



**CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

**Report on misconduct handling procedures in
the Western Australian public sector:
Department of Local Government and Regional
Development**

April 2006

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CORRUPTION AND CRIME COMMISSION OF WESTERN AUSTRALIA

11 April 2006

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

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

Dear Mr President
Dear Mr Speaker

In accordance with section 88 of the *Corruption and Crime Commission Act 2003*, I am pleased to present the Corruption and Crime Commission's report on *Misconduct handling procedures in the Western Australian public sector: Department of Local Government and Regional Development*.

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

I recommend that the report be laid before each House of Parliament at your earliest convenience.

Yours sincerely

Kevin Hammond
COMMISSIONER

EXECUTIVE SUMMARY

This review was conducted with the support of the Department of Local Government and Regional Development (the Department) in order to determine the Department's capacity to deal with matters of misconduct.

The Compliance and Advice Branch is the investigative arm of the Department and reports suspected matters of misconduct to the Investigations Review and Complaint Assessment Unit of the Corruption and Crime Commission (the Commission) for assessment. Further, it investigates complaints about local government, reviews local government statutory compliance returns and auditor's reports and undertakes compliance audits on local governments (or councils).

The structure of the Branch varies according to the availability of staff and the competing investigative needs of the Department at any given time. When all positions in the Branch are filled, the workload is manageable.

The Department has a methodical and comprehensive complaints handling system for complaints received from local governments and from other informants both inside and outside local government. However, the Department's records management system for its investigation files, is procedurally awkward and requires review. The Department has advised that it is currently modifying the system in order to improve the process.

This review found that, in most cases, the Department investigates matters of misconduct in a timely fashion. Further, the Commission has a reasonably high degree of confidence that the Department is properly notifying it of those misconduct matters. However, those matters are relatively few compared to the number of local government sector matters received by the Commission overall.

Within the local government setting, the Commission receives most of its complaints directly from councils and individual complainants. Consequently, the Department remains uninformed about most of the matters received and it is this lack of a central processing point that this review has exposed as the main weakness in the present system. A process therefore needs to be established whereby the Commission reports all matters of suspected misconduct by local governments to the Department on a monthly basis, so that the Department keeps itself informed about, and is in a position to address, misconduct risks within the local government sector.

Finally, there are a number of jurisdictional questions that need to be settled between the Department and the Commission concerning the responsibility of one or the other agency for the investigation of some matters. The Commission recommends that this be addressed by way of the establishment of a Memorandum Of Understanding (MOU) between the Department and the Commission.

At the conclusion of this report, the Commission makes the following five recommendations that it believes will enhance the capacity of the Department to deal with matters of misconduct.

RECOMMENDATIONS

RECOMMENDATION 1:

The Commission recommends that:

(1.1) legal opinion be sought by the Department of Local Government and Regional Development to establish its authority to investigate matters not specified under the *Local Government Act 1995*;

(1.2) a Memorandum of Understanding be established between the Department of Local Government and Regional Development and the Corruption and Crime Commission defining the role of both agencies in relation to the investigation of local government misconduct matters.

RECOMMENDATION 2:

The Commission recommends that:

the Department continue its evaluation of the current records system with a view to refining the process to ensure that all relevant documentation relating to discrete investigations is kept together.

RECOMMENDATION 3:

The Commission recommends that:

the Department consider changes to existing legislation or an amendment to the *Local Government (Official Conduct) Amendment Bill 2005*, that will provide a disciplinary framework for CEOs and local government employees that complements the proposed framework for elected members.

RECOMMENDATION 4:

The Commission recommends that:

the Commission establish a process by which the details of local government misconduct matters that are reported to the Commission are provided to the Department by way of a monthly register.

RECOMMENDATION 5:

The Commission recommends that:

the Department establish an audit process, or existing Departmental audit processes be reviewed, with a view to incorporating the examination of the relevant files at local government offices to ensure that all notifiable matters are being properly reported to the Commission.

FOREWORD

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 *Corruption and Crime Commission Act 2003*. The Commission receives the majority of its notifications about suspected misconduct from public sector agencies, as well as receiving a considerable number directly from members of the public.

Two of the Commission's principal functions are the misconduct function and the corruption prevention and education function. Through its focus on these functions the Commission is charged with continuously improving the integrity of the public sector. Central to its overall approach to misconduct, is the Commission's view that Western Australians have the right to expect the highest standards of integrity and performance from their public sector. In that regard, the Commission considers that the CEO of each public sector organisation has primary responsibility for addressing misconduct matters within their organisation. Having said that, however, the Commission, in discharging its misconduct and corruption prevention and education functions, supports and assists CEOs in meeting their responsibilities.

