



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT IN RELATION TO THE ACTIVITIES OF AN EMPLOYEE OF THE DEPARTMENT OF HEALTH

15 December 2010

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CORRUPTION AND CRIME COMMISSION

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Mr Peter John McHugh
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Dear Mr Peacock
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003 (WA)* ("the CCC Act"), the Commission hereby transmits to you a copy of its *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Activities of an Employee of the Department of Health*.

The Commission notes that under section 93(3) of the CCC Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

A handwritten signature in black ink that reads "Len Roberts-Smith".

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

15 December 2010

ABBREVIATIONS AND ACRONYMS

ATM	Automated Teller Machine
CACH	Child and Adolescent Community Health
Café	Kite Café, Harry Boan Building, Princess Margaret Hospital for Children
CAHS	Child and Adolescent Health Service
“the CCC Act”	<i>Corruption and Crime Commission Act 2003 (WA)</i>
“the Commission” or CCC	Corruption and Crime Commission
CPCA	<i>Criminal Property Confiscation Act 2000</i>
DPP	Director of Public Prosecutions
EFTPOS	Electronic Funds Transfer at Point of Sale
Estee Lauder	Estee Lauder Companies
ID Card	Identification Card
LHMU	Liquor Hospitality and Miscellaneous Union
PMH	Princess Margaret Hospital for Children
“the SD Act”	<i>Surveillance Devices Act 1998 (WA)</i>
WAIRC	Western Australian Industrial Relations Commission

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EXECUTIVE SUMMARY

Introduction

- [1] This is a report on the investigation by the Corruption and Crime Commission (“the Commission”), commenced in September 2009, of alleged public sector misconduct in relation to the activities of Ms Aⁱ as an employee of the Department of Health,ⁱⁱ particularly during 2009 but also 2004-2009 inclusive.
- [2] This report, and investigation upon which it is based, is part of a larger body of work undertaken by the Commission in relation to the capacity of WA Health to identify misconduct risks and deal with misconduct suspicions, and to form an opinion as to the adequacy of policies, procedures and structures with regard to the overall management of misconduct. The case of Ms A which forms the basis of this report is further testament to the shortcomings in the management of misconduct by WA Health and the need for these to be addressed.

Ms A

- [3] Ms A commenced employment with the Department of Health in 1989. During the period of the Commission investigation she was a Leading Hand in the Kite Café, Princess Margaret Hospital for Children (PMH), Child and Adolescent Health Service, a position which she had held for more than 10 years. Ms A was employed by the Department of Health until 18 December 2009.

Commission Investigation

- [4] On 13 August 2009 the Commission received a report that Ms A had been engaging in misconduct by stealing cash from the Kite Café.
- [5] Whilst initially the situation appeared to be a relatively simple case of stealing as a servant which could be adequately dealt with by a routine investigation (perhaps by referral to the Western Australia Police) followed by, if appropriate, the laying of criminal charges, it was revealed to be more significant as the investigation progressed. There were indications that the thefts had been occurring for several years and involved a substantial amount of money. Determination of the extent of it would require detailed financial analysis and obtaining specific evidence of theft would require special investigative techniques. Finally, it would be

ⁱ The Commission has concluded that it is not necessary to name the Health Department employee in this report. She is no longer employed in the public sector and has been convicted of offences arising out the Commission investigation. Further disciplinary action is not a consideration. The Commission has also had regard to her personal circumstances, which outweigh the public interest in naming her. The Commission accordingly refers to her throughout this report as “Ms A”.

ⁱⁱ The Department of Health, situated in Royal Street, East Perth, is the executive or management arm of WA Health. “WA Health” refers to the whole of the WA public health system.

necessary to examine systemic and procedural issues which may have facilitated any such conduct or led to it being able to continue undetected over what looked to be some years.

- [6] The Commission obtained and analysed Ms A's banking records. It was clear from the analysis that Ms A had access to a significant, regular income of undisclosed source in order to meet her basic living requirements that were not being funded from her bank account. Further, Ms A was able to save an average of \$1,085 per month for the 67-month period between 1 April 2004 and 30 October 2009, whilst at the same time spending an average of \$871 per month on Clinique products during that period.
- [7] Records obtained by the Commission from Estee Lauder Companies ("Estee Lauder")ⁱⁱⁱ showed that between 15 April 2004 and 30 October 2009 Ms A had purchased Clinique products costing \$257,292 from the Service Centre in Centro Galleria.
- [8] Financial analysis determined that of the Clinique products purchased in cash during the period 15 April 2004 to 30 October 2009, up to \$7,437 may have been sourced through ATM (Automated Teller Machine) or EFTPOS (Electronic Funds Transfer at Point of Sale) withdrawals from Ms A's bank account. The remaining Clinique products purchased in cash totalling \$166,518 were purchased using funds from an unexplained source.
- [9] Given the evidence derived from the analysis of her bank statements and Estee Lauder records relating to Ms A's expenditure on Clinique products, it was determined that the Commission should undertake further investigation.
 - On 9 October 2009 a warrant was issued authorising the installation and use of surveillance devices within the Kite Café using surveillance devices pursuant to section 13 of the *Surveillance Devices Act 1998* (WA).
 - On 26 November 2009 a Supreme Court Judge granted Commission applications for search warrants, pursuant to section 101 of the *Corruption and Crime Commission Act 2003* ("the CCC Act"), and a search of Ms A's residential premises was conducted the following day.
 - Subsequent to the search on 27 November 2009, Ms A was interviewed by Commission Investigators.

ⁱⁱⁱ Estee Lauder Companies manufacture and market skin care, makeup, fragrance and hair care products. Clinique is a Brand Name.

- Further financial analysis was undertaken by a Commission Forensic Accountant and a Kite Café cash register was examined by the Commission’s Computer Forensics Investigator.

[10] Based on evidence obtained as a consequence of the above the Commission charged Ms A on 7 May 2010 with two counts of stealing as a servant (by way of a general deficiency) between 15 April 2004 and 26 November 2009. The charges were laid pursuant to sections 371 and 378(7) of *The Criminal Code*. The first charge was for theft of an alleged amount of \$170,202^{iv} and the second for an alleged amount of \$16,610,^v a total of \$186,812, over the period from 15 April 2004 to 26 November 2009. Ms A pleaded guilty to the charges in the Perth Magistrates Court on Friday 18 June 2010 and was committed for sentence in the District Court of Western Australia.

[11] On 7 September 2010 Ms A was sentenced by Chief Judge Martino to nine months imprisonment for each count, to be served cumulatively, that is, a total of 18 months, with the term of imprisonment suspended for two years with a program and supervision requirement.

Reviews of Kite Café Procedures and Controls

[12] As a result of the Commission investigation the Corporate Governance Directorate of the Department of Health undertook a review of Kite Café procedures and controls in relation to the handling of cash, inventory management and rostering of staff in December 2009.^{vi} This review highlighted a number of shortcomings (refer [80] of the main body of this report).

[13] It is significant to note that the 2009 review report made reference to an earlier review, which occurred in 2002.

[14] It is stated in the 2009 review report that “Internal Audit has previously reviewed and issued a report in 2002, out of which recommendations were issued. Management has indicated that they were not implemented”. If the 2002 recommendations had been implemented and maintained, Ms A would not have been able to behave in the way that she did in order to steal a very substantial amount, over the period from 15 April 2004 to 26 November 2009, from Kite Café takings.

^{iv} The first charge includes Clinique purchases from unsourced funds totalling \$166,518, and additional Clinique purchases from unsourced funds subsequent to 30 October 2009 totalling \$3,684.

