



# **CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA**

## **Misconduct Handling Procedures in the Western Australian Public Sector: Department of Consumer Employment Protection**

**29 March 2007**

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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](http://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	<a href="mailto:info@ccc.wa.gov.au">info@ccc.wa.gov.au</a>
Office 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 of Consumer Employment Protection

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**

29 March 2007



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## EXECUTIVE SUMMARY

This review of the Department of Consumer Employment Protection (DOCEP) was conducted as part of the Commission's misconduct function of 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. It is part of a program of reviews to assess the ability of the Public Sector Agencies to deal with misconduct and, if required, to make recommendations.

DOCEP is in the unique position of having detailed knowledge of many, perhaps most, breaches by public sector officers of workplace related laws and/or regulations. The Department is also in the position of having an in depth awareness of measures employed by public sector agencies to deal with such breaches and the effectiveness of those processes. Additionally, DOCEP is, from time to time, likely to be a target for disgruntled consumers, including some complaints of misconduct.

The Commission has received relatively few notifications from DOCEP, with only 17 being received since the Commission's inception in 2004. However, this does not mean to imply that there has been any attempt by DOCEP to conceal matters of misconduct. It may simply indicate that, until now, there hasn't been a reliable process in place within DOCEP for reporting matters of misconduct.

The introduction of a Code of Conduct, 'Reporting Misconduct' guidelines and a demonstrable resolve on the part of DOCEP to enhance its capacity to conduct internal investigations demonstrate that DOCEP is serious about identifying and dealing with misconduct.

In addition to its internal notifications, DOCEP has a pivotal role in the trading and employment sector. It is in a unique position to identify and notify the Commission of misconduct external to itself. From the Commission's review, it would appear that DOCEP understands the importance of this position and, through its relationship with the Commission's CPER directorate, training and executive support, is committed to ensuring that all instances of reasonably suspected misconduct, external to itself, and known to it, are notified to the Commission.

The Commission has made two recommendations in this report, being that:

- DOCEP monitor the current approach to identifying and investigating misconduct. In the event that the number of instances of identifiable misconduct increases to any significant degree, DOCEP should explore the possibility of establishing a dedicated capability to conduct internal investigations; and
- DOCEP maintain its current approach to identifying and notifying the Commission of all reasonably suspected instances of misconduct external to itself and known to it.

The Commission considers that DOCEP is making a very serious attempt to establish appropriate misconduct guidelines for its staff, to roll out those guidelines in a timely fashion and to educate the Executive and staff about their obligations and responsibilities under the Act.

With this commitment, misconduct notifications are likely to increase as this is the trend the Commission has observed in relation to other agencies.



# CHAPTER ONE - INTRODUCTION

## 1.1 *Background to the Report*

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; Appendix 1 refers.

This report is about how the Commission views the Department of Consumer Employment Protection’s (“DOCEP”) 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 process/system they apply – will, to some extent, reflect 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 organization 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, is that 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 the Public Sector Agencies to deal with misconduct and, if required, to make recommendations.

All assistance has been provided by the Director General of the Department, Mr Brian Bradley, and the Acting Executive Director, Mr John Donovan. Mr Bradley and Mr Donovan welcomed this review and were most generous with their time and assistance. In this case the review fortuitously occurred concurrently with the Department looking towards structuring an internal process for dealing with matters of misconduct.

## 1.2 *The Department*

DOCEP was formally established as a department on 1 July 2001, when the Ministry of Fair Trading, the Department of Productivity and Labour Relations and Worksafe

Western Australia amalgamated. The Technical and Safety Division of the Office of Energy joined DOCEP on 1 July 2002 and Resources Safety on 1 July 2005. DOCEP began functioning as a department in July 2002.

DOCEP is a central government agency responsible for advising and overseeing other public sector agencies. Other central Government agencies include the Office of the Auditor General, the Equal Opportunity Commission and the Department of Environmental Protection. It has a broad range of regulatory, inspectorial and advisory functions.

DOCEP employs 880 full time equivalent staff members, including committee and board members, who occupy between 70 and 80 of those FTE positions at any given time.