An important element of this approach is to seek to develop the capacity of public sector agencies to respond to allegations of suspected misconduct within their own agencies. In taking this approach, the Commission recognises that the extent to which agencies are able to manage this is directly related to their size and the complexity of matters they deal with. Nevertheless, the Commission believes that the development of appropriate misconduct handling protocols within agencies delivers two major benefits. First, it enables the full extent of misconduct matters across the agency to be assessed, enabling where appropriate systemic changes that promote appropriate behaviour. Second, and connected to the first, is that it enables agencies to transform their view of allegations from matters to be addressed singularly and disposed of as soon as possible, to one in which the proper handling of allegations 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 capacity of public sector agencies to deal with matters of misconduct and, if required, to make recommendations for adjustments and refinements to existing processes to improve the overall management of misconduct within the sector.

The reviews are 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.

This is not, however, a job that the Commission can achieve on its own. It is one that requires support and assistance from agency CEOs.

This monitoring function is best achieved in partnership with the CEOs of public sector agencies in order to identify and act upon recommendations for improvements to policies and processes. Consequently, these partnerships will contribute to continuously improving the integrity of and reducing the incidence of misconduct.

INTRODUCTION

The purpose of this review by the Commission is to determine the capacity of the Department of Local Government and Regional Development to deal with matters of misconduct.

It is anticipated that this will be the first in a series of reviews of this kind to be conducted by the Commission with a view towards streamlining the misconduct notification procedures currently in place at Western Australian public sector agencies.

This project has been undertaken with the co-operation and assistance of the Director General of the Department and her staff. The Director General has welcomed the opportunity of an independent review of Departmental processes. The Commission appreciates the particular support provided by the Manager, Compliance and Advice, and A/Principal Investigations Officer.

PROJECT SCOPE

Working within a four phase structure, the review involved:

- Understanding the Department's objectives and structure by reviewing relevant legislation, annual reports and related documents in order to establish how the Department's investigative arm deals with routine investigations, extensive investigations and inquiries;
- Establishing what misconduct issues exist, whether they are properly identified and how they are recorded. This part of the process involved reviewing the Commission's departmental and local government files, departmental assessment, investigation and general council administration files, and various other information and departmental files;
- Ascertaining how the Department 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 the principles of procedural fairness were followed 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 the Department and will serve as a catalyst for ongoing and effective liaison and collaboration between the Department and the Commission with regard to the management of matters of misconduct.

STATUTORY ENVIRONMENT

Local Government Act 1995 (*the Act*)

Employees and elected members of local government exercise authority under a written law, *the Act*, and are public officers within the Commission's jurisdiction. Therefore, the Commission has jurisdiction to deal with allegations of misconduct by elected members (mayors, presidents and councillors) as well as Chief Executive Officers (CEOs) and other employees (local government staff).

The *Act* does not specify a process for dealing with misconduct, disciplinary offences or substandard performance.

Corruption and Crime Commission Act 2003 ("the CCC Act")

Local governments, elected councils of local governments and the Department are notifying authorities as defined in section 3 of *the CCC Act*. Under Section 28(2) of *the CCC Act*, the principal officer of a notifying authority has a duty to notify the CCC of suspected misconduct. The mayor or president of a council is the principal officer of the council of local government and the CEO is the principal officer of a local government as well as an agent and employee of the elected members. Section 28 of *the CCC Act* compels the mayor or president and the CEO to notify the CCC of suspected misconduct by other councillors, the CEO or other employees. Under section 25 of *the CCC Act*, councillors may report misconduct by the mayor or president, other councillors, the CEO or other employees. Further, the CEO or other employees may report misconduct by any councillor or employee.

INTERNAL INVESTIGATIONS

The Department's Investigations Policy and Procedures Manual cites that its primary objective for the outcome of inquiries

"...is to assist local governments to correct instances of operational practice, elected members conduct and staff performance identified as failing to meet legislative requirements or accepted industry standards. Prosecution of individuals is not the objective and will be a measure of last resort."

Division 1 of Part 8 of the *Local Government Act 1995*, provides the Director General, or any other authorised person, with the power to authorise an inquiry into all local governments and their operations and affairs. These powers can be exercised in relation to a person who is or has been a council member, or member of a committee, or employee of the local government concerned or a person with whom the local government has or may have had a financial or other association.