^v \$16,610 is comprised of \$16,490 stored in clear plastic bags and an additional amount of \$120 seized by the Commission on 27 November 2009 during a search of Ms A’s residential premises, pursuant to section 101 of the CCC Act (refer [72] of main body of this report).

^{vi} *Review of Coffee Shop [Kite Café] Cash Handling Controls: Princess Margaret Hospital*, Government of Western Australia, Department of Health, Corporate Governance Directorate, December 2009.

Commission Opinion

- [15] In the opinion of the Commission the conduct of Ms A as outlined in this report constitutes serious misconduct under section 4(c) of the CCC Act as such behaviour amounted to criminal offences under sections 371 and 378(7) of the *The Criminal Code*, of which she was subsequently convicted.
- [16] As Ms A is no longer employed as a public officer, and has been convicted and sentenced for her criminal offences, the Commission makes no recommendation for further action in relation to her.

Recommendation

Recommendation

That the recommendations contained in the 2009 report entitled *Review of Coffee Shop [Kite Café] Cash Handling Controls: Princess Margaret Hospital* be implemented in order to address the shortcomings identified by the review in relation to the handling of cash, inventory management and rostering of staff. In the opinion of the Commission this would effect an improvement in accountability, and thereby significantly reduce the risk of theft and revenue loss.

- [17] It is the intention of the Commission to monitor the action taken by PMH to address the shortcomings in procedures and controls as identified by the 2009 review of the Kite Café and to implement the recommendations contained in the report of the review; monitoring which will occur in the context of an ongoing relationship between the Commission and PMH. Monitoring is a normal part of the Commission's work subsequent to an investigation, and is undertaken pursuant to section 41 of the CCC Act.
- [18] The Commission notes that the recommendations contained in this report have been accepted by WA Health, and have either been implemented or implementation is well progressed.
- [19] The Commission welcomes the willingness of Mr Snowball, Director General, Department of Health, to work in partnership with the Commission to improve misconduct management in WA Health.

CHAPTER ONE

INTRODUCTION

1.1 Background

- [1] This is a report on the investigation by the Corruption and Crime Commission (“the Commission”), commenced in September 2009, of alleged public sector misconduct in relation to the activities of Ms Aⁱ as an employee of the Department of Health,ⁱⁱ particularly during 2009 but also 2004-2009 inclusive. The investigation commenced as a consequence of a report made to the Commission which led to a suspicion that Ms A may have engaged in misconduct as defined by section 4 of the *Corruption and Crime Commission Act 2003* (WA) (“the CCC Act”).
- [2] WA Health is a major organisation within the Western Australian public sector. The nature of its business, its size, its 37,000 employees and its importance to the wider community means it is an organisation the Commission must consider in executing its responsibility for assisting public sector agencies to prevent and manage misconduct.
- [3] This report, and investigation upon which it is based, is part of a larger body of work undertaken by the Commission in relation to the capacity of WA Health to identify misconduct risks and deal with misconduct suspicions, and to form an opinion as to the adequacy of policies, procedures and structures with regard to the overall management of misconduct. In this context, the case which forms the basis of this report, that is, the case of Ms A, is a relevant case study.
- [4] Section 7A of the CCC Act specifies the main purposes of the Commission, and section 7B specifies how these purposes are to be achieved. One purpose of the Commission is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”. One of the ways the Commission does this is by helping public authorities to increase their capacity to prevent, identify and manage misconduct, and by requiring authorities to notify the Commission when misconduct occurs. The Commission may conduct reviews to assess this capacity and has done so in the case of several authorities. In June 2007 the Commission commenced a review of WA Health, under sections 17 and 18 of the CCC Act.
- [5] The first of the WA Health reviews was of Princess Margaret Hospital for Children (PMH). This review identified significant shortcomings in the

ⁱ The Commission has concluded that it is not necessary to name the Health Department employee in this report. She is no longer employed in the public sector and has been convicted of offences arising out the Commission investigation. Further disciplinary action is not a consideration. The Commission has also had regard to her personal circumstances, which outweigh the public interest in naming her. The Commission accordingly refers to her throughout this report as “Ms A”.

ⁱⁱ The Department of Health, situated in Royal Street, East Perth, is the executive or management arm of WA Health. “WA Health” refers to the whole of the WA public health system.

management of misconduct and, in the Commission's view, PMH did not have an effective misconduct management mechanism in place to deal with misconduct risks. Critical weaknesses in PMH's approach to dealing with misconduct included the following.

- (1) Misconduct was dealt with in an *ad hoc* manner rather than on a core business basis.
- (2) Although policies and guidelines existed to address behaviour, and in some cases elements of misconduct, they were not coordinated and provided little assistance to direct managers in identifying, managing and reporting misconduct.
- (3) Training and education programs were fragmented.
- (4) There was no risk management plan.
- (5) Managers knew little, if anything, about misconduct and how to manage it. To the extent that they did try to manage misconduct, practices varied widely.

[6] On that basis, the Commission formed the opinion that PMH did not place sufficient weight on managing misconduct as part of its overall management strategy. PMH was unable to account to the wider community that it managed its significant misconduct risks in a demonstrably fair, reliable or transparent way, that is, it did not have in place an effective misconduct management mechanism, albeit elements of such a mechanism existed.

[7] The Commission made recommendations, relating to the development of management plans, a whole of organisation misconduct management mechanism, a dedicated function that has standards of conduct as its primary responsibility, and an education and training package about misconduct prevention and response, to address these issues. The recommendations were accepted by the Department of Health with an undertaking that they would be implemented not only at PMH but on a "whole-of-Health" basis.

[8] The report entitled *Misconduct Handling Procedures in the Western Australian Public Sector: WA Health*, tabled in the Parliament of Western Australia on 22 April 2010, is the culmination of the Commission's review of misconduct management across WA Health. The overall review of WA Health included separate reviews of Royal Perth Hospital and the Western Australia Country Health Service-Kimberley, and a thematic review of drug handling procedures at a range of WA Health sites. In its April 2010 report the Commission was critical of the progress made by WA Health in developing the necessary mechanism for dealing with its serious misconduct risks, and for managing and preventing misconduct. The Department of Health is currently working with the Commission to achieve progress in this area.

- [9] The case which forms the basis of this report, the case of Ms A, is further testament to the shortcomings in the management of misconduct by WA Health and the need for these to be addressed.
- [10] Ms A commenced employment with the Department of Health on 20 April 1989. During the period of the Commission investigation she was a Leading Hand in the Kite Café, PMH, Child and Adolescent Health Service (CAHS), where she had worked since commencing employment with the Department of Health. Ms A held the position of a Leading Hand in the Kite Café for more than 10 years, having been appointed to the position on 8 January 1996.

- [11] Ms A was employed by the Department of Health until 18 December 2009.

1.1.1 Princess Margaret Hospital for Children¹

- [12] The Perth Children's Hospital opened in Subiaco (Roberts Road) in 1909 after 12 years of community fundraising. It was comprised of 40 beds, an operating theatre and a small outpatient section. It was renamed Princess Margaret Hospital for Children in 1949. Today PMH, along with Child and Adolescent Community Health (CACH), comprises the CAHS, which is part of the Health Department's Metropolitan Health Service. CACH provides a comprehensive range of health promotion, and early identification and intervention community-based services for children and families.
- [13] CAHS was formed in 2006 as part of ongoing health reform in Western Australia. At that time PMH separated from the Women's and Children's Health Service, becoming part of the newly formed CAHS. CAHS is committed to providing high quality health care to the children and adolescents of Western Australia.
- [14] PMH is Western Australia's specialist, internationally recognised, paediatric facility that treats around 300,000 children and adolescents, as inpatients and outpatients, from around the State, each year.
- [15] The Kite Café is located on Level 4 of the Harry Boan Building at PMH.