DOCEP has five operational divisions –

- **Consumer Protection**, which promotes consumer protection and fair trading in Western Australia in a number of ways, including providing information and advice to consumers and traders about their rights and responsibilities; helping consumers resolve disputes with traders; investigating complaints about unfair trading practices; prosecuting unscrupulous traders; regulating and licensing some business activities; and developing legislation that protects consumers;
- **Labour Relations**, which provides employment information to employers and employees, education services on any aspect of labour relations laws; ensuring that employers and employees are complying with their legal obligations under the state industrial relations system; co-ordinating public sector labour relations and Government labour relations policies; and providing strategic advice and services in relation to labour relations policy and legislation to Government;
- **Worksafe**, which provides information designed to answer questions about workplace safety and provide explanations of the laws and regulations in Western Australia;
- **Energy Safety**, which is responsible for the technical and safety regulation of all the electrical industry and most of the gas industry in Western Australia; and
- **Resources Safety**, whose role it is to promote best practice in the areas of safety and health with companies (and their employees) involved in dangerous goods, mineral and onshore petroleum industries.

DOCEP also has two administrative divisions –

- Office of the Director General
- Corporate Services

The key strategies DOCEP adopts to meet its mission of creating an employment and trading environment that provides for the growth, safety and protection of the community include:

- the provision of information;
- reviewing legislation;
- monitoring and enforcing compliance with laws governing consumer protection, labour relations, energy safety and occupational safety and health effectively, efficiently and equitably; and

- delivery of consumer and employment protection.

In terms of misconduct, it is the last of these strategies that impacts most significantly on DOCEP.

In that regard, DOCEP is in the unique position of having detailed knowledge of many, perhaps most, breaches by public sector officers of workplace related laws and/or regulations. DOCEP is also in the position of having an in-depth awareness of any measures employed by public sector agencies to deal with such breaches and the effectiveness of those processes. Additionally, DOCEP is, from time to time, likely to be a target for disgruntled consumers.

While most of those complaints are likely to be administrative or human resource based, it seems likely that matters of misconduct may also arise.

### **1.3 Purpose**

The purpose of this review by the Corruption and Crime Commission is to determine the capacity of the Department of Employment and Consumer Protection to deal with misconduct.

The review was conducted pursuant to section 18(2)(d) of the Corruption and Crime Commission Act 2003, 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’.

### **1.4 Scope of the review**

Working within a four phase structure, the review involved:

- Understanding DOCEP’s objectives and structure by reviewing relevant legislation, annual reports, internal documentation and related documents in order to establish how DOCEP deals with routine investigations, extensive investigations or inquiries and matters that are not investigated;
- Establishing what misconduct issues exist, whether they are properly identified and how they are recorded. This part of the process involved reviewing DOCEP files held by the Commission, general DOCEP inquiry and investigation files and relevant DOCEP Human Resources files. The purpose of analysing the Human Resource files was to determine whether all notifiable issues, that may perhaps have been otherwise dealt with as grievance or industrial complaints, were being properly reported to the Commission;
- Ascertaining how DOCEP manages misconduct investigations by 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 procedural fairness was applied when appropriate; and
- Gathering and analysing all of the above data to identify what (if any) misconduct risks exist and whether those risks are being adequately addressed by way of efficient and effective process. The remaining stage of this phase is to produce this report, which we hope will provide some

immediate assistance for DOCEP and will serve as a catalyst for ongoing and effective liaison and collaboration between DOCEP and the Commission with regard to the management of matters of misconduct.

## **1.5 *Statutory environment***

In the execution of its function, DOCEP acts in accordance over 30 written laws including the Corruption & Crime Commission Act 2003. Further, it administers a number of Acts on behalf of the Minister and Government of Western Australia.

### **1.5.1 *Corruption and Crime Commission Act 2003***

The Commission is required to manage and deal with matters of misconduct in the Western Australian Public Sector, as defined by section 4 of the CCC Act.

DOCEP is a notifying authority as defined in section 3 of the CCC Act.

Pursuant to section 28 of the CCC Act, if any matter involves a reasonable suspicion of misconduct, DOCEP is obliged to notify the Commission.

## CHAPTER TWO – DOCEP’S MISCONDUCT MANAGEMENT

### ***2.1 Notification and internal investigation***

Since its inception, the Commission has received only 17 notifications of suspected misconduct from DOCEP. A small number of additional complaints have been received by the Commission directly from complainants. However, in all cases, the complainants’ allegations were appropriately referred on to the Ombudsman or Police or were closed on the basis that they fell outside the Commission’s jurisdiction.

Of the matters that were within jurisdiction, nearly all were investigated by DOCEP or by contract investigators engaged by DOCEP. However two matters, involving the same subject officer in both cases, were investigated by the Commission.