The authority includes the role of investigating breaches of *the Act* and any matters relating to the exercise or performance of a power, authority, duty or function conferred on a local government. As part of their investigation, the Department may review the processes employed by local government to determine the matter.

Compliance and Advice Branch

The Compliance and Advice Branch is the investigative arm of the Department and sits within the Governance and Statutory Support Directorate. It investigates matters of complaint about local governments, reviews local government statutory compliance returns and auditors' reports and undertakes compliance audits on local governments. It has other key roles including providing advice to the Minister on the operation of Acts related to the *Local Government Act*. For example, the *Cemeteries Act 1986*, granting approvals under various Acts, and providing a support role for a number of statutory boards and committees.

The Compliance and Advice Branch was established on 1 July 2001 with a staff complement of 10.8 FTEs when the Department was created in response to recommendations from the Machinery of Government Taskforce. The Department combined the roles of the former Department of Local Government, the regional functions of the former Department of Commerce and Trade and the Westlink function of the former Department of Contract and Management Services.

As at 30 June 2005, the number of FTE's in the Compliance and Advice Branch had increased to 14.8 and, with an additional three positions approved in 2005/2006, this will increase the number of staff engaged in this Branch to 17.8 FTEs.

Overall, the Government has been supportive of the Department's requests for resources in this area and, when additional positions are filled and a new structure, that is presently under discussion, is implemented, there is reason to believe that this will lead to improved standards of accountability in local government.

The other Directorates that together form the Department are the Executive, Strategies and Legislation, Corporate Business Services and Capacity Building. The Capacity Building Division incorporates the Local Government Support and Development Branch which works closely with the Compliance And Advice Branch by providing instruction, guidance and support for local governments as and when a need is identified.

The Governance and Statutory Support Division is managed by a Director and Manager. The Compliance and Advice Branch is lead by a Manager with its investigation team being comprised of 1 x Principal Investigations Officer, 3 x Senior Investigations Officers, 2 x Investigations Officers and a part-time Records Officer.

The Branch also includes a Principal Advisory Officer, 4 x Advisory Officers, a Senior Compliance Officer and an Administrative Assistant. Having said that, the level of expertise in the Branch can vary from time to time. At the time of the review, the Principal Investigation Officer and a Senior Investigation Officer were seconded to the Joondalup Inquiry. They are the most experienced and skilled investigative staff. The officer, whose substantive position is that of Senior Compliance Officer, was acting in the position of Principal Investigation Officer.

In each case, the above positions have been backfilled but with less experienced staff.

Statistics included in the Department's 2003-2004 Annual Report reveal that the Department received 285 complaints about local governments in that year and completed 224 investigations during that period (this number includes complaints received prior to this period). The complaints included 377 separate allegations. Additionally, 350 "letters of concern" were received relating to a wide range of issues including such matters as rate increases, local services and facilities and the application of other Acts administered by the Department. The breakdown of the 377 allegations is as follows:

Council procedures	26
Tendering procedures	4
Other administrative processes	57
Financial Interest breaches (elected members)	42
Financial Interest breaches (employees)	5
Improper use of information (elected members)	7
Improper use of information (employees)	2
Other actions (elected members and employees)	152
Planning processes at members level	25
Planning processes at employees level	12
Miscellaneous	45

When positions are filled with appropriately skilled officers, the workload is, in the Branch's opinion, manageable. However, the allocation of officers to major inquiries such as the Belmont Inquiry (completed in April 2003), can give rise to a backlog of other assessment and less significant investigative matters. However, this problem has largely been overcome by an increase in staffing in the Branch as a result of increased funding.

THE DEPARTMENT'S COMPLAINTS HANDLING SYSTEM

The Department has in place a methodical and comprehensive complaints handling system for the management of complaints received from local governments and other informants from both inside and outside local government. Of these sources, by far the majority of complaints appear to come from members of the public either directly or through their local members or the relevant Minister, rather than from local governments.

The system provides a progressive and prescriptive course of action for investigating officers depending on the seriousness of the complaint received. The complaint progresses within the system according to its seriousness with the necessary resources and time allocated accordingly. Department files examined during the course of this review, reveal that this process seems to make certain that no matters are overlooked and that the more serious matters are adequately resourced.

