) of the Corruption and Crime Commission Act 2003 ("CCC Act"), which provides the Commission with the authority to perform its misconduct function by 'Monitoring the way in which independent agencies and appropriate authorities take action in relation to allegations and matters that are referred to them by the Commission'.

1.3 Scope Of The Review

This review had four components:

1. Identify DCD's objectives and structure and its approach to misconduct management. This involved reviewing relevant legislation, annual reports and documentation. Discussions were held with a number of senior staff with responsibilities in key areas of the Department's operations and visits were made to several district offices for discussions with local managers. Discussions were also held with DCD staff in the Kimberley and Pilbara.
2. Establish what misconduct issues exist, whether they are properly identified and how they are recorded. This involved reviewing Commission files about DCD misconduct matters; DCD files relating to misconduct, discipline and grievance matters and considering relevant documentation from Human Resources and from DCD complaint and incident registers. This also involved determining whether all notifiable issues that may perhaps have been otherwise dealt with as grievances, industrial complaints, or as performance management issues have been properly notified to the Commission.
3. Assess how DCD manages misconduct matters. This involved taking into consideration criteria including, but not limited to, whether the Commission was notified of the matter, whether all relevant issues were adequately identified and addressed, whether all relevant evidence was obtained and analysed, whether the investigation was proportionate to the seriousness of the matter, whether it was conducted in a timely manner and whether the principles of procedural fairness were followed.
4. Form an opinion as to the adequacy of misconduct management in DCD. This involved analysis of the data collected from the first three components. This analysis helped the Commission form a view about how well DCD manages misconduct.

1.4 Limitations Of This Review

The Office of Seniors Interests, Office for Children and Youth, Office for Women's Policy and the Family and Domestic Violence Unit, were not included in this review. There are also aspects of the Department's operations that have not been

commented on in any detail (other than in terms of 'risk' reference) – such as foster care and child care for example because there are differing legal views about whether these areas are within the Commission's jurisdiction.

1.5 Guidelines, Support And Advice Regarding Misconduct

From its inception, the Commission has sought to inform public agencies and their staff of their responsibilities with regard to misconduct and the CCC Act. In doing so, it has published misconduct notification guidelines, provided briefings and targeted education sessions and sought to engage responsible staff in key agencies concerning the management of misconduct.

In this regard, the Commission has interacted with DCD across a range of levels. This includes:

- In March 2004, the Commission distributed information guidelines to all public sector agencies for the notifying of misconduct matters.
- In May 2004, the CCC delivered information sessions for public sector agencies in regional districts on the subject of risk and misconduct.
- In June 2004, the CCC provided DCD with a copy of its 'Notification Guidelines' document.
- DCD participated in the CCC's public sector profiling survey in January 2005 – a survey aimed at identifying organisational level strategies, activities and attitudes related to corruption prevention.
- During March 2005, the CCC made separate presentations to DCD executives and the Child Care Licensing Unit on misconduct and risk.
- In November 2005, the CCC conducted community and agency information sessions in the Kimberley and Pilbara, focussing on explaining the CCC's operations and establishing an understanding of misconduct risks in regional areas. DCD staff participated in these sessions.

The Commission has provided these guidelines, advice and support to DCD to enable it to focus on developing the means to identify, reduce and effectively manage misconduct incidents when they occur. The Commission will continue to provide assistance in the form of guidance and advice in supporting DCD to meet its responsibilities.

1.6 DCD's Response To The Draft Report

On 27 June 2006, in accordance with section 86 of the Corruption and Crime Commission Act 2003, DCD was issued with a draft of this report to provide the opportunity for consideration and discussion about the views formed by the Commission. DCD's response was positive. The Commission's recommendations were accepted and a commitment was given to their implementation. Only minor issues were raised in terms of the text of the draft and these are reflected in this report.

