



CORRUPTION AND CRIME COMMISSION

REPORT ON THE REVIEW OF THE CAPACITY OF LOCAL GOVERNMENTS IN THE PILBARA TO PREVENT, IDENTIFY AND DEAL WITH MISCONDUCT

16 April 2013

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CORRUPTION AND CRIME COMMISSION

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President of the Legislative Council
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Hon. Michael Sutherland, MLA
Speaker of the Legislative Assembly
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Dear Mr President
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003* the Corruption and Crime Commission presents its *Report on the Review of the Capacity of Local Governments in the Pilbara to Prevent, Identify and Deal with Misconduct*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roger Macknay'.

Roger Macknay, QC
COMMISSIONER

16 April 2013

ABBREVIATIONS AND ACRONYMS

(“the CCC Act”)	<i>Corruption and Crime Commission Act 2003</i>
CEO	Chief Executive Officer
(“the Commission”)	Corruption and Crime Commission
ICAC	Independent Commission Against Corruption (New South Wales)
(“the LG Act”)	<i>Local Government Act 1995</i>
(“Regulations”)	<i>Local Government Regulations 1996 and 2007</i>

GLOSSARY

Misconduct — (also refer **Serious Misconduct**) as defined by section 4 of *Corruption and Crime Commission Act 2003* (“the CCC Act”).

Misconduct occurs if —

...

(d) a public officer engages in conduct that —

- i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
- ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
- iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
- iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person;*

and constitutes or could constitute —

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

Organisational Review — the evaluation of organisational systems, processes and practices to form an opinion about a public authority’s capacity to prevent, identify and deal with misconduct.

Public Officer — is defined in section 3 of the CCC Act. For the purpose of this review, the term “public officer” includes members, officers or employees of any local government or council of a local government, whether for remuneration or not.

Serious Misconduct — (also refer **Misconduct**) section 3 of the CCC Act defines serious misconduct as “misconduct of a kind described in section 4(a), (b) or (c)”. Thus serious misconduct occurs if —

- (a) *a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;*
- (b) *a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person; [or]*
- (c) *a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment ...*

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EXECUTIVE SUMMARY

- [1] The Pilbara is strategically important to Western Australia. In 2011, \$135 billion from all funding sources was either committed, or under consideration, to significant resource and resource-related infrastructure projects.ⁱ There are four local governments in the region and they play a critical role in developing the Pilbara.
- [2] In terms of local government, the Town of Port Hedland and the Shire of Roebourne are at the forefront of growth and development pressure impacting on the region which increases misconduct risks. Although the Shire of East Pilbara and the Shire of Ashburton have not been subject to this pressure on the same scale, pressure is growing.
- [3] In the context of the role these four local governments play in an area of such strategic economic importance, the capacity to effectively prevent, identify and deal with misconduct is crucial.
- [4] In that light, between 2010-2012 the Corruption and Crime Commission (“the Commission”) engaged with each of the Pilbara local governments about their capacity to prevent, identify and deal with misconduct. This included a formal review, followed by the provision of written feedback in the form of working papers. A second round of visits by Commission staff was then undertaken to discuss the working papers and how the local governments might overcome identified deficiencies. Subsequently, all four local governments were given the opportunity to comment on a draft of this report before it was finalised in preparation for tabling in the Parliament of Western Australia.ⁱⁱ
- [5] As a result of the Commission’s engagement, all four local governments are taking steps to overcome their exposure to a particularly heightened level of misconduct risk. Prior to the Commission’s involvement, they had little in the way of organisational processes and practices in place to minimise exposure to their risk. In short, preventing, identifying and dealing with misconduct in a strategic and systematic manner was not part of their management agenda.
- [6] While each local government is taking a different approach to developing their capacity to prevent, identify and deal with misconduct, there are some common themes. These include:

ⁱ The Department of State Development in conjunction with the Department of Mines and Petroleum *Prospect Magazine* (December 2011), p.6.

ⁱⁱ Since this report was drafted, the Shire of Ashburton Council was suspended. The six month suspension follows a Probity and Compliance Audit which identified “sufficient evidence of a failure by the Shire to properly perform some of its functions” including “significant and serious levels of non-compliance” with the *Local Government Act 1995*. The Show Cause Notice was issued on 31 October 2012 pursuant to Section 8.15B of the *Local Government Act 1995* to the Shire of Ashburton by the Minister for Local Government; Heritage; Citizenship and Multicultural Interests.