Essentially, the reported matters can be classified into non-legislative breaches such as code of conduct issues, matters concerning the behaviour of councillors and local government administrative procedures and breaches of the *Local Government Act*. It is the alleged breaches of the *Local Government Act* that the Commission is most interested in as they include all matters assessed as serious misconduct.

Each matter is assessed and it is determined whether the complaint is dealt with by the Governance and Statutory Support Division (investigations), the Capacity Building Division (education and advice), whether it should be referred to another agency (such as Police) or whether no action should be taken (for example, if the matter is outside its jurisdiction).

If the matter includes issues that are the subject of both the Governance and Statutory Support Division and the Capacity Building Division, then the issues are separated with breaches of legislation dealt with by investigations staff and other matters referred to the Capacity Building Division. The Capacity Building Division does not have any role to play in relation to investigations, although investigators will seek information from the Capacity Building Division to ascertain what advice has been provided so that any information leaving the Department is consistent.

Further, if during the course of working with a local government in an advisory capacity, the Capacity Building Division identifies matters that require investigation, they will advise the Governance and Statutory Support Division accordingly.

If the matter is allocated to the Compliance and Advice Branch, an investigator conducts a preliminary assessment. Following the preliminary assessment, if the matter is to be progressed, it is investigated by one of the following processes:

In assessing a complaint, the Principal Investigations Officer determines whether to refer the matter:

- for an authorised inquiry (an authorised enquiry is undertaken pursuant to Division 1 of Part 8 of the *Act* - such as in the case of the Belmont Inquiry);
- for preliminary inquiry (initial investigation undertaken to establish the validity of a complaint);
- to another investigative agency (such as the Ombudsman's Office or the Western Australia Police Public Sector Investigation Unit (PSIU) or the Commission in the case of criminal matters);
- to the section manager (where the complaint is essentially one of process and advice or guidance is required) ;
- to the local government concerned (when the matter is considered to be best dealt with by way of a local government complaint handling procedure); or
- to be written off (if, for example, the matter is outside jurisdiction, has no grounds, is vexatious or trivial or not in the public interest).

There are presently a number of jurisdictional questions that need to be settled between the Commission and the Department with regard to which agency should bear the responsibility for investigating certain matters that are either not expressly in breach of the *Act* or that the Department doesn't feel it has the capacity to investigate. For example, the Department has returned to the Commission a number of matters that were forwarded for investigation on the basis that, while identified as possible matters of misconduct, they were not specifically in breach of *the Act*.

Further, in 2003, the Director General put a corresponding view to the Legislative Council's Standing Committee on Public Administration and Finance that the intent of *the Act* is that councils be autonomous and that the Department will only intervene when there has been a breach of *the Act*. The Minister supported that view and also referred to the limited budget and staffing levels at the Department as a reason for the Department limiting its involvement in investigations into many of the matters raised by complainants and not investigating questionable policy decisions made by the council.

While this is obviously not the forum for jurisdictional and associated issues to be debated in any detail, suffice to say that the Commission has had an introductory discussion with the manager, Compliance and Advice, and A/Principal Investigations Officer around the idea that an MOU between the two agencies, clarifying and defining the roles of both agencies with regard to the investigation of matters of misconduct within the local government sector, be considered without delay.

Accepting complaints

Preferably, complaints are provided in writing - although an oral complaint can be accepted at the discretion of the Principal Investigations Officer.

Anonymous allegations are investigated if the matter is serious and adequate information has been provided to enable the commencement of an investigation.

Frequently complaints are received by the Department from elected members and members of the community for alleged breaches of a local government's code of conduct. In the main, such matters relate to a perceived failure to disclose a personal interest in a matter. It is the Department's view that it is the responsibility of each local government to deal with this type of matter and enforce its code of conduct without intervention by the Department. These complaints are, therefore, redirected to the local government to be dealt with in the first instance.

Consistent with the Department's approach, the Commission receives a significant number of these types of complaints and, in most cases, the most appropriate and direct means for addressing code of conduct issues is by having them dealt with by the local government. The complaints are either forwarded or returned directly to the local government concerned by the Commission or the complainant is encouraged to initially liaise directly with the local government.

The Commission's discussions with senior departmental officers and its understanding of the Department's complaints handling system, give the Commission confidence that, for the most part, it is being properly notified of matters of misconduct that come to the Department's attention. Having said that, there are many reportable matters of which the Department is unaware as they are reported directly by local government authorities to the Commission. This is the main shortcoming of the current reporting procedure and proposals for addressing this problem will be discussed in further detail in this report.