CHAPTER TWO – DCD’S MANAGEMENT OF MISCONDUCT

2.1 *Misconduct Management Mechanisms*

To effectively manage misconduct, agencies need to have in place policies, procedures and structures that provide mechanisms for handling misconduct. These mechanisms need to have organisation-wide reach to ensure effective and appropriate action across the breadth and depth of the organisation. Developing these mechanisms involves acceptance of the notion that promoting professional conduct, at the expense of misconduct, is a fundamental element of an agency’s core business. Such mechanisms should ensure that misconduct is addressed in terms of policies, procedures and structure and supported by staff, education and training. It is essential that within each agency the mechanism is clearly documented and disseminated across the organisation.

An effective, integrated misconduct management mechanism founded on an appropriate management plan contains reactive and pro-active elements structured in a way so as to address the following:

- The means to prevent misconduct through –
 - appropriate policies, practices and procedures;
 - organisational and individual awareness of the issue of misconduct generally and of the nature of the misconduct risks particular to the organisation;
 - recognition of misconduct as a risk in a risk management plan (its nature, location and relevant controls); and
 - education and training.
- The means to identify misconduct through –
 - appropriate policies, practices and procedures;
 - specified responsibilities for managers and staff;
 - checks and balances within practices and procedures to ensure compliance; and
 - relevant education and training.
- The means to report identified or suspected misconduct (both internally and to the CCC).
- A policy and a procedure for handling misconduct – this includes the means to deal with the consequences of identified misconduct in both the short and long term.
- An effective internal investigation process.

2.2 *DCD’s Misconduct Management*

DCD does not have an organisational misconduct management strategy nor appropriate formally documented policy and procedures in place – it does not have an effective, integrated misconduct management mechanism. This is not to suggest that the issue of misconduct has not been considered and to some degree addressed

by DCD, or that steps are not currently being taken to manage misconduct. What is not evident is an approach to dealing with misconduct as a whole of organisation issue. There is no clearly enunciated, centralised and cohesive approach to misconduct management.

The Department's response to the need to address misconduct has resulted in responsibility for misconduct management spread over a number of areas within DCD:

- The Human Resources Division has responsibility for what appears to be the most clearly defined aspect of the Department's misconduct management process in the form of its disciplinary procedure. It manages the formal disciplinary process, the handling of reported misconduct allegations and any associated investigations and inquiries, in consultation with Regional Directors and District Managers. Human Resources also has a staff education responsibility with regard to ethics and conduct matters generally.
- The Department's Internal Audit Branch and the Internal Audit Committee manage the Department's risk management plan. The Internal Audit Branch targets specific risk areas for periodic review. Corruption and misconduct are risks identified in the risk management plan.
- Staff education and training is a shared responsibility involving Human Resources and the Capacity Building Directorate (this directorate is located within the 'North' division - one of three regional divisions).

2.3 *Organisational Awareness Strategies*

A number of policies and procedures that have a direct bearing on the issue of misconduct are documented in the Department's 'Best Practice Manual'. The manual includes direction about the following:

- Code of Conduct;
- Conflicts of Interest;
- Disclosure of Official Information;
- Gifts, Gratuities, Benefits etc; and
- Suspected Official Corruption.

The manual is available on the Department's intranet. The manual does not include information about the concept of misconduct as an organisational issue, the responsibility the organisation has to manage and report on misconduct, the relevance of the CCC or what the misconduct management procedures are.

The Department has a Strategic Risk Management Plan, managed by its Internal Audit Branch. The plan is an extensive document detailing and rating the identified organisational risks, their location within the organisation, their cause and consequence and the relevant controls. The plan identifies corruption and misconduct as a risk for the organisation. It states 'If Departmental policies and procedures are not adhered to and/or if management do not take appropriate action as required, there is a risk that in some instances corruption and misconduct may occur.' The plan does not detail what types of behaviour might occur when this risk is realised. The plan is only available to management staff at Director level and above.

There is no education or training programme for staff addressing these identified risks.

The Department has an on-line education/induction programme that all staff must complete on commencement. With regard to information that has relevance to the issue of misconduct, the on-line induction programme directs new staff members to the Department's Best Practice Manual via the intra-net link. This programme is currently under review.