1.1.2 Scope and Purpose of the Commission Investigation

- [16] The scope and purpose of the Commission investigation, under section 33(1)(a) of the CCC Act was to:

assess the allegations against Ms A and form an opinion under section 22 of the CCC Act as to whether “misconduct” [has or] may have occurred [is or may be occurring, is or may be about to occur or is likely to occur] as defined by section 4 of the CCC Act.

1.2 Jurisdiction of the Commission

- [17] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day,

nor of any political or departmental interest. It must perform its functions under the CCC Act faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the CCC Act.

- [18] It is a function of the Commission, pursuant to section 18 of the CCC Act, to ensure that an allegation about, or information or matter involving, misconduct by public officers is dealt with in an appropriate way. An allegation can be made to the Commission, or made on its own proposition. The Commission must deal with any allegation of, or information about, misconduct in accordance with the procedures set out in the CCC Act.

1.3 Definitions

1.3.1 Misconduct

- [19] The Commission refers to and incorporates into this report what is set out at [20] to [36] and [38] inclusive of its Special Report.ⁱⁱⁱ

1.3.2 Public Officer

- [20] The Commission refers to and incorporates into this report what is set out at [39] of its Special Report.
- [21] By definition, Ms A was a “public officer” during the period relevant to the Commission investigation. Ms A, as an employee of the Department of Health, PMH, appointed under the *Hospitals and Health Services Act 1927*, was included in the category of “public service officer … within the meaning of the *Public Sector Management Act 1994*”.²

1.4 Reporting by the Commission

- [22] The Commission refers to and incorporates into this report what is set out at [40] to [41] inclusive of its Special Report.
- [23] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

1.4.1 Ms A

- [24] Accordingly, Ms A was notified of possible adverse matters which it was proposed to include in this report. She was invited to make representations about those and other matters about which she might wish to do so, and was advised that she and/or her legal adviser could inspect

ⁱⁱⁱ *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“Special Report”) tabled in the Parliament of Western Australia on 21 October 2010.

evidentiary material going to matters identified. Ms A did not avail herself of the opportunity to provide representations to the Commission.

1.4.2 Another Public Officer

- [25] Despite the investigation being principally confined to the conduct of Ms A and the Commission making no assessment of, nor expressing any opinion about, another public officer in this report, the Commission accepts that the words “any matters adverse to a person” in section 86 of the CCC Act have a meaning wider than merely the Commission’s assessments and opinions.
- [26] As it was possible that matters considered in this report may be regarded as matters adverse to that public officer, the Commission notified him of those matters, pursuant to section 86 of the CCC Act.
- [27] That individual was invited to make representations about those and other matters about which he might wish to do so. He was advised that he and/or his legal adviser could inspect evidentiary material going to matters identified. He did not avail himself of the opportunity to provide representations to the Commission.
- [28] By definition, this person was a public officer during the period relevant to the Commission investigation. As an employee of the Department of Health since 1987 appointed under the *Hospitals and Health Services Act 1927*, he was included in the category of “public service officer … within the meaning of the *Public Sector Management Act 1994*”.³ He worked as a Cleaner at PMH, CAHS, between 1999 and 2010. His employment was terminated on 4 May 2010 following an investigation by PMH, Workforce Services, in relation to activities undertaken in association with Ms A.
- [29] The action taken by PMH in relation to him occurred as a result of the Commission investigation. The Commission understands that the Liquor Hospitality and Miscellaneous Union (LHMU) lodged a claim in the Western Australian Industrial Relations Commission (WAIRC) of unfair dismissal on his behalf but proceedings were subsequently discontinued.

1.4.3 Department of Health

- [30] As a body, the Department of Health was notified on Wednesday 10 November 2010 by letter to the Director General, Mr Kim Snowball, of possible adverse matters which it was proposed to include in this report. In addition, Mr Philip Aylward, as Chief Executive of CAHS (which is comprised of PMH and CACH) was notified by letter of the same date of possible adverse matters which it was proposed to include in this report. Representations (attached as Appendix 1 to this report) were received by the Commission on Friday 3 December 2010 from Mr Snowball on behalf of WA Health.
- [31] The Commission notes that the recommendations contained in this report have been accepted by WA Health, and have either been implemented or implementation is well progressed.

[32] The Commission welcomes the willingness of the Director General to work in partnership with the Commission to improve misconduct management in WA Health, and notes his comments that –

WA Health would like to take this opportunity of thanking the CCC in its work in relation to this matter. It is anticipated that an ongoing partnership between our two organisations will continue to improve misconduct management within WA Health, and thereby providing an appropriate assurance to the public of Western Australian [sic] in the ethics, integrity and professional conduct of staff employed within the public health sector.⁴

[33] The Commission has taken Mr Snowball's representations, on behalf of WA Health, into account in finalising this report.

1.5 Disclosure

[34] The Commission refers to and incorporates into this report what is set out at [43] to [46] inclusive of its Special Report.

[35] The decision to report on the investigation by the Commission of alleged public sector misconduct in relation to the activities of Ms A goes to its statutory purpose of improving continuously the integrity of, and reducing the incidence of misconduct in, the public sector and is also necessary in the public interest to enable informed action to address the corruption and other misconduct risks identified by the circumstances revealed in this report.

1.6 Privacy Considerations

[36] In formulating this report the Commission has considered the benefit of public exposure and public awareness and weighed this against the potential for prejudice and privacy infringements. The Commission has also complied with the strict requirements of the *Surveillance Devices Act 1998* (WA) ("the SD Act") in the utilisation of surveillance device information in this report.

1.7 Opinions of Misconduct

1.7.1 Publication of an Opinion

[37] The Commission refers to and incorporates into this report what is set out at [49] to [51] inclusive of its Special Report.

1.7.2 Balance of Probabilities

[38] The Commission refers to and incorporates into this report what is set out at [52] to [57] inclusive of its Special Report.

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

- [39] Section 23(1) of the CCC Act prohibits the Commission from publishing or reporting a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence. Accordingly, the Commission must not publish or report an opinion that a person has engaged in misconduct of a kind described in section 4(c) unless they have been convicted (or at least pleaded guilty) to the relevant offences. In such a case the Commission would be reporting a fact, not its opinion, as to that.
- [40] Section 23(1) also limits the Commission's ability to publish or report an opinion that conduct "constitutes ... an offence" under section 4(d)(v) or that it "constitutes ... a disciplinary offence" under section 4(d)(vi). In both cases the most that the Commission can say is that that conduct "could constitute" a criminal offence or a disciplinary offence.

1.7.4 Expression of Opinion

- [41] The Commission has borne all of the foregoing considerations (as outlined in 1.7.1-1.7.3 above) in mind in forming its opinions about matters the subject of the investigation. Any expression of opinion in this report is so founded.

CHAPTER TWO

COMMISSION INVESTIGATION

2.1 Introduction

[42] As stated previously, the investigation by the Commission of alleged public sector misconduct in relation to the activities of Ms A as an employee of the Department of Health commenced in September 2009 as a consequence of a report made to the Commission. The report, received on 13 August 2009, led to a suspicion that Ms A may have engaged in misconduct as defined by section 4 of the CCC Act whilst employed in the Kite Café, CAHS at PMH.

[43] The report alleged that Ms A was stealing cash from the Kite Café on a daily basis.

[44] Whilst initially the situation appeared to be a relatively simple case of stealing as a servant which could be adequately dealt with by a routine investigation (perhaps by referral to the Western Australia Police) followed by, if appropriate, the laying of criminal charges, it was revealed to be more significant as the investigation progressed. There were indications that the thefts had been occurring for several years and involved a substantial amount of money. Determination of the extent of it would require detailed financial analysis and obtaining specific evidence of theft would require special investigative techniques. Finally, it would be necessary to examine systemic and procedural issues which may have facilitated any such conduct or led to it being able to continue undetected over what looked to be some years.