- developing a broad strategic approach to the management of misconduct;
- relating organisational values back to clear statements of expectations around staff integrity and conduct;
- reviewing the Shire or Town Code of Conduct and induction processes in the light of the Commission's comments;
- formally identifying and including ways to prevent, identify and deal with misconduct in risk management plans;
- discussing misconduct risk and management with staff to raise awareness;
- reviewing current policies and practices with a view to integrating misconduct management (e.g. disciplinary processes, performance management, procurement processes, etc.); and
- improving the accessibility of organisational policies and procedures, along with improving documentation and recording processes.

[7] There are differences in how far each of the four local governments have progressed. The Town of Port Hedland and the Shire of Roebourne are more advanced than the Shire of East Pilbara and the Shire of Ashburton.

[8] This greater progress seems to be attributable to the fact that, firstly, the Commission engaged with the Town of Port Hedland and the Shire of Roebourne at an earlier stage in the review; and secondly, the conclusions in the original working papers caused some initial alarm for both local governments, creating a greater sense of urgency to address the issues raised by the Commission. In contrast, the Shires of Ashburton and East Pilbara have, until recently, appeared less exposed to the same scale of development and misconduct risk.

[9] The Commission views the work both planned and undertaken as positive. It will go some considerable way to address their exposure to misconduct risk.

[10] It is critical that the momentum for change in the four local governments achieved by the Commission's review is not lost. The Commission has consulted with the Department of Local Government about this issue and makes the following recommendations.

Recommendation 1

The Commission recommends that the Shire of Ashburton, the Shire of East Pilbara, the Town of Port Hedland and the Shire of Roebourne continue to develop a formal, comprehensive and effective misconduct management strategy and system.

Recommendation 2

The Commission recommends that by 30 June 2013, the Shire of Ashburton, the Shire of East Pilbara, the Town of Port Hedland and the Shire of Roebourne report their progress in developing effective misconduct management strategies and systems to the Department of Local Government.

[11] The Commission thanks each of the four Pilbara local governments for their cooperation and assistance in all phases of this organisational review program. This includes the former Chief Executive Officers at the Town of Port Hedland and the Shire of Roebourne. Specific thanks are extended to:

- Mr Jeff Breen and staff at the Shire of Ashburton;
- Mr Allen Cooper and staff at the Shire of East Pilbara;
- Mr Ian Hill and staff at the Town of Port Hedland; and
- Mr Simon Kot and staff at the Shire of Roebourne.

CHAPTER ONE

INTRODUCTION

1.1 Jurisdiction of the Commission

[1] Section 7A (b) of the *Corruption and Crime Commission Act 2003* (“the CCC Act”) stipulates that one of the two main purposes of the CCC Act and, by extension, the Corruption and Crime Commission (“the Commission”) is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.” Section 7B (3) says that one of the ways this is to be achieved is by the Commission helping “public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.”

[2] Section 17 of the CCC Act provides the Commission with a prevention and education function. One of the ways this function can be performed is by analysing systems used within public authorities¹ to prevent misconduct.² Consistent with that, the Commission reviews the capacity of public authorities to prevent, identify and deal with misconduct. An elaboration on each aspect is provided below.

Prevent Misconduct — to properly understand the behaviours which can occur within public authorities which amount to misconduct, the related risk factors and circumstances which are likely to give rise to those behaviours, and developing appropriate treatment strategies to minimise the risk of those behaviours occurring.

Identify Misconduct — to properly understand misconduct and recognise misconduct behaviours when they arise.

Deal with Misconduct — to officially respond to misconduct behaviours effectively and appropriately when they arise by:

- notifying the Commission in accordance with section 28 of the CCC Act;
- conducting appropriate enquiries and investigations;
- recording the behaviours in official organisational records as having occurred;
- taking reasonable steps to stop the behaviours from continuing;

¹ The term “public authority” is defined in section 3 of the *Corruption and Crime Commission Act 2003*.

² Section 17(2)(ac) of the *Corruption and Crime Commission Act 2003*.

- forming reasonable opinions about the harm caused by the behaviours;
- rectifying the harm;
- if necessary, taking appropriate disciplinary action; and
- establishing appropriate measures to mitigate the risk of similar misconduct re-occurring.