Expressing reservation about the number of notifications received by the Commission from DOCEP does not mean to imply that there has been any attempt by DOCEP to conceal matters of misconduct. However, it may indicate that, until now there hasn’t been a reliable process in place within DOCEP for reporting matters of misconduct.

Having acknowledged the lack of proper process as a possible explanation for the small number of reports, allowance must be made for the fact that the relationship between DOCEP and the Commission only commenced in January 2004. In that regard, the Commission is mindful that, once an agency is acquainted with its responsibilities under a new Act, it then takes time to develop and disseminate the appropriate departmental policies and guidelines in line with the agency’s particular role within the sector and the new legislation.

### ***2.2 Reporting misconduct – internal regulation***

About two years ago, DOCEP drafted a ‘Code of Conduct’ (“the Code”). In 2006 the draft was revised. The Code and a set of ‘Reporting Misconduct’ guidelines that were produced in consultation with the Commission, are mandatory reading for all DOCEP employees, new officers and contract and short term staff. Attendance at induction sessions conducted by DOCEP’s Human Resources Division, that focus on reporting misconduct, is also compulsory for all new DOCEP staff.

The Code provides guidance to all staff on operational matters and expected behaviours in the Department. It provides a comprehensive guide for employees about their workplace performance including ethical decision making, acceptance of gifts or benefits, professional integrity, conflicts of interest, the protection of confidential information, use of official facilities and equipment, secondary employment, corrupt conduct and breaches of the Code.

Examination of the relevant human resources file at DOCEP revealed that training sessions arranged for new staff to acquaint themselves with the Reporting Misconduct guidelines are very well campaigned for within the Department by the Project and Policy Officer, as is the requirement for existing staff to familiarise themselves with the Guidelines.

Added to this, the Director General and Acting Executive Director have advised that they are confident that the Divisional Executive Directors have a clear understanding of the nature of the actions that demonstrate misconduct and of their responsibility to

report such matters to the Director General. Further, they are confident that the Executive Directors understand the need to inform and educate staff in their respective divisions about matters of misconduct.

### ***2.3 Internal DOCEP investigations***

DOCEP does not have a separate internal investigative section for dealing with internal investigations and complaints. DOCEP's structure is such that, in the past, very few matters have come to the department's attention for internal inquiry unless they have been in-house issues such as, for example, complaints concerning the behaviour of a senior DOCEP officer towards a subordinate and other internal employment matters.

It is only since the establishment of the Commission, that the occasional matter of misconduct, such as the improper release of confidential information by a DOCEP employee or the inappropriate use of departmental stationery by an employee, has had to be investigated. (The Commission's predecessor, the Anti-Corruption Commission, dealt only with matters of "serious improper conduct".) For the reason that so few misconduct allegations are received by DOCEP at the present time, a separate investigative arm is currently unwarranted.

Having said that, once the intended process for identifying and reporting matters of misconduct is properly established, if it becomes apparent that the number of matters under investigation justifies the establishment of a separate internal investigations division within DOCEP, then the current system will need to be replaced with a more formal internal investigating structure such as a Professional Standards Division.

Presently, when low level or less significant matters that are not matters of misconduct require inquiry or investigation, those matters are reported to the divisional Executive Director and managed within that division. When allegations of greater importance call for more exhaustive inquiry, those inquiries are either contracted out to investigators in the private sector or the Commission takes over the conduct of the investigation.

### ***2.4 Commission's opinion***

Although only 17 notifications have been received by the Commission from DOCEP, the review did not indicate that there has been any attempt to conceal misconduct by DOCEP. The introduction of a Code of Conduct, 'Reporting Misconduct' guidelines and a demonstrable resolve on the part of DOCEP to enhance its capacity to conduct internal investigations, demonstrate that DOCEP is serious about identifying and dealing with misconduct.

In the present system, when a matter of misconduct is reported to an Executive Director he or she considers whether it meets the misconduct test, as defined by the Commission. If it does then it is reported to the Director General who notifies the Commission. The Director General will make the decision as to whether the matter is significant enough to be contracted out for investigation.

Having said that, the Commission has been informed that there may have been occasions in the past when matters were resolved prior to having been identified by a DOCEP Executive Director as a reportable matter of misconduct. In those cases, the Commission has been notified after the matter has been investigated and finalised. DOCEP is confident that the re-issuing of misconduct guidelines and the introduction

of a more formal system of reporting will go a long way towards ensuring that, in the future, the Commission is informed of such matters in the first instance.