[45] The Commission investigation involved an analysis of documentation provided to the Commission voluntarily and in response to notices served on persons pursuant to section 95 of the CCC Act, which relates to the Commission's power to obtain documents and other things. Commission Investigators undertook physical surveillance of Ms A, and conducted interviews with her and other public officers. During a search of Ms A's residential premises in November 2009, pursuant to section 101 of the CCC Act, relevant material was seized by Commission Investigators and other officers. Section 101 relates to the Commission's power to issue and effect search warrants. Surveillance devices, authorised by warrants granted under section 13 of the SD Act, were also utilised.

[46] Ms A commenced employment with the Department of Health on 20 April 1989. During the period of the Commission investigation she was a Leading Hand in the Kite Café.

2.2 Kite Café

- [47] The Kite Café is located on Level 4 of the Harry Boan Building, PMH, and serves a variety of hot and cold meals, snacks and drinks to both members of the public and PMH staff. It is open between 6:30 a.m. to 7:30 p.m. seven days a week. Ms A worked as a Leading Hand in the Café, Monday to Friday, from 11:30 a.m. to 7:30 p.m. (late shift), and from mid-afternoon onwards was the most senior person on duty (as management and other supervisors worked only during the early shift). Thus, Ms A was responsible during the late shift for counting, recording and preparing Kite Café takings for banking at the end of each weekday.
- [48] Between July 2009 and February 2010 total income per month ranged from about \$155,000 to \$181,000. Any profit generated through operation of the Kite Café becomes part of a Special Trust for use by PMH.

2.3 Commission Investigation

2.3.1 Initial Financial Investigation

- [49] The Commission obtained and analysed Ms A's banking records.
- [50] Ms A's regular income during the period 1 April 2004 to 30 October 2009 consisted of her fortnightly wages from the Kite Café, a fortnightly superannuation pension, a monthly pension from the United Kingdom, and a monthly transfer from her daughter which appears to be reimbursement for insurance expenses paid by Ms A. Ms A's expenditure from her bank account during this period was substantially less than her income, such that the credit balance of her account increased from \$6,879.65 on 1 April 2004 to \$79,566.82 on 30 October 2009; an increase of \$72,687.17. That equates to an average increase of \$1,085 per month for the 67-month period.
- [51] Ms A's bank account statements show that she spent quite large sums on Clinique products from the Skin Care Range. Between 1 April 2004 and 30 October 2009 Ms A spent a total of \$58,357 at a Clinique Service Centre in Morley by way of Electronic Funds Transfer at Point of Sale (EFTPOS) transactions debited to her bank account. That equates to an average of \$871 per month for the 67-month period.
- [52] Notwithstanding that Ms A's bank account statements show an average of \$871 per month between 1 April 2004 and 30 October 2009 was spent on Clinique products, the credit balance of her bank account grew by an average of \$1,085 per month over the same period. This was primarily due to low levels of spending in other areas.
- [53] Ms A's bank account statements, for example, show that her expenditure on groceries during the period 1 April 2004 to 30 October

2009 totalled \$8,912.60, or an average of \$133.00 per month. For the 22-month period between 1 January 2008 and 30 October 2009 Ms A's bank account statements show expenditure on groceries of only \$665.94, or an average of \$30.27 per month. Between 1 January 2008 and 30 November 2008 there is no evidence from Ms A's bank account statements of any expenditure on groceries.

- [54] Ms A's bank account statements also show low levels of Automated Teller Machine (ATM) and EFTPOS cash withdrawals. Between 1 April 2004 and 30 October 2009 the bank account statements show ATM and EFTPOS cash withdrawals totalled \$13,500, or an average of \$201.49 per month. There is no evidence of Ms A having made an ATM or EFTPOS withdrawal between 20 May 2008 and 30 October 2009.
- [55] For 23 months of the 67-month period between 1 April 2004 and 30 October 2009 Ms A's bank account statements show no expenditure on groceries and no ATM or EFTPOS cash withdrawals during the month. This increases proportionately to 16 months of the 22-month period between 1 January 2008 and 30 October 2009.
- [56] There is no evidence from Ms A's bank account statements that she incurred any expenditure on petrol between 1 April 2004 and 30 October 2009, despite the fact that she used one of her vehicles, a Mercedes Benz A140, to drive to PMH from her residential premises and return five days a week. This is a round distance of 16 kilometres per day or 80 kilometres per week.
- [57] In conclusion, it was clear from the analysis of Ms A's bank account statements that she had access to a significant, regular income of undisclosed source in order to meet her basic living requirements that were not being funded from her bank account. Further, Ms A was able to save an average of \$1,085 per month for the 67-month period between 1 April 2004 and 30 October 2009, whilst at the same time spending an average of \$871 per month on Clinique products during the 67-month period.

2.3.2 Surveillance of Ms A

- [58] As mentioned, the Commission investigation into the activities of Ms A involved physical surveillance by Commission Investigators on a number of occasions, several of which resulted in information particularly relevant to the investigation. On 24 September and 1 October 2010 she was observed attending a Clinique Service Centre located in the Centro Galleria, Morley, Western Australia. On both occasions Ms A paid for various items using cash (banknotes), which she appeared to retrieve from a clear plastic coin bag.

2.3.3 Estee Lauder Companies (Clinique)^{iv}

[59] Enquiries by the Commission ascertained that a Clinique Service Centre is able to provide a \$30 Gift Voucher to a customer who has accumulated 300 points during a 12-month period through purchase of Clinique products from a Service Centre (but not outlets in Department Stores). A point is accumulated for every dollar spent, that is, a \$30 Gift Voucher is provided to a customer who has spent \$300 during a 12-month period (in effect a 10% discount on products). To be eligible a customer is required to be a member of the loyalty programme offered by a Clinique Service Centre. Customers enrol in the programme at a Service Centre, such as the one located in Centro Galleria, in Morley, and receive a personal Membership Card with an identifying Bar Code and Membership Number. A record of the customer's details is made at the time of enrolment. In order to accumulate points the Membership Card needs to be "swiped" each time a customer purchases Clinique products at a Service Centre. Hence, it is possible to track the amount spent on Clinique products, over time, by any customer who is a member of the loyalty programme.

[60] Records obtained by the Commission from Estee Lauder Companies ("Estee Lauder") showed that:

- (1) between 15 April 2004 and 30 October 2009 Ms A had purchased Clinique products costing \$257,292 from the Service Centre in Centro Galleria;
- (2) on 24 September and 1 October 2009 (refer [58]) Ms A had spent \$1,208 and \$1,238 respectively on Clinique products from the Service Centre in Centro Galleria obtaining Gift Vouchers on each occasion for \$150 and \$120 respectively; and
- (3) Clinique products purchased by Ms A were almost entirely from the Skin Care Range.

[61] The amount of \$257,292 referred to above was paid for as follows:

Loyalty Vouchers	\$ 24,990
EFTPOS	\$ 58,357
Cash	<u>\$173,955</u>
	<u>\$257,302^v</u>

^{iv} Estee Lauder Companies manufacture and market skin care, makeup, fragrance and hair care products. Clinique is a Brand Name.

^v The difference of \$10 arises from a purchase on 27 March 2007 for \$110 for which four \$30 Loyalty Vouchers were used.

[62] Financial analysis determined that of the Clinique products purchased in cash during the period 15 April 2004 to 30 October 2009, up to \$7,437 may have been sourced through ATM or EFTPOS withdrawals from Ms A's bank account. The remaining Clinique products purchased in cash totalling \$166,518 were purchased using funds from an unexplained source.