The Department also has a work-place (local level) induction programme that staff are required to complete with their managers within the initial three months. This programme is intended to provide new employees with a good understanding of their specific role and clear direction about their work practices. Although the induction 'guidelines' for managers does not include a specific reference to conduct, they do identify the issues of ethical and professional standards and breaches of discipline as items to be considered. Managers are expected to identify and assess the relevant risk factors associated with the position and plan the induction accordingly.

Education and training for new field workers is provided through the 'Start-up' programme, an eight-week training course developed by the Department's Capacity Building Directorate, Learning Development Unit and Human Resources. To the extent that the course addresses the issue of misconduct, it contains a short training session on Public Sector Standards, DCD Code of Conduct, DCD Mission, Vision, Principles and Values. This course is currently under review.

In those instances where a field worker is required to commence prior to the 'Start-up' training, there is an abridged mandatory induction and training programme to be completed at the local level within the first week. The programme requires the field worker to access an on-line session entitled 'Working in the Public Sector', which addresses conduct issues.

The Department's Duty of Care Unit deals with child maltreatment and critical incident allegations involving children in care. The unit conducts a module within the Start-up programme, which includes information about the need to identify and report maltreatment and critical incidents. The Unit also makes similar presentations to district offices.

In support of the Department's formal education and training programmes, the Department's Human Resource Division has also recently included in its regular district visits, information sessions for management and staff that address the issue of conduct and aspects of misconduct management. Sessions address the following:

- 'What it means to be a public servant';
- Public Sector Management Act 1994;
- Corruption and Crime Commission;
- Code of Ethics/Code of Conduct;
- Breaches of policy; and
- Inappropriate use of the Internet.

While such information sessions are a positive initiative, there isn't a specific, structured district education programme.

2.4 Individual Awareness

Interviews of managers and senior staff during the course of our review revealed the following:

- Managers and supervisors appear to be generally aware of the Best Practice Manual. The extent to which it is used as a reference at the local level is unclear.
- Managers and supervisors are aware of misconduct as a 'behaviour' issue - e.g. in the 'code of conduct' context. There is not the same awareness about the broader consequences of misconduct – of it being a risk for the organisation; of it reflecting on the organisation's integrity; or of its relationship to professional service delivery.
- There are varying degrees of acknowledgment that information about misconduct and CCC notification responsibilities has been provided across the organisation. There appears to be vagueness about the nature of the information provided and its importance. For example, one manager described the provision of information about misconduct as 'an email, one of many each day'. Not everyone recognises their responsibility to report misconduct internally or of the requirement of the organisation to notify the CCC of misconduct.

Generally, there is a view that misconduct is not a significant management problem for the organisation, with the exception of the difficulties being experienced at the local level where indigenous cultural issues impact on conduct and effective service delivery. The view that misconduct is not an issue is frequently explained in terms of the professional/ethical backgrounds of DCD employees – as social workers they are perceived as persons of integrity, with strong values and a clear sense of right and wrong. It has been said that therefore misconduct is unlikely to occur. There is a sense that misconduct might be more readily, and is more often, identified and managed as a 'performance' matter particularly at the local level.

2.5 Identifying, Recording And Reporting Misconduct

There is no system in place within the organisation that formally focuses the attention of managers or their staff on being alert to misconduct or to provide a formal process to be followed should misconduct be suspected. Views were expressed that this responsibility is implicit within the duties and responsibilities detailed in the respective job descriptions. It was not apparent during the Commission's review that the need to proactively identify and manage misconduct and misconduct risks was perceived as a normal management responsibility. Those who indicated they were mindful of the issue of misconduct within their area or function confirmed that this focus was something that they assumed a responsibility for as individuals and that the action they took was coincidental to their primary responsibilities.

There seems to be uncertainty within the organisation about what action should be taken when a misconduct matter is identified. Consensus among those interviewed by the Commission was that Human Resources as well as the relevant District Director would be contacted and that the process to be followed would be determined by the advice received from these sources.

There is no provision by way of system or database facility for initially recording an identified misconduct matter. It appears that email between parties serves as the primary record, at least until the alleged conduct becomes the subject of the disciplinary process and is formally recorded on the Discipline Register.