### **Recommendation 1**

**The Commission recommends that DOCEP monitor the current approach to identifying and investigating misconduct. In the event that the number of instances of identifiable misconduct increases to any significant degree, DOCEP should explore the possibility of establishing a dedicated capability to conduct internal investigations.**

## **2.5 *DOCEP response***

The issue of DOCEP internal investigations was canvassed during a meeting to discuss this report. Mr Donovan recognised that, in the future, as a result of DOCEP being required to investigate a greater number of matters of misconduct referred back to them for investigation by the Commission under section 37 of the Act, there will be a requirement for the Director General's Office to execute a greater governance function within DOCEP and a central investigative section will need to be established within that Office. That will, of course, have resource implications that will need to be addressed at the time. DOCEP does not currently have the resources available to take an officer away from their usual position to conduct internal investigations.

Mr Donovan also acknowledged the need for quality standard investigative policies and procedures to be developed throughout DOCEP before an internal investigations section is formally established. In that way matters can be properly prioritised and appropriately resourced according to the seriousness of the matter before they commence.

Mr Donovan has expressed an interest in progressing discussions with the Commission about establishing a professional standards portfolio in the future that will include dedicated risk management, corporate governance and investigative sections.

## **2.6 *Public sector misconduct external to DOCEP***

Having identified DOCEP's central position in the trading and employment environment, its pivotal role in regulating that environment and the anticipated prospect of a greater number of misconduct matters having to be managed by DOCEP in the foreseeable future, it is timely to consider the most likely areas of risk within the agency.

In that regard, an association has already been established between DOCEP and the Corruption Prevention and Education Division ("CPER") of the Commission. That is a connection that the Commission predicts will develop and expand as DOCEP rolls out its misconduct guidelines and other relevant procedures.

DOCEP is in a unique position within the public sector. Via its operational divisions, particularly Worksafe and Labour Relations, DOCEP receives reports and its advice is sought concerning matters of workplace misconduct, breaches of Public Sector

policies, workplace related laws and regulations and, from time to time, of criminal transgressions. In the Commission's view, DOCEP is potentially a rich source for misconduct notifications.

The Commission was told that there was a view within DOCEP that it was not the agency's role or responsibility to report matters of misconduct that have been reported to DOCEP by other agencies. The concern was that agencies would be hesitant to discuss matters with DOCEP if they thought that those matters could then potentially be reported to the Commission as a matter of suspected misconduct.

However, the Commission found no evidence to support a perception of under-reporting and accepted the CEO's strongly-expressed view that the Executive within DOCEP are clear about their obligation in relation to reporting matters of misconduct and of their responsibility to educate their staff about misconduct.

The Commission considers that the need for officers with the responsibility of providing advice to clients to be sufficiently informed about the overriding obligation to identify and report matters of misconduct is understood by the DOCEP Executive, and will expect to see an increase in notifications as DOCEP further develops its misconduct guidelines and other relevant procedures.

## **2.7 *Commission's opinion***

In the Commission's view, DOCEP's pivotal role in the trading and employment sector places it in a unique position to identify and notify the Commission of misconduct external to itself. It would appear that DOCEP understands the importance of this position and, through its relationship with the Commission's CPER directorate, training and executive support, is committed to ensuring that all instances of reasonably suspected misconduct, external to itself, and known to it, are notified to the Commission.

### **Recommendation 2**

**The Commission recommends that DOCEP maintain its current approach to identifying and notifying the Commission of all reasonably suspected instances of misconduct external to itself and known to it.**

## **CHAPTER THREE - CONCLUSION**

In this first phase in the development of the relationship between DOCEP and the Commission, the Commission is of the view that DOCEP is making a very positive endeavour and serious attempt to establish the appropriate misconduct guidelines for its staff, to roll out those guidelines in a timely fashion and to educate the Executive and staff about their obligations and responsibilities under the Act.

With this commitment, misconduct notifications are likely to increase as this is the trend the Commission has observed in relation to other agencies. If so, then DOCEP may choose to consider the formation of a central investigative section or a dedicated investigative arm of a wider professional standards portfolio sooner rather than later.

In that regard, the Commission looks forward to assisting DOCEP as required with the future progress of its emerging misconduct notification agenda.