[3] This report advances the Commission’s prevention and education function by:

- providing information about misconduct prevention in the local government sector of the Pilbara region that is of interest to the broader community; and
- providing examples of what is required to develop reasonable capacity to prevent, identify and deal with misconduct that will be of interest to public authorities, particularly local governments.

1.2 Local Governments in the Pilbara Region

[4] The Pilbara region, comprising the four local governments³ of the Shire of Ashburton, the Shire of East Pilbara, the Town of Port Hedland and the Shire of Roebourne, covers an area in excess of 510,000 square kilometres (about 20% of the land mass of WA). It has a resident population of around 50,000, supplemented by a fly-in/fly-out workforce estimated to be around 15,464 in 2010.⁴

[5] The region is often referred to as the “engine room of the Australian economy” with its significant economic and geostrategic importance to State and National interests. According to the Department of Regional Development and Lands, the Pilbara has, until recently, generated approximately \$71 billion, or 30% of Australia’s exports. The region’s mining, oil and gas production contributes some \$3.5 billion annually to the State’s income. Tourism, fishing, agriculture and aquaculture production from this region contributes in excess of \$300 million each year.⁵

[6] The Commission visited the Pilbara as part of its regional outreach program in 2010. In meetings with local government executives, concerns emerged about the capacity of Pilbara local governments to prevent, identify and deal with misconduct. Of particular concern was their ability to address misconduct risk related to:

- the enormous concentration of industrial and mining development;

³ As defined by the *Local Government Act 1995*.

⁴ *Pilbara: a region in profile 2011* (Department of Regional Development and Lands), p.2.

⁵ *Ibid.*

- the allocation of private and public monies for infrastructure development and supporting services;
- overseas and national investment by large corporations;
- pressures for enhanced regional planning within local governments to cater for the State Government’s “Pilbara Cities”⁶ vision for the region; and
- associated pressures of providing or expanding large scale infrastructure.

1.3 Scope and Purpose of the Review

[7] Between 2010-2012 the Commission reviewed the capacity of all four Pilbara local governments to prevent, identify and deal with misconduct. It focused on strategically evaluating organisational systems, processes and practices.

[8] Having regard to the issues discussed above, but without limiting itself to them, the review focussed on five key questions:

1. Whether organisational processes for preventing, identifying and dealing with misconduct exist, particularly:
 - strategies and/or plans to manage misconduct; and
 - organisational systems or mechanisms to manage misconduct.
2. Whether measures are in place generally across each local government that relate to preventing, identifying and dealing with misconduct.
3. To determine the extent to which misconduct risk has been formally identified as a risk for each local government.
4. To determine the level of awareness and understanding in each local government of misconduct prevention and management as a supervisory and management responsibility.
5. To determine the level of awareness and understanding at the management and supervisory level of:
 - misconduct as a risk factor generally for each local government; and

⁶ The Pilbara Cities initiative aims to secure the long term sustainability of the Pilbara through the development of a robust and diverse regional economy. This includes the transformation of Port Hedland and Karratha from predominantly mining towns to regional cities.

- misconduct as a risk factor specifically for individual business service areas.

[9] The intent of the review was not to test compliance with legislation, nor was it to identify instances of misconduct. Legislative requirements pertaining to all local governments as set out under the *Local Government Act 1995* (“the LG Act”) and *Regulations 1996 and 2007* (“Regulations”) do not directly reference or require the management of misconduct and were therefore out of scope.

1.4 Approach

[10] All identifiable documentation relevant to preventing, identifying and dealing with misconduct was examined. This included any policies, procedures and records in relation to annual and primary returns, gifts and benefits, financial and impartiality interests, discipline, grievances, complaints, staff induction, and the Shire or Town’s Code of Conduct.