Matters referred to Human Resources are recorded on the Discipline Register only if action under the process is commenced. If it is determined that the matter is not to be pursued under the discipline process or is to be dealt with by performance management, the matter is either not recorded on the Register or the record is removed. As a result there is no comprehensive record of all alleged misconduct matters referred to Human Resources. The decision as to whether individual instances of alleged misconduct should be dealt with through the disciplinary process and investigated is arrived at jointly between Human Resources and the relevant District Directors in each particular case.

There is no formal structure existing between Human Resources and other specialised operational areas (e.g. Consumer Advocacy, Duty of Care Unit, Crisis Care Unit) for the purpose of ensuring the recording and reporting of conduct issues that might arise. There are a number of separate information recording modules operated as part of the DCD database that serve the operational needs of specific operational areas (e.g. Consumer Advocacy (Complaints), Crisis Care, Duty of Care etc). These all have a case/client focus and do not require or make provision for the recording of information relating to the reporting and management of conduct issues. Human Resources operate a separate database.

The Duty of Care Unit deals with child maltreatment allegations and critical incidents involving children. DCD has recently taken steps to identify conduct issues in child maltreatment and critical incident matters involving children and for these to be referred to Human Resources for consideration. With regard to the Duty of Care Unit and the Duty of Care Register, there is no requirement on management or staff to report all matters where there are concerns or allegations about maltreatment or critical incidents involving children and young people. Matters recorded on the Register that are considered to have no substance or ultimately result in no action being taken are removed from the Register. As a consequence, in these instances there is no formal record in relation to the matter other than the information that may have been placed on the Human Resources personnel file.

With regard to staff performance management, performance management issues are dealt with at the local level in the majority of instances. There is no system in place to ensure that in the course of the performance management process, misconduct issues are identified and reported. There is no central Departmental register of staff that are or have been subject to performance management.

2.6 Misconduct Notifications Received By The Commission

From 1 January 2004 to 8 November 2005 the Commission received 31 misconduct notifications from DCD (see below). Ten of those concerned the inappropriate release or accessing of confidential information. Of the 31 notifications received, 27 matters have been finalised. Of these finalised matters, 10 matters were substantiated.

Table 1 Misconduct Notifications from DCD 2004-05

Breach of confidentiality	10
Inappropriate/unethical/incompetent behaviour	7
Fraud/theft/falsification	5
Physical action/assault/abuse	4
Serious criminal conduct	3
Management / Administration	2
Total	31

A further 23 notifications were received from DCD at the completion of the review (see below). These matters range from misconduct of a relatively minor nature to several more serious cases. Eight involved allegations of physical action/assault or abuse and seven related to misuse of the Department's database.

Table 2 Notifications by DCD at completion of Review

Physical action/assault/abuse	8
Misuse of database/email	7
Inappropriate/unethical/incompetent behaviour	3
Fraud/theft/falsification	3
Breach of confidentiality	1
Serious criminal conduct	1
Total	23

In terms of the general reporting of matters or incidents that might involve issues of misconduct, some strong views were expressed among people interviewed during the review that there was likely under-reporting of incidents involving children and young people who were in care situations. A more common view expressed amongst those staff interviewed was that DCD staff would know what action was appropriate and would report all incidents. As previously mentioned, DCD operates in a high-risk environment, there is a high risk that misconduct may occur and there is a high risk that the consequences of misconduct may be severe.

Given DCD's operating environment and, in the absence of any organisation-wide misconduct management mechanism, it is considered by the Commission that the

level of notification is unrealistically low and the nature of the misconduct actually notified does not reflect the associated level of risk.

2.7 Investigations By DCD

To date the Commission has taken a pragmatic approach to determining the adequacy of investigation work conducted by agencies. Unless a shortcoming is so significant as to materially affect the outcome of an investigation, it has not been pursued. On this basis the Commission has not yet identified or formally raised with DCD any significant concerns in connection with its misconduct investigations.