Prioritising complaints

The Department's Compliance and Advice Branch operates a complaints management process that ensures the most effective use of the Branch's resources. Each matter is prioritised by the Branch's Principal Investigations Officer with any priority one matters being at the direction of management. A priority matrix is used, which takes into consideration a wide range of criteria including the seriousness of the allegation, the potential for the destruction of evidence and whether it is in the public interest to prioritise the matter.

This process ensures not only that matters are duly prioritised but that they are accorded the appropriate level of resources necessary to complete that inquiry bearing in mind the impact that the investigation is likely to have on the Division's resources. Further, management may change the priority of a matter at its discretion as the matter progresses and additional evidence or information comes to light.

Preliminary assessments or inquiries

From a review of a wide range of files from the Department's compliance and advice database, the number of matters that are resolved at the preliminary assessment/inquiry stage, by far eclipse the number that progress through to any substantive review or investigative level or that are referred to other agencies for investigation. Although a number of matters require substantial preliminary investigation, the majority of matters are minor and could just as appropriately be labelled advice matters or matters of enquiry.

These matters are typically dealt with by way of first round inquiries being made by an investigating officer, for example, providing an explanation of the relevant section of the *Local Government Act* or *Regulations* to the complainant followed by a letter of confirmation about the advice provided.

The preliminary assessment is a document based process and does not involve interviewing complainants or witnesses. No formal authorisation by the Director General is required to undertake a preliminary inquiry.

The guiding principles applied to the assessment of complaints by the Department as outlined in the Compliance and Advice Policy Procedures Manual (the manual) are as follows:

- Discretion
- Fairness
- Accuracy
- Accountability
- Efficiency
- Responsiveness (timeliness)

All routine matters are kept together on the one file, described as 1-18 files, corresponding to the local government authorities that they are concerned with. However, if the matter progresses to an investigation, then a separate file is created at that time with, in theory, all relevant documentation being transferred to that dedicated file.

The manual also gives notice of the need for complaints that allege criminal or corrupt behaviour (other than complaints that allege breaches of the financial interest and improper use of information provisions of *the Act*) be referred to the Public Sector Investigation Unit of the Western Australia Police or the Commission for investigation. It states that the Commission should be notified of any complaint the Department intends to assess that could give rise to a reasonable suspicion of corrupt behaviour or misconduct. For any matters that are to be referred to the Commission, a letter is prepared for signing by the Principal Investigations Officer. It is anticipated that most matters will be finalised within four weeks.

This appears to be a reasonable period of time within which to complete most preliminary assessments. Realistically however, by the time administrative tasks associated with assessment matters and a final report is completed, our review revealed that the majority of matters are generally completed within a six to eight week time frame. As one would expect though, during periods of back log created by major inquiries such as the Belmont Inquiry, the average time taken to finalise assessments increases. However, in that regard, the Commission recognises that, in assessing the capacity of any agency to deal with misconduct matters, the complaints environment is one where there will always be matters that unexpectedly require additional time and resources dedicated to them and that any blow out associated with such matters will usually alter the average time in which a file is closed. Nevertheless, the current six to eight week time period appears to be excessive.

COMMISSION'S OPINION

The Department has in place a methodical and comprehensive complaint handling system. However, the system could be improved if:

- Current uncertainties about who has responsibility for investigating matters not expressly in breach of the Act were resolved
- Current uncertainties about who should investigate matters that are beyond the Department's investigation capacity were resolved; and
- The current six to eight week time frame to complete assessments was reduced.

Resolving the first issue involves obtaining legal advice. The first two issues could be resolved by developing a Memorandum of Understanding between the Commission and the Department. As previously noted, the third is really an issue of resource availability.

RECOMMENDATION 1:

The Commission recommends that:

- (1.1) legal opinion be sought by the Department of Local Government and Regional Development to establish its authority to investigate matters not specified under the *Local Government Act 1995*;**
- (1.2) a Memorandum of Understanding be established between the Department of Local Government and Regional Development and the Corruption and Crime Commission defining the role of both agencies in relation to the investigation of local government misconduct matters**

FILE MANAGEMENT

The Department is reviewing the current process and, in future, the Principal Investigating Officer will examine all complaints with a view to deciding whether a matter appears serious enough to progress to an investigation. If that is considered likely to occur, then the matter will be allocated a discrete investigation file in the first instance.