[63] Given the evidence derived from the analysis of her bank statements and Estee Lauder records relating to Ms A's expenditure on Clinique products, it was determined that the Commission should undertake further investigation. The amounts involved were obviously very substantial; it appeared the possible misconduct may have been occurring over a long period of time and was ongoing; determining the full extent of it would require further financial analysis; and obtaining specific evidence of theft was not likely to be possible without using sophisticated investigative techniques.

2.3.4 Surveillance of the Kite Café

[64] On 9 October 2009 a warrant was granted authorising the installation and use of surveillance devices within the Kite Café, pursuant to section 13 of the SD Act.

[65] Subsequently, surveillance devices were installed in the Kite Café, and associated food preparation and office areas. Analysis of the surveillance device product confirmed the following in relation to counting, recording and preparation of Kite Café takings for banking.

- (1) Ms A, as Leading Hand, counted, recorded and prepared Kite Café takings (coins and banknotes) for banking towards the end of each weekday trading period, and separated a number of banknotes from the rest of the takings during this process.
- (2) Ms A put the separated banknotes into a clear plastic coin bag, which she then placed into the pocket of her apron whilst in the food preparation room (which was obscured from public view). As part of this procedure Ms A would often take the drawer from the closed cash register into the food preparation room, leaving the room with the drawer in hand, and then place it on shelves outside the room. The Commission is satisfied this was done deliberately by Ms A to mask her conduct. The separated banknotes were not returned to the takings prepared for banking.
- (3) The purpose of the clear plastic coin bags was to hold counted coins in preparation for recording and banking. Banknotes were presented for banking in bundles and not in coin bags. There was no apparent legitimate reason why Ms A needed to place the separated banknotes into coin bags.

- (4) Although on occasions the process varied, in the main banknotes were counted by Ms A, recorded on the outside of a Commonwealth Bank quick deposit envelope and placed inside the envelope, which was then sealed. The float for the following day (which was mostly comprised of coins) was counted and placed in a box.
- (5) As Ms A started counting and recording takings in preparation for banking prior to the end of the trading period, any additional takings were placed in a white paper bag to be counted along with the takings for the following day. On occasions the white paper bag was folded and placed in a clear plastic coin bag, and then placed in the box with the float, prepared previously for the following day.
- (6) On numerous occasions Ms A counted and recounted the amount being prepared for banking, checking and re-checking cash register printouts. On occasions she would count the separated banknotes and at other times would not do so, leaving the separated banknotes in the drawer of the operating cash register. On the occasions that Ms A counted the separated banknotes (in bundles of 10, with each bundle being secured by an elastic band) the Commission was able to determine the total value of banknotes placed in the coin bag (as the number and denomination of banknotes was clearly visible on the surveillance device product).
- (7) On occasions Ms A removed \$100 banknotes from Kite Café takings prior to banking.
- (8) The staff member countersigning the record of Kite Café takings prepared for banking did so without being involved in the actual counting, recording and preparation process. The countersignature merely acknowledged the amount of takings recorded for banking by Ms A. This was able to occur because there was no mechanism in place to ensure that two persons signed the end-of-day Cash Register Report.

2.3.5 Issue of Recorded Banknotes

- [66] As part of the Commission investigation 11 \$100 banknotes were used by Commission officers to purchase consumable items (valued at less than \$10) from the Kite Café between 13 November and 26 November 2009 during various late shifts. Prior to this occurring the banknotes had been photographed and serial numbers recorded. Analysis of surveillance device product confirmed that a number of these \$100 banknotes were not included in the Kite Café takings prepared for banking on relevant days.

2.3.6 Unexplained Wealth Declaration

[67] It was clear from an examination of Ms A's bank account statements that she had access to a significant, regular income of undisclosed source. The records of Clinique sales from Estee Lauder provided evidence that Ms A had access to undisclosed income and enabled quantification of at least part of that income.

[68] Commission officers met with representatives of the Office of the Director of Public Prosecutions (DPP) to discuss making an application to the Court for an unexplained wealth declaration pursuant to section 11 of the *Criminal Property Confiscation Act 2000* (CPCA), and an application for freezing orders pursuant to sections 41 and 43 of the CPCA. The basis of the application for the unexplained wealth declaration was the purchase of Clinique products from unsourced funds between 15 April 2004 and 30 October 2009 totalling \$166,518.

[69] On 26 November 2009 the Supreme Court of Western Australia ordered that certain property held by Ms A be frozen on the ground that an application had been made against her for an unexplained wealth declaration.

[70] The matter was settled following negotiations between the DPP and Ms A's solicitor.

2.3.7 Search Warrants

[71] Also on 26 November 2009 a Supreme Court Judge granted Commission applications for search warrants, pursuant to section 101 of the CCC Act, for the property owned and occupied by Ms A and for two vehicles registered in her name.

[72] During a search of Ms A's residential premises conducted on 27 November 2009 relevant material seized by Commission Investigators and other officers, included:

- cash to the value of \$16,490 stored in clear plastic coin bags and an additional amount of \$120;
- Clinique products costing more than \$15,000;
- various items from the Kite Café, including disposable cutlery, plates, containers and gloves, perishable food, bottled water and crockery; and
- financial documentation.

[73] The cash seized from Ms A's premises included 10 of the 11 \$100 banknotes spent in the Kite Café by Commission Investigators on eight separate days between 13 November and 26 November 2009 (refer [66]). The eleventh banknote was spent on the same day as two of the recovered \$100 banknotes and is believed to have been

included in takings prepared for banking by Ms A on the day that it was spent. This was supported by an analysis of the surveillance device product.

[74] During the search, after being appropriately cautioned by a Commission Investigator, Ms A admitted to stealing the cash and items referred to in [72] from the Kite Café.

[75] Subsequent to the search on 27 November 2009 Ms A was interviewed by Commission Investigators at the Commission premises in St Georges Terrace, Perth.⁵ During the interview Ms A:

- admitted to voiding customer transactions on the cash register and taking cash, equivalent to the voided amount, from the cash register prior to submitting the remainder of the takings for banking;
- admitted that she spent approximately \$1,300 on Clinique products on a weekly basis, and unless a payment was made from her personal bank account these products were purchased using stolen banknotes;
- explained that her only sources of income were from her employment as a Leading Hand at the Kite Café, a superannuation pension and a United Kingdom pension, and she did not receive cash from any other person (apart from cash received on birthdays and at Christmas);
- attempted to explain the nature of what was later diagnosed as obsessive compulsive behaviour, but could not identify when the behaviour began; and
- indicated that she believed that she had been stealing from the Kite Café for approximately two years (although evidence available to the Commission suggested that she had been stealing for a much longer period of time).

2.3.8 Other Expenditure by Ms A

[76] As previously stated, during a search of Ms A's residential premises on 27 November 2009 Commission Investigators seized financial documentation relevant to the investigation. The documentation included accounts for utilities, insurance, vehicle registration and servicing, strata fees, veterinary services and council rates, and numerous receipts for expenditure on retail items.

[77] Many of the accounts had been paid in person at an Australia Post outlet near Ms A's residential premises. Printed receipts attached to the accounts detailed the date, time and mode of payment.

[78] Financial analysis of the documentation showed that Ms A had expended a considerable amount of funds, in addition to purchases of Clinique products, that were not sourced from her personal bank account. Between 15 April 2004 and 26 November 2009 payments

made in cash totalled \$27,992.45. In addition, a further \$10,174.89 of spending occurred where, whilst the mode of payment was not specified on documents seized by the Commission, there were no corresponding withdrawals from Ms A's bank account.

[79] A summary of these payments is provided in the table below.