CHAPTER THREE – CONCLUSION

3.1 The Commission's Assessment

The nature of its role and responsibility, the relative position of power and authority with regard to its clients and the circumstances in which it conducts business, mean that DCD functions in a high-risk environment.

DCD's risk management plan is limited in terms of the issue of misconduct. It has not yet identified the nature and the likely location of the organisation's misconduct risks or how such risks should be managed. Further, DCD is not in a position to say with any certainty that it is able to identify existing misconduct.

From the misconduct notifications provided by DCD it is evident that misconduct occurs within DCD, but also that it is under-notifying. The nature and amount of the misconduct that has been notified does not reflect the level of risk.

The most significant steps taken so far by DCD to address misconduct focus primarily on staff education and training.

The education and training that is being delivered does not address misconduct in the 'organisational' or 'operational' context, nor does it place sufficient significance on the issue. The information that is provided is fragmented in its delivery across the organisation.

Outside of the discipline process there is little in place procedurally to assist the organisation to identify, report, record and manage misconduct.

3.2 Commission's Opinion

It is the Commission's opinion that, given the high-risk environment in which it operates it is reasonable to expect DCD to employ sophisticated, efficient and effective misconduct prevention, complaint and notification handling systems within an overall misconduct management mechanism that is effective across the organisation.

Based on the information gathered in the review, it is the Commission's opinion that DCD has not yet developed an effective, organisational misconduct management strategy and does not yet have in place an adequate and integrated misconduct management mechanism. There are a number of steps open to DCD to address this issue. These include:

- Developing a strategy that ensures a cohesive organisation-wide approach to managing misconduct;
- Developing a misconduct management plan that addresses the issues of process and procedure, structure and education – it should provide a mechanism that focuses on preventing misconduct and identifying, recording and responding to misconduct and suspected misconduct. It is essential that this mechanism has effect across the whole of the organisation;
- Expanding the Risk Management Plan so that it details the nature and likely location and circumstances of misconduct risk and how these risks are to be managed;

- Establishing an organisational function that has as its primary responsibility dealing with standards of conduct. This would consolidate the misconduct management function and give effect to policy. The Western Australian Police some time ago adopted a directorate approach that is a useful and reasonably successful model. This example is not referred to in the prescriptive sense but the principles involved are relevant. (See details at Appendix 2); and
- Educating and training staff at all levels. The Commission is able to assist in this process.

This report has made assessments, formed an opinion and made five recommendations. Given the high-risk nature of DCD's operating environment, the Commission considers it appropriate that DCD give priority to remedying the present situation.

Apart from the legislative responsibility placed on agencies to report such activity the Commission considers misconduct to be an operational issue that is certain to have a considerable negative impact on the primary work of agencies if it is not properly managed, not the least of which is the erosion of public confidence in government. The Commission looks forward to working with DCD in progressing its approach to misconduct management.

3.3 *Recommendations*

The Commission makes the following recommendations:

Recommendation One

That DCD develops a misconduct management plan for the prevention and management of misconduct across the organisation.

Recommendation Two

That DCD reviews its risk management plan and clearly identifies and details the misconduct risks that exist.

Recommendation Three

That DCD develops a whole of organisation misconduct management mechanism.

Recommendation Four

That DCD develops a function within its structure that has standards of conduct as its primary responsibility, overseen by a senior executive directly responsible to the Director General.

Recommendation Five

That DCD, in conjunction with the Commission, develops an education and training package about misconduct prevention and response. This package needs to raise and maintain awareness among all DCD staff and managers of their obligations and responsibilities when dealing with misconduct matters.

3.4 DCD Implementation

DCD was provided with a draft report on 27 June 2006. DCD accepted the Commission's recommendations and made a commitment to their implementation. An implementation plan was developed in conjunction with the Commission - see Appendix 3.

Implementation of the recommendations is occurring in conjunction with the corporate services restructure project currently being undertaken by DCD. The implementation action plan incorporates a misconduct management focus and ensures implementation of the recommendations within the restructuring project. The Commission has consulted regularly with DCD management during this planning process and will continue to consult and provide assistance during the implementation period. It is envisaged that implementation will take twelve months to complete. DCD will report on progress on a quarterly basis.