The Department's Compliance Advice Branch and Records Manager is also examining whether there is a need to modify the Department's records system.

Further, in regard to file management, it was noted that, in most cases, files did not contain notes of telephone attendances or meetings that were then referred to in correspondence or reports. For example, in one such matter, correspondence from the Department to a complainant stated that the Commission had advised that aspects of his complaint should be re-directed to other agencies. However, there was no file reference to any discussions held between the Department and the Commission about this issue. Further, in relation to that same matter, a number of important documents referred to in correspondence and in the departmental report into the matter were not included on the files. In one example in this case, a report prepared for the Department by an external human resources consultant could not be located on either the 1-18 file or the dedicated case files.

The Department advised that many file notes and telephone messages are not kept on file but are maintained in electronic form. The Department has since acknowledged that, for the purpose of maintaining a tidy audit trail, it is necessary to maintain hard copies of those documents on the relevant files.

Recently, the Compliance and Advice Branch issued an instruction that officers maintain running sheets on file and, henceforth, that they download all relevant file notes and include hard copies on file.

The Commission's audit of Department files also revealed that, in some cases, documentation referred to in particular reports and other documents contained within the dedicated investigation file could not be found on file. Further enquiries revealed that the documentation could be located on the original 1-18 file. It would seem that this is little more than a shortcoming in the Department's filing procedure. However, when a completed departmental investigation is subsequently reviewed by the Commission, should the Commission decide to make further enquiries or conduct an investigation into the matter, then the necessity for all relevant evidence to be readily available to the Commission is essential.

COMMISSION'S OPINION

Within the existing system, there is too great an opportunity for important information to go astray and, therefore, for significant issues to be overlooked and for the CCC not to be notified.

To ensure that the guiding investigative principle of 'accountability' can be demonstrated, that the Commission can be confident that all reportable matters are properly reported, and that the integrity of an investigation can be maintained by the Department, it is essential that the Department devise a more reliable and consistent records system for its investigation files.

As previously mentioned, recent consultation with the Department confirms that a more reliable and accountable records system is presently under discussion.

RECOMMENDATION 2:

The Commission recommends that:

the Department continue its evaluation of the current records system with a view to refining the process to ensure that all relevant documentation relating to discrete investigations is kept together.

AUTHORISED INQUIRY AND INQUIRY PANELS

If a new matter is identified as being of sufficient significance to warrant an Authorised Inquiry (Division 1 of Part 8 of the *Local Government Act 1995*), or if an existing matter progresses from a preliminary investigation to the next stage of inquiry because of its seriousness, then the Director General may authorise an Inquiry and may confer a general power to conduct an inquiry to officers of the Department or external appointees.

An Authorised Inquiry is an internal inquiry conducted by officers from the Department (such as in the case of the inquiry into the City of Belmont). The requirements of the Department in relation to the conduct of such an inquiry are detailed in the Department Investigations Manual.

An Inquiry Panel (such as the Joondalup Inquiry into whether the City of Joondalup Council should be re-instated or dismissed - which is discussed later in this report) is an external inquiry conducted by external appointees. An Inquiry Panel, pursuant to Division 2 of Part 8 of *the Act*, can only be authorised by the Minister for Local Government. The Minister has a wide discretion to suspend a Council pending, during or following an inquiry by an Inquiry Panel and significant powers to scrutinise the business of local governments including the conduct of individual public officers.

In relation to both Authorised Inquiries and Inquiry Panels, procedural fairness is provided to persons affected by possible adverse findings and the opportunity to respond is afforded before final conclusions are reached and recommendations are made.

The City of Belmont Inquiry resulted in 33 findings and 13 recommendations regarding the improvement of processes within the City. Based on the Department's advice, all the recommendations have been implemented. Arising from the findings in this Inquiry, the Department produced a booklet to assist other local governments with the lessons learnt from Belmont.

The structure within the Department allowed for the Governance and Statutory Support Division - Compliance and Advice Branch, to conduct the Belmont Inquiry and then for the Capacity Building Division – Local Government Support and Development Branch, to engage and provide a support role by arranging the publication of the information booklet.

The Commission has no oversight or review role in relation to either Authorised Inquiry or Inquiry Panel matters. (Having said that, the Commission at all times maintains the authority, under the CCC Act, to conduct its own inquiry if it considers it necessary or appropriate under the circumstances.)