[11] Commission staff first visited the Town of Port Hedland and Shire of Roebourne in 2010 and the Shires of East Pilbara and Ashburton in 2011. During the visits, ninety-eight interviews were held as follows:

- **Shire of Ashburton** — 30 interviews including the then Chief Executive Officer (CEO), the Deputy Shire President, the executive management group and managers, co-ordinators and senior staff from all business service areas. Interviews were conducted at the Shire of Ashburton’s main office in Tom Price and at the Shire’s Western Operations office in Onslow.
- **Shire of East Pilbara** — 24 interviews including the Chief Executive Officer and the Shire President; the executive management group; and managers, co-ordinators and senior staff from all business service areas. Interviews were conducted at the Shire of East Pilbara’s main office in Newman and at Shire technical service sites and recreational facilities within Newman.
- **Town of Port Hedland** — 22 interviews including representatives of the executive management group, including the then Chief Executive Officer; the Town’s Mayor and Deputy Mayor, and managers and supervisors from all business service areas. Interviews were conducted at the Town of Port Hedland main office and at sites in South Hedland where a number of business units and activities are located.
- **Shire of Roebourne** — 22 interviews including the Shire President and Deputy President; representatives of the executive management group, including the then Chief Executive Officer, and managers and supervisors from all business service areas. Interviews were conducted at the Shire of Roebourne main office and at sites across the Shire where a number of business units and activities are located.

- [12] The interviews were conducted as discussions with notes taken to record comments made by staff. To ensure that the comments and views expressed by Shire and Town employees were considered in context, discussions included talking with staff about their specific roles, their working backgrounds and their working experiences in local government. Participation in all interviews was voluntary.
- [13] Separate working papers were then provided to each local government analysing the information obtained. The working papers sought their response to the issues identified.
- [14] Subsequently, in April and May 2012, Commission staff visited the four local governments a second time to discuss the review conclusions and steps taken by them in response to the working papers.
- [15] In May and June 2012, the four local governments provided written responses to the working papers and discussions held with Commission staff. The responses are presented in Chapter Four. Both the Town of Port Hedland and the Shire of Roebourne offered additional insights into the unique circumstances of the Pilbara region and how misconduct risk can manifest in that environment. Their commentary has been incorporated into Chapter Two of this report.
- [16] Staff comments and views taken from the interviews and original working papers are used in Chapter Three of this report without revealing the identity of those involved.

1.5 Reporting by the Commission

- [17] Under section 84(1) of the CCC Act, the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4) of the CCC Act, or dealt with under section 93 of the CCC Act.
- [18] 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.
- [19] Pursuant to section 86 of the CCC Act, in October 2012, the Shire of Ashburton, the Shire of East Pilbara, the Town of Port Hedland and the Shire of Roebourne were given the opportunity to comment on the final draft of the report. The section 86 responses are discussed in Chapter Four of this report.

CHAPTER TWO

MISCONDUCT RISK IN PILBARA LOCAL GOVERNMENT

2.1 Misconduct Risk in the Local Government Context

[20] The local government sector is a unique area of business activity with particular complexities in terms of misconduct risk. In local government, misconduct risk generally relates to the scale of activity and diversity of services and functions associated with the business of local government. These include, for example, infrastructure and property services, the provision of recreation facilities, building services, planning and development approval, health services, community services, and cultural facilities and services.

[21] Research results presented in a 2010 Independent Commission Against Corruption (ICAC) Report verify the Commission's understanding of how misconduct risk manifests in the local government sector. ICAC research in New South Wales shows that local governments face a wider range of corruption risks than state government authorities.⁷

[22] Western Australia has 139 regional and metropolitan local governments with differences in size, complexity and location, the demands placed on them and the risks that come with those demands. However, in terms of misconduct risk, there are similarities across the sector.

[23] In the Commission's experience, misconduct risk is higher in those business areas where discretionary authority is exercised, and particularly when it is exercised in isolation from the administrative centre.

[24] In providing their services, local governments exercise significant authority and, in many instances, with a considerable degree of discretion. As these services are delivered, this authority and discretion is delegated to, and exercised by, staff at all levels and to varying degrees across the organisation. In this context, it is important to take into account that local government facilities and staff are often physically widespread across the community and sometimes operate in isolation from the administrative centre.

[25] The nature of the functions performed by local government escalates misconduct risk. There are inherent misconduct risks associated with, for example:

- regulatory functions carried out by rangers and health and building inspectors and the possibility of abuse of authority and improper influence;

⁷ Independent Commission Against Corruption (ICAC), *Profiling the NSW Public Sector II – Report 3: Differences Between Local and State Government* (April 2010), p.8.

- procurement and tendering processes and the prospect of corruption and fraud;
- planning and building approval processes and the possibility of bribery; and
- theft, which could include materials, plant, tools and equipment from works.