APPENDIX 1

‘Misconduct’, as defined by s4 *Corruption and Crime Commission Act 2003*.

“4. “Misconduct”, meaning of

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 of employment;*
- (b) *a public officer corruptly takes advantage of the public officer’s office of 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 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 function 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 officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public officer or is a person whose office or employment could be terminated on the grounds of such conduct). ”*

APPENDIX 2

A ‘Standards’ Directorate - Western Australian Police Service ‘Professional Standards Portfolio’

The idea of a Professional Standards Directorate is not a new or unique concept. The Western Australian Police precedent in this area is a useful and reasonably successful model. While it is not intended here to use the police model in a prescriptive sense, the principles involved are relevant.

The Portfolio comprises an Internal Affairs Unit (and this includes a risk assessment unit), Internal Investigations Unit, Ethics and Standards Division (this incorporates standards compliance and standards development), and Management Audit Unit.

- The stated mission for the Portfolio is ‘ensuring the integrity of the Service’.
- The Portfolio has as its core business, the promotion of integrity and ethical conduct.
- To achieve this the Portfolio sets out to –
 - perform an audit and internal review function in relation to management practices, behavioural standards and performance;
 - facilitate cultural change in ethical standards and behaviour;
 - provide support for Districts in improving Police professionalism;
 - provide a single liaison point for external oversight bodies (Corruption and Crime Commission, Ombudsman, Auditor General, DPP, Crown Solicitor, ALS, State Coroner);
 - investigate corrupt and serious misconduct.
- Key objectives –
 - foster commitment through continued improvement in individual and organisational integrity and accountability;
 - minimise the incidence and impact of corruption within the Service;
 - provide a source of independent internal review;
 - foster individual and corporate commitment to the ethical standards of professionalism, integrity and codes of conduct.
- Key outcomes –
 - increased community confidence, respect and trust for Service;
 - increased workforce acceptance of professional conduct and ethical behaviour;
 - improved transparency and accountability in Service practices;
 - improved level of ethical awareness and professional behaviour

APPENDIX 3

CCC REPORT

MISCONDUCT HANDLING PROCEDURES IN THE WESTERN AUSTRALIAN PUBLIC SECTOR: DEPARTMENT FOR COMMUNITY DEVELOPMENT

ACTION PLAN

Recommendations	Action	Timeframe
<p><i>“Develop a misconduct management plan for the prevention and management of misconduct across the organisation”</i></p>	<p><i>The Department will develop a misconduct management plan for the prevention and management of misconduct across the organisation.</i></p> <p><u>Long Term</u></p> <ol style="list-style-type: none"> 1. <i>Organisational misconduct management plan to be developed as part of Corporate Services Restructure.</i> 2. <i>Review current policies in relation to misconduct management and identify and develop new policies and procedures as required.</i> 3. <i>Review the Department’s Code of Conduct and Code of Ethics.</i> <p><u>Short Term</u></p> <ol style="list-style-type: none"> 4. <i>Develop an overarching policy statement on misconduct prevention, concept of misconduct as an organisational issue and the responsibility the organisation has to manage and report on misconduct.</i> 5. <i>Review the process for the notification of misconduct arising out of Concerns for a Child’s Welfare Investigation.</i> 6. <i>Process guide to be developed for employees on discipline process and concerns for a child’s welfare investigation.</i> 7. <i>Protocol to be developed on providing information to the DG and Minister on Misconduct issues.</i> 8. <i>Central Investigations unit to be established to lead all abuse in care investigations and to ensure misconduct is identified and appropriately actioned.</i> 9. <i>Establish interim structure for the purpose of ensuring the central recording and reporting of conduct issues arising in Human Resources and specialised operational areas</i> 	