ITEM	AMOUNT
Utilities	\$8,672.14
Insurance	\$6,524.43
Strata Fees	\$7,862.00
Council Rates	\$1,650.65
Home Maintenance	\$3,915.25
Veterinary	\$1,474.87
Retail	\$4,821.20
Dining Out	\$1,899.55
Other	\$1,347.25
TOTAL	\$38,167.34

2.3.9 Departmental Review of Kite Café Procedures and Controls (December 2009)

[80] As a result of the Commission investigation the Corporate Governance Directorate of the Department of Health undertook a review of Kite Café procedures and controls in relation to the handling of cash, inventory management and rostering of staff in December 2009.⁶ This review highlighted a number of shortcomings.

- (1) During trading hours approximately 9-10 staff had access to the cash registers (with two registers being open during the early shift and one during the late shift). Staff were required to log-in by swiping their personal Identification (ID) Card prior to entering transactions and log-out upon completion. However, this was not a matter of routine, particularly during peak periods. Staff members did not always log-off, thereby enabling colleagues to enter transactions without logging-in. This meant that staff could not be held accountable for any anomalies which may have occurred, causing an increased risk of theft and revenue loss.
- (2) Generally, all staff who served customers had access to the cash registers. At times a staff member may have been assigned to undertake the duties of a Cashier, thereby restricting access to cash registers and ensuring accountability for transactions, reducing the risk of theft and revenue loss.
- (3) The requirement that transaction receipts be issued to customers as proof of purchase was not enforced, thereby creating a risk that transactions could occur but not be recorded as such on the cash register. This caused an increased risk of theft due to reduced accountability, increasing the risk of revenue loss.

- (4) Cash registers were not “relieved” of excess cash at regular intervals during operating hours. Furthermore, additional coinage was kept in a box (which was portable and unlocked) beneath each cash register, a location not considered secure. This loose arrangement created an unnecessary security risk, increasing opportunities for theft (premeditated or otherwise) by either staff or customers and the risk of revenue loss
- (5) The Coordinator and Leading Hand reconciled the amounts of cash in the two cash registers between 1:00 p.m. and 2:00 p.m. each day, and prepared and signed a Cash Register Report. The cash and Report were placed in a lockable bag for transfer by two persons to the Hospital Cashier for banking. A new float was then counted for use during the remaining trading hours. At the end of the day a similar procedure occurred, except that there was no mechanism in place to ensure that two persons signed the end-of-day Cash Register Report. Due to the resulting reduced level of accountability an opportunity for undetectable loss of cash was created, and in the event that a loss was detected the “audit trail” had been jeopardised. This increased the risk of revenue loss
- (6) Whilst a procedure was in place whereby the voiding of a “closed” transaction required authorisation by a supervisor and use of an ID Card, there was no such requirement for voiding an “open” transaction (for example, where a customer changes his/her mind before a purchase is finalised and the transaction is “totalled” on the register). Also, the cash register software was not configured to record either “open” or “closed” void transactions in the end-of-day Cash Register Report (making such transactions untraceable). This caused an increased risk of theft due to reduced accountability, increasing the risk of revenue loss.
- (7) Access Keys were left attached to the cash registers for the entire period during trading hours (6:30 a.m.-7:30 p.m., seven days a week), making it easy for all staff to gain access to cash in the registers at any time. Alternatively, staff could gain access to cash in the registers using “dummy” transactions which are not recorded in Cash Register Reports. This caused an increased risk of theft due to reduced accountability, increasing the risk of revenue loss.
- (8) There was no mechanism in place for monitoring inventory, including drinks, disposable items, consumables and cleaning products. This caused an increased risk of theft due to reduced accountability, increasing the risk of revenue loss.
- (9) The Kite Café had operated on a fixed roster of permanent staff for five years prior to December 2009. This caused an increased risk of theft due to the increased capacity, caused by familiarity and routine, to exploit the shortcomings of weaknesses outlined above.

2.3.10 Earlier Review

[81] It is significant to note that the 2009 review report made reference to an earlier review, which occurred in 2002.

[82] The 2002 review also contained the following recommendations relating to Kite Café procedures and controls.

- *A Coffee Shop Cashier position be created for each shift. This person to have the sole responsibility for maintaining the cash balance for the shift.*
- *The Coffee Shop Cashier should be responsible for verifying the starting change drawer, counting end of shift takings and reconciling the register tape.*
- *The Leading Hand should oversight the process and acknowledge that the cash has been counted by initialling the Coffee Shop Cashier's reconciliation.*
- *A procedure should be adopted to reduce the amount of cash held in the cash register and adjacent drawer at regular intervals during operating hours.⁷*

[83] It is stated in the 2009 review report that "Internal Audit has previously reviewed and issued a report in 2002, out of which recommendations were issued. Management has indicated that they were not implemented". If the 2002 recommendations had been implemented and maintained, Ms A would not have been able to behave in the way that she did in order to steal a very substantial amount, over the period from 15 April 2004 to 26 November 2009, from Kite Café takings.

[84] The December 2009 report of the review of Kite Café procedures and controls contained a number of recommendations to address the shortcomings identified. In the opinion of the Commission implementation of these recommendations would result in a significant improvement in accountability, and thereby substantially reduce the risk of theft and revenue loss.

[85] The Commission further notes that all Café transactions were settled in cash, although the cash register was computerised and capable of dealing with various methods of payment. In addition, as indicated previously, a number of other capabilities were either not used at all or were used sporadically. In effect, the recording and, therefore, audit capabilities of the cash registers were underutilised.

[86] Examination of a Kite Café cash register by the Commission's Computer Forensics Investigator, and extensive discussions with the provider of the cash register software, confirmed that the software had not been configured to record "open" transactions (for example, where a customer changes his/her mind before a purchase is finalised and the transaction is "totalled" on the register), although the

software has the capacity and the provider recommends that it be so configured. As highlighted by the December 2009 review of Kite Café procedures and controls (refer [80]) this caused an increased risk of theft due to reduced accountability, enabling Ms A to behave in the way that she did and continue to do so for a lengthy period without being detected.

[87] Taking into account the Clinique purchases from unsourced funds totalling \$170,202^{vi} as well as the payment of various household expenses from unsourced funds totalling \$38,167.34, it can be concluded that the total value of voided transactions was at least \$208,369.34,^{vii} equivalent to an average of \$766.00 per week^{viii} for the period from 15 April 2004 to 26 November 2009. The minimum value of voided transactions increased considerably in the last two years, as illustrated by the table below. This would not have occurred if Ms A's conduct had been detected earlier, as there is a tendency for this type of conduct to escalate if it remains undetected.

[88]

MINIMUM VALUE OF VOIDED TRANSACTIONS					
PERIOD	NO. WEEKS	CLINIQUE PURCHASES	HOUSEHOLD EXPENDITURE	TOTALS	WEEKLY AVERAGE
2004 ^{ix}	33	\$12,701.00	\$5,276.50	\$17,977.50	\$544.77
2005	48	\$23,962.00	\$9,392.20	\$33,354.20	\$694.88
2006	48	\$16,726.00	\$4,796.05	\$21,522.05	\$448.38
2007	48	\$25,533.00	\$4,744.55	\$30,277.55	\$630.78
2008	48	\$45,807.00	\$8,896.33	\$54,703.33	\$1,139.65
2009 ^x	47	\$45,473.00	\$5,061.71	\$50,534.71	\$1,075.20
Totals	272	\$170,202.00	\$38,167.34	\$208,369.34	

^{vi} Total Clinique purchases from unsourced funds includes the amount of \$166,518 for which the unexplained wealth declaration was sought, plus additional Clinique purchases from unsourced funds subsequent to 30 October 2010 totalling \$3,684.