Should a review be requested by a person or persons whose actions are being investigated by means of an Authorised Inquiry, that request will be considered by the Director, Governance and Statutory Support, provided there is new and compelling evidence produced or the inquiry failed to take proper account of or misinterpreted evidence presented during the inquiry.

In both examples, *the Act* requires that a report on the outcome of the inquiry is produced.

In the case of an Authorised Inquiry, the report is given to the Director General who is required to provide a copy to the Minister and, unless the Minister directs to the contrary, to the local government authority concerned. *The Act* provides that the local government is then required to provide written advice to the Minister detailing what it has done, or proposes to do to give effect to any recommendations within 35 days, or longer at the Minister's discretion. The Minister will then determine if and how the report should be released to the public.

Reports generated by an Inquiry are given directly to the Minister and a similar process regarding the implementation of recommendations and for deciding the distribution of the report follows.

Local Government (Official Conduct) Amendment Bill 2005

The Local Government (Official Conduct) Amendment Bill 2005 was read for a second time in Parliament on 16 November 2005.

The purpose of the Bill is to amend the *Local Government Act 1995* to provide a disciplinary framework to deal with individual misconduct by local government council members where they do not comply with a code of conduct or when they contravene particular laws applying to them in Acts and Regulations, rather than by taking action against the whole council.

Under the Bill, the Minister will establish a standards panel for the hearing of minor breaches that have been reported by a complainant and the Director General may receive notice of the breach.

In the case of recurrent or serious breaches, the Director General must be notified and the matter can be referred to the Standards Panel or to the State Administrative Tribunal. A serious breach will virtually always amount to misconduct, attracting the duty to notify the Commission.

The rules of conduct will be provided for in the regulations and include the general principles of behaviour, the misuse of information and other council resources, securing personal advantage or disadvantaging others, unlawful interference in administration, disclosure requirements and restrictions on accepting gifts.

Although the Bill provides a disciplinary framework for elected members, it does not provide an equivalent framework for CEOs and local government employees. The *Local Government Act* is also silent on the minimum standards of behaviour required of CEOs and employees.

COMMISSION'S OPINION

The Department's approach to Authorised Inquiries and Panel Inquiries is appropriate. The enactment of the *Local Government (Official Conduct) Bill* will improve the capacity of the local government sector to deal with misconduct by establishing a relevant disciplinary framework. Unfortunately, the Bill does not provide a disciplinary framework for CEOs and local government employees.

RECOMMENDATION 3:

The Commission recommends that:

the Department consider changes to existing legislation or an amendment to the *Local Government (Official Conduct) Amendment Bill 2005*, that will provide a disciplinary framework for CEOs and local government employees that complements the proposed framework for elected members.

MISCONDUCT REPORT PROCESSING

Interestingly, it is the lack of any central processing point for dealing with matters of misconduct within the local government system that this review has exposed as the main weakness in the present system. Further, because of the length of time it is likely to take before the Bill is enacted, the Commission is of the view that it would be futile to wait before progressing existing processes.

Within the local government setting, the Commission receives most allegations of misconduct directly from councils and individual complainants. Comparatively few are received from the Department. Nevertheless, there is an expectation on the part of the Commission that the Department keep itself informed about misconduct risks within the local government sector and that it puts in place the necessary processes to efficiently and effectively address those risks.

On that basis, misconduct risks need to be properly identified, systemic or frequent matters need to be recognised and the appropriate support strategies, from both within the Department and, if necessary, from the Commission's Corruption Prevention Education and Research Unit, need to be introduced to help combat misconduct in the sector. Therefore, without delay, a process should be established by which the details of all local government matters of misconduct that are reported to the Commission are provided to the Department by way of a monthly register.

The advice should include particulars of the council reporting the allegation, the nature of the alleged breach and the details of the officer(s) involved. By having regular access to this information, the Department would be better placed to identify systemic failures and intervene in significant matters at an early stage. The system as it presently stands creates too great an opportunity for significant issues to go unnoticed, unreported and uncorrected by the Department.

During preliminary discussions with the Director Governance and Statutory Support, the Manager Compliance and Advice and the Acting Principal Investigations Officer, they indicated that the type of changes we are proposing would be most welcomed by the Department as a way of providing a wider and more complete picture of misconduct in the local government sector and better placing the Compliance and Advice Branch to address misconduct risks. The Department looks forward to further discussion with the Commission to establish the most cost effective and beneficial way to progress this proposal.