	<p>(Consumer Advocacy, Child Advocate, Duty of Care Unit, Crisis Care Unit, Ministerial Liaison Unit).</p> <p>10. Establish process for ensuring that in the course of the performance management process, misconduct issues are identified and reported.</p> <ul style="list-style-type: none"> • Raise awareness with managers of identification and reporting of misconduct. • Amend current performance management templates. • Ensure a formal process is incorporated in the development of the new performance management process. 	<p>Ongoing</p> <p>January 2006</p> <p>December 2007</p>
<p>“Review its risk management plan and clearly identify and detail the misconduct risks that exist”</p>	<p>The Department will review its current misconduct risks identified in the existing risk management plan to assist in the development of the misconduct management plan.</p> <ol style="list-style-type: none"> 1. Business Improvement to review risk management plan in conjunction with Risk Cover. 2. CCC to review risk management plan with DCD to ensure misconduct risks are properly documented and identified. 3. The ongoing review of major operational risks including the issue of misconduct to be dealt with at Executive Level. 4. Revised Risk Management Plan to be endorsed by Executive. 5. Misconduct risks included in the risk management plan to be reviewed with custodians of the risks. 6. Develop training program for custodians of risks on the management of misconduct risks. 	<p>Ongoing to June 2007</p> <p>Ongoing to April 2007</p> <p>Ongoing</p> <p>May 2007</p> <p>Ongoing</p> <p>June 2007</p>

<p><i>“Develop a whole of organisation misconduct management mechanism”</i></p> <p><i>“Develop within the organisation a unit that has as its primary responsibility dealing with standards of conduct overseen by a senior executive directly responsible to the Director General”</i></p>	<p><i>The Department will develop a whole of organisation misconduct management mechanism, which may or may not include a unit with primary responsibility for dealing with standards of conduct. This to be determined as part of the establishment of the new Corporate Services Delivery Model. The whole of Organisation Misconduct Management Mechanism is to incorporate the initiatives outlined above.</i></p> <ol style="list-style-type: none"> 1. <i>Implementation Plan</i> 2. <i>Identify Senior Executive Member responsible for overseeing standards of conduct.</i> 3. <i>Identify Functions and high level processes for misconduct management.</i> 4. <i>Identify opportunities for Business Process Re-engineering in relation to misconduct management and ensure new processes will produce right outcomes/service.</i> 5. <i>Document current processes and organisational structure for misconduct management.</i> 6. <i>Re-engineer the business processes for misconduct management.</i> 7. <i>Identify the new work flows, organisational structure, training implications, job descriptions, information requirements and technology for new misconduct management structure.</i> 8. <i>Endorsement of new misconduct management mechanism.</i> 9. <i>Implement new misconduct management structure and transition into structure.</i> 	<p><i>Completed December 2006</i></p> <p><i>January 2007</i></p> <p><i>February 2007</i></p> <p><i>March 2007</i></p> <p><i>July 2007</i></p> <p><i>August 2007</i></p> <p><i>Sept 2007</i></p> <p><i>October 2007</i></p>
<p><i>“In conjunction with the Commission, develop an education training package about misconduct prevention and response in order to raise and maintain</i></p>	<p><i>1. Global statement from the organisation regarding misconduct and its approach to the management of misconduct.</i></p>	<p><i>December 2006</i></p>

<p><i>raise and maintain awareness among all DCD staff and managers of their obligations and responsibilities when dealing with misconduct matters”</i></p>	<p>2. <i>Training program on misconduct prevention to be delivered to:</i></p> <ul style="list-style-type: none"> • <i>Child Advocate, Consumer Advocate, Standards Monitoring Unit, Duty of Care Unit, Ministerial Liaison Unit.</i> • <i>District Managers</i> <p>3. <i>Structured Misconduct Prevention training programs to be developed for inclusion in:</i></p> <ul style="list-style-type: none"> • <i>Departmental Induction Program for all new employees.</i> • <i>Management and Team Leader Development Programs.</i> 	<p><i>January 2006</i></p> <p><i>February 2007</i></p> <p><i>Ongoing</i></p> <p><i>June 2007</i></p>
---	--	--

DCD will report progress on this action plan to the CCC on a quarterly basis