^{vii} The total value of voided transactions is likely to be higher due to the likelihood of further items of household expenditure being funded in this manner, such as fuel, groceries and personal cash expenditure.

^{viii} The period has been calculated at 272 weeks, allowing for four weeks of annual leave in each of the 2004 to 2008 years.

^{ix} Period in 2004 was from 15 April to 31 December only.

^x Period in 2009 was from 1 January to 26 November only.

[89] Ms A's long-term employment at PMH, that is, from April 1989 to December 2009, helped to camouflage her activities. She was an established and well known member of staff, with connections throughout PMH, and had an inside knowledge of PMH procedures and operations, which was well grounded by virtue of longevity of employment.

[90] As a long-serving, senior and trusted employee, Ms A was able to count, record and prepare Kite Café takings for banking in a manner that was not generally questioned by other employees or supervisors. This included being able to commence the banking process a considerable time before the end of week-day trading periods. In addition, lack of accountability, and inadequate procedures and controls relating to the handling of cash, inventory management and rostering of staff, enabled Ms A to behave in the way that she did and continue to do so for a lengthy period without being detected.

2.3.11 Termination of Ms A's Employment

[91] Ms A's employment with the Department of Health was terminated on 18 December 2009.

2.3.12 Charging and Sentencing of Ms A

[92] On 7 May 2010 the Commission charged Ms A with two counts of stealing as a servant (by way of a general deficiency) between 15 April 2004 and 26 November 2009. The charges were laid pursuant to sections 371 and 378(7) of *The Criminal Code*. The first charge was for theft of an alleged amount of \$170,202^{xi} and the second for an alleged amount of \$16,610,^{xii} a total of \$186,812, over the period from 15 April 2004 to 26 November 2009. Ms A pleaded guilty to the charges in the Perth Magistrates Court on Friday 18 June 2010 and was committed for sentence in the District Court of Western Australia.

[93] On 7 September 2010 Ms A was sentenced by Chief Judge Martino to nine months imprisonment for each count, to be served cumulatively, that is, a total of 18 months, with the term of imprisonment suspended for two years with a program and supervision requirement.

^{xi} The first charge includes Clinique purchases from unsourced funds totalling \$166,518 (which is equivalent to the amount for which the unexplained wealth declaration was sought), and additional Clinique purchases from unsourced funds subsequent to 30 October 2009 totalling \$3,684. Refer also Footnote No. vi.

^{xii} \$16,610 is comprised of \$16,490 stored in clear plastic bags and an additional amount of \$120 seized by the Commission on 27 November 2009 during a search of Ms A's residential premises, pursuant to section 101 of the CCC Act (refer [72] of this report).

2.3.13 Order for Forfeiture of Clinique Products

[94] Section 731 of *The Criminal Code* relates to the forfeiture etc. of property used to commit offences and states that:

- (1) *A court that convicts a person of an offence under this Code may make an order for the forfeiture to the State, or the destruction or disposal, of any thing that was used in or in connection with the commission of the offence.*
- (2) *A court must not make an order under subsection (1) in respect of any property unless the owner or any person who claims to be the owner of it has been afforded the opportunity to show cause why the order should not be made.*

[95] On 10 September 2010 the DPP applied for an order pursuant to section 731 of *The Criminal Code* for the forfeiture of all Clinique products subject to the indictment, and which originally cost more than \$15,000. The application was not opposed by Ms A's solicitor and the order was granted on 16 September 2010 as per the application. It is the Commission's intention to donate those products (seized on 27 November 2009) to a charitable institution in accordance with the applicable legislation.⁸

2.3.14 Another Public Officer

[96] Analysis of surveillance device product from the Kite Café established that another PMH employee (and so a public officer) regularly attended the Kite Café premises, despite his responsibilities as a cleaner not extending to those premises. This person was also observed assisting Ms A with the removal of stock from the Café premises. Various items from the Kite Café were found on the premises owned and occupied by Ms A during a search by Commission Investigators and other officers on 27 November 2009.

[97] This other person was observed placing Café stock into his backpack and was heard discussing with Ms A items that were available for removal. In accordance with section 18(2)(h)(i) of the CCC Act the Commission furnished evidence to PMH in relation to him.

[98] The Commission has not made any assessment, nor expressed an opinion about, that individual in this report. As a consequence of the Commission investigation his employment at PMH was terminated on 4 May 2010. A claim of unfair dismissal was being pursued on his behalf, by the LHMU, through the WAIRC but proceedings were subsequently discontinued.

CHAPTER THREE

OPINION AND RECOMMENDATION

3.1 Sentencing Remarks

[99] In sentencing Ms A on 7 September 2010 Chief Judge Martino made the following remarks.

... you've been convicted on your pleas of guilty of two offences of stealing as a servant ...

...

Your offences were serious. By committing them you breached the trust that your employer placed in you ...

...

You admitted the offences when interviewed by Commission officers and have pleaded guilty under the fast-track system. You have shown a willingness to facilitate the course of justice, an acceptance of responsibility for your offending behaviour ...

...

... For many years you have suffered from obsessive compulsive disorder and I find that that psychiatric disorder was the principal factor in your offending ...

You developed a compulsion to use skin care creams and you stole to fund the cost of the purchases of those creams. Since being charged with those offences you have taken steps to address your disorder by seeking appropriate medical treatment ...

... The seriousness of the offences and the need for personal and general deterrence lead me to conclude that, notwithstanding the matters to your credit, the only appropriate sentences are terms of imprisonment.

...

I have decided ... that the combination of matters to which I have referred, and in particular to the fact that you did suffer from an obsessive compulsive order, which was the principal factor in your offending which has, I find, reduced your moral culpability ... it is appropriate to suspend that term of imprisonment on conditions.

3.2 Commission Opinion

[100] In the opinion of the Commission the conduct of Ms A as outlined in this report constitutes serious misconduct under section 4(c) of the CCC Act as such behaviour amounted to criminal offences under sections 371 and

378(7) of the *The Criminal Code*, of which she was subsequently convicted.

[101] As Ms A is no longer employed as a public officer, and has been convicted and sentenced for her criminal offences, the Commission makes no recommendation for further action in relation to her.

3.3 Recommendation

Recommendation

That the recommendations contained in the 2009 report entitled *Review of Coffee Shop [Kite Café] Cash Handling Controls: Princess Margaret Hospital* be implemented in order to address the shortcomings identified by the review in relation to the handling of cash, inventory management and rostering of staff. In the opinion of the Commission this would effect an improvement in accountability, and thereby significantly reduce the risk of theft and revenue loss.

[102] It is the intention of the Commission to monitor the action taken by PMH to address the shortcomings in procedures and controls as identified by the 2009 review of the Kite Café and to implement the recommendations contained in the report of the review; monitoring which will occur in the context of an ongoing relationship between the Commission and PMH. Monitoring is a normal part of the Commission's work subsequent to an investigation, and is undertaken pursuant to section 41 of the CCC Act.

[103] It is also the intention of the Commission to revisit the implementation of recommendations made in relation to PMH as a consequence of the 2007 review of misconduct management. As outlined in [7] above, these recommendations focus on developments that would result in a more effective misconduct management mechanism.

[104] The Commission acknowledges and records its appreciation for the invaluable assistance, cooperation and support provided by CAHS and PMH, and in particular Mr Philip Aylward, Chief Executive, and Ms Anne Bourke, Executive Director, CAHS, during the period relevant to the investigation of alleged public sector misconduct.