Finally, the Commission wishes to increase its confidence that local governments are meeting their reporting obligations to the Commission with regard to all notifiable matters. The Department conducts regular audits of local governments. The Commission proposes that such audits include the inspection of councils grievance and complaint records. Such an approach will contribute to higher confidence that misconduct matters are properly notified.

COMMISSION'S OPINION

The current system of local governments directly notifying the Commission of misconduct matters, without reference to the Department, undermines the Department's capacity to identify systemic failures and develop appropriate support strategies. This problem could be rectified by the Commission compiling a monthly notification register. The Commission is not sure that the current system provides the sufficient confidence that local governments notify the Commission of all notifiable matters. The conduct of a regular audit process could help increase confidence.

RECOMMENDATION 4:

The Commission recommends that:

the Commission establish a process by which the details of local government misconduct matters that are reported to the Commission are provided to the Department by way of a monthly register.

RECOMMENDATION 5:

The Commission recommends that:

the Department establish an audit process, or existing Departmental audit processes be reviewed, with a view to incorporating the examination of the relevant files at local government offices to ensure that all notifiable matters are being properly reported to the Commission.

REPORT OF THE INQUIRY INTO THE CITY OF JOONDALUP

On 26 May 2004, under the terms of section 8.16 of *the Act*, the Minister for Local Government and Regional Development appointed a panel to inquire into and report on the operations and affairs of the City of Joondalup. On 11 October 2005, the Minister tabled the “Report of the Inquiry into the City of Joondalup”.

The Joondalup Inquiry focused on matters that occurred in 2003. The Corruption and Crime Commission first opened its doors for business in January 2004. So, in the Commission’s view, any shortcomings identified in the Department’s processes prior to that time are of interest only insofar as they may assist in the development and strengthening of effective processes and the relationship between the Commission and the Department into the future.

The Commission sees no merit in simply censuring past administrative processes unless those criticisms generate worthwhile future change. It is, it seems, with a similar view, that the Inquiry made certain observations and recommendations concerning the Department while prefacing their remarks with the rider that the role of the Minister and the Department is only relevant to the extent that it may have influenced the operation of the Council during the period under review. Interestingly, the observations made by the Inquiry about the Department essentially parallel those made by the Commission in this report.

Arguably, the most significant recommendation made by the Commission in this report relates to the need to establish a process that requires the details of all local government misconduct matters reported to the Commission to be provided to the Department so that the Department can identify misconduct risks and systemic or frequent issues and provide the appropriate support strategies to local governments to address misconduct issues.

Similarly, the Inquiry identified that, the Department was ultimately ineffective in preventing the disintegration of good government in the City of Joondalup because the relationship between the Department and local authorities is not structured in such a way which allows the Department to control the process of prevention which their Capacity Building Division seeks to implement.

Further, the Inquiry recognised that present legislation doesn’t allow for intervention by the Minister or the Department in disputes between a CEO and a council as a result of which neither the Minister nor the Department can reasonably have fulfilled that function in this case. This observation clearly impacts on the Commission’s concerns regarding the inadequacy of present legislation insofar as it relates to the conduct of CEOs and other council employees and the lack of consistency in the standards of conduct required of CEOs as opposed to elected members.

Finally, the Inquiry heard that problems experienced by the Joondalup Council in 2003 partly resulted from a failure by the Department to properly address, in a timely fashion, six matters of complaint made against the Mayor. In that regard, the Inquiry heard that 10% of complaints from the City of Joondalup were not dealt with within six months (90% were dealt with in that time and that the Department dealt with complaints as quickly as they were able to given the resources available to them).

The Inquiry also heard the contention that delays may be interpreted by some parties as the Department favouring one party over another.

In concluding this particular matter, the Inquiry made the observation that the Department will no doubt note the contentions made and will take them into account, as best they can.

It is with that same eye to the future that the Commission identified that, in the past, the allocation of officers to major inquiries gave rise to a backlog of other assessment and less significant investigative matters and a resultant delay in their finalisation. However, by 2005, this problem had been largely overcome by increased staffing in the Department through a budget increase from the Government.

CONCLUSION

The Commission acknowledges that the Department has, at an early stage, demonstrated its clear intention to establish a cooperative association with the Commission by endeavouring to establish an effective process for handling matters of misconduct within the local government system. At the present time, however, the development and progress of that process is limited by the structure of the existing relationship between local governments and the Department which hampers the control of misconduct and corruption prevention by the Department. It is further impeded by existing legislation insofar as it relates to the conduct of CEOs and other council employees.