APPENDIX

**Letter of 29 November 2010 to the
Commissioner of the Corruption and Crime Commission
from the Director General of the Department of Health**



Government of **Western Australia**
Department of Health
Office of the Director General

The Hon L W Roberts-Smith, RFD, QC
Commissioner
Corruption & Crime Commission of Western Australia
PO Box 7667 Cloisters Square
PERTH WA 6850

Dear Mr Roberts-Smith

**REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT IN
RELATION TO THE ACTIVITIES OF MS A AS AN EMPLOYEE OF THE DEPARTMENT
OF HEALTH**

I refer to your letter of 10 November 2010 in which you provided the Department of Health with an opportunity to make representations about matters contained within the CCC draft report relating to an investigation of alleged public sector misconduct. I note that you have also provided Mr Philip Aylward, Chief Executive of the Child and Adolescent Health Service an opportunity to also comment. Please accept this response as a consolidated response from WA Health in relation to the CCC draft report.

As advised in my letter to you of 16 October 2010, WA Health is implementing a number of improvement initiatives that are linked to the Corruption and Crime Commission (the CCC) report to Parliament on the Management of Misconduct in WA Health. Particularly, an Integrity and Ethical Governance Framework has been developed and will be implemented across WA Health. This framework is built around 3 pillars:

1. Leadership Commitment
2. Workplace Behaviour
3. Risk Management and Monitoring

Within Pillar 3 (Risk Management and Monitoring), a Misconduct Management Framework has been developed around three key areas: detection, prevention and response. As previously advised, this systems based approach will ensure that clearly defined roles and responsibilities across WA Health will ensure that appropriate resources are utilised to more effectively identify, report and manage misconduct when it occurs, as well as ensuring that staff in key leadership positions are well supported in this area.

Notwithstanding this, WA Health accepts the recommendations contained within the CCC report, namely:

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Department of Health – promoting a smoke free environment

"That the recommendations contained in the 2009 report entitled *Review of Coffee Shop [Kite Café] Cash Handling Controls: Princess Margaret Hospital* be implemented in order to address the shortcomings identified by the review in relation to the handling of cash, inventory management and rostering of staff. In the opinion of the Commission, this would effect an improvement in accountability, and thereby significantly reduce the risk of theft and revenue loss."

In order to provide further information on this matter, please find attached some brief comments relating to specific (and identified) paragraphs contained within the CCC report. Contained within this attachment, you will note that the actions taken by Princess Margaret Hospital in relation to the 2009 report (as mentioned above) are already well progressed.

WA Health would like to take this opportunity of thanking the CCC in its work in relation to this matter. It is anticipated that an ongoing partnership between our two organisations will continue to improve misconduct management within WA Health, and thereby providing an appropriate assurance to the public of Western Australian in the ethics, integrity and professional conduct of staff employed within the public health sector.

If you have any further queries in relation to this or any other matters, please do not hesitate to contact Mr Shane Wilson, Director, Corporate Governance Directorate, on 9222 4069.

Yours sincerely


Kim Snowball
DIRECTOR GENERAL

29 November 2010

Att

G O V E R N M E N T O F W E S T E R N A U S T R A L I A

Attachment

**Corruption and Crime Commission Report On The Investigation
of Alleged Public Sector Misconduct
in relation to the activities Of Ms A
as an Employee of the Department of Health**

Paragraph [5]

The Report (ref LWRS/MP) has referred to the first of the WA Health reviews as being Princess Margaret Hospital for Children (PMH). The report stated that the original 2007 review identified critical weaknesses in PMH's approach to the management of misconduct.

These issues have been addressed or are ongoing.

Since 2008, PMH has:

- Conducted ongoing misconduct management education with Corporate Governance;
- Developed a flow chart summarising misconduct reporting;
- Risks identified and documented in Risk Register.

Paragraph [60]

PMH cooperated fully with the CCC during this investigation.

Surveillance identified daily removal of the till takings by Ms A, and flaws in the process of checking the day's takings.

Paragraph [76]

At PMH's request, the Corporate Governance Directorate completed a review of the Kite Café procedures and controls. Mention was also made of the Coffee Shop (now known as the Kite Café) review conducted in 2002.

2009 Corporate Governance Review:

Actions taken:

- The layout and use of the area has been changed to improve customer flow and to enable the till to be in good public view at all times;
- This area will be refurbished within the next few months to further streamline the customer areas;
- The tills usage has been reversed with the former public side till being used for only hot meals over the lunchtime period. The former staff side is used for breakfast, morning tea, lunch, afternoon tea and dinner periods. It is now in plain view at all times;
- The use of the designated cashier operates as follows:
 - 0630 – 1030 – One till is in active use
 - 1030 - 1400 – Both tills are in operation
 - 1400 -1830 – One till is in operation
 - Receipts are printed off for staff
 - Café staff use their own cards for all transactions for accessing the tills by closing off and opening up the till. This is limited to three or four staff
 - In non-peak times, this number is restricted to two staff having access
 - The practice of opening the till to give out change has been ceased

G O V E R N M E N T O F W E S T E R N A U S T R A L I A

- Tills are never left open.
- The cash box is now out of public view;
- The cash box is locked at all times;
- The cash box has been moved to a safe area. The float is carried in each till;
- Cash is counted, witnessed at 0600 and at 1330 and counted by the Retail Services Coordinator and another staff member;
- The status of the card for access to void transactions has been modified so only the Retail Services Coordinator has access;
- Void transactions are now a separate item on the end of day final transactions report and must be reported to the Retail Services Coordinator;
- Both staff must sign and witness the transfer of money from the till to the locked bags;
- The Retail Services Coordinator and another staff member count and balance the end of day receipts the following day. The bank receipts of the daily totals are recorded by the Accounts Clerk;
- The Retail Services Coordinator monitors and reviews stock levels, and has altered to better reflect the demand;
- The store person monitors and reviews "end dated goods";
- Rosters have been discussed with staff and changes made.

Following an incident, further security measures have been implemented. This includes:

- All sliding doors are down and locked when moving money;
- Staff Dining Room access is locked;
- Both staff witness the counting of the float;
- The end of day collection is placed into a bank pouch which is witnessed by the staff;
- The locked pouch and cash box are placed in the safe by the two staff members;
- The safe has been relocated to the Dining Room office.

Paragraph [78]

2002 Review

The 2002 Internal Audit into "Cash Handling in the Coffee Shop and Vending Machines May 2002" report has been located but the formal PMH management response at the time cannot be located.. However, the report and the recommendations have been recently reviewed in light of the current CCC Report and this incident. The 2002 Report Overview of Audit Findings indicated that there was a lack of compliance with operational controls over cash collection, cash transfer to the Cashier and access to keys at that time. These issues have since been addressed as a way forward for mitigating further risk.

Paragraph [98]

Revisit by CCC

PMH/CAHS welcome a revisit by the CCC to review the implementation of controls and procedures in the Kite Café.

ENDNOTES

¹ Department of Health Website, <http://www.pmh.health.wa.gov.au>, viewed 21 July 2010.

² *The Criminal Code (WA)*, section 1, p.31.

³ *Ibid.*

⁴ Letter of 29 November 2010 to the Hon. LW Roberts-Smith, RFD, QC, Commissioner of the Corruption and Crime Commission, from Mr Kim Snowball, Director General, Department of Health [CCC 80117].

⁵ Record of Interview of Ms A at the Corruption and Crime Commission, 186 St Georges Terrace, Perth, Western Australia 6000, on 27 November 2009.

⁶ *Review of Coffee Shop [Kite Café] Cash Handling Controls: Princess Margaret Hospital*, Government of Western Australia, Department of Health, Corporate Governance Directorate, December 2009.

⁷ Report entitled *Cash Handling Coffee Shop and Vending Machine Controls: PMH*, Department of Health, May 2000.

⁸ *Criminal and Found Property Disposal Act 2006*, section 29(3).