[26] It is rarely a single issue that gives rise to behaviour constituting misconduct. More often, it is a mix of shortcomings in organisational values, processes and practices – such as inadequate documentation, failure to declare conflicts of interest, lack of an adequate internal audit function, lack of supervision, and misplaced trust in the integrity of professional relationships – that underpin misconduct.

[27] The prospect of misconduct occurring is heightened yet again by several relationship-driven factors. Many local government services are delivered in partnership with State and Federal Government and private sector organisations. Local governments around the state regularly negotiate large scale business developments of various kinds. These are typically commercial, residential and industrial developments driven by the interests of the private sector, or infrastructure developments driven by government and community needs, or a combination of both.

[28] The financial stakes can be extraordinarily high. Local governments are in the difficult position of engaging with companies that are simultaneously applicants seeking cooperation and approval and good corporate citizens looking to invest considerable funds in community facilities and infrastructure. The likelihood of the lines between these roles becoming blurred, that impartiality is lost, that improper influence may occur and the integrity of processes may be compromised, increases.

[29] In addition to those issues common to the local government sector as a whole, local governments operating in regional and remote areas face a number of further issues that impact on the nature and level of their misconduct risk. These include:

- the difficulty of attracting and retaining suitable staff;
- the high cost of living and lack of infrastructure and support services;
- the close working relationships that necessarily develop between the local government, the community and private enterprise;
- the problem of keeping professional and private relationships separate within relatively close town environments;
- the heightened potential for conflicts of interest to arise in small town environments;
- large geographic areas to service;

- diverse community needs to be met from a limited revenue base; and
- a high level of unpredictable and often rapidly escalating demands from industry and government for infrastructure and services.

2.2 Issues for Local Government in the Pilbara

[30] In its letter of 17 June 2012 responding to the Commission's working paper and subsequent visit, the Town of Port Hedland described the environment in which regional local governments, and those in the Pilbara in particular, conduct business:

Regional Councils are regularly required to operate several facilities such as airports, refuse services and landfill sites, multiple CBDs and residential centres, extensive road networks, and services associated with indigenous communities. Additionally, there is little private sector interest or capacity in providing facilities and services like leisure centres, halls and entertainment facilities and sporting venues, with the majority of these facilities falling largely as the responsibility of the Town. Where contributions are made by resource companies, these involve large investments of negotiation time and ongoing attention to the companies' requirements for recognition.⁸

[31] A stable workforce and well-informed and well-aware staff are fundamental to the effective management of misconduct. Attracting and retaining skilled and experienced staff is a serious problem for local governments in the Pilbara. During the review, three of the four Shire and Town Chief Executive Officers said that three years service for management staff in local government was considered lengthy in the Pilbara, and shorter periods for staff at lower levels.

[32] The relative isolation of the Pilbara region, along with the need for regional centres to shift from what the Shire of Roebourne described as "mining town situations to places which have the facilities, lifestyle and general liveability to attract residential populations"⁹ are contributing factors to the difficulty of attracting and retaining staff. Finding suitable housing for non-resource industry workers is an enormous problem in the region. However, even if housing can be found, it remains problematical, as the Town of Port Hedland letter to the Commission highlighted:

At times it is virtually impossible to recruit staff unless housing can be offered as part of the package – even at the intermediate level. With current housing rental costing in the order of \$2,500 and above per

⁸ Letter to Commissioner Roger Macknay QC, of 17 June 2012 from Mr Ian Hill, Acting Chief Executive Officer, Town of Port Hedland responding to the Commission's working paper and subsequent visit.

⁹ Letter to Commissioner Roger Macknay QC, of 25 May 2012, from Mr Simon Kot, Acting Chief Executive Officer, Shire of Roebourne letter responding to the Commission's working paper and subsequent visit.

*week, this often adds in excess of \$100,000 each year to the cost of employing each staff member.*¹⁰

- [33] These difficulties are compounded yet again by the constant “poaching” of staff by the mining sector with its offers of substantially higher salaries and other benefits, including housing.
- [34] The significance of this issue cannot be understated. Consistently inadequate staffing numbers, inexperienced staff and high turnover impacts heavily on the nature and degree of misconduct risks. In these circumstances, a robust misconduct management system, with clearly defined policies and processes across every aspect of the organisation’s business activities, is essential to minimise the prospect of actual misconduct occurring.

2.2.1 Rapid Growth and Development in the Pilbara

- [35] If misconduct risk is heightened by the scale of business activity, local governments in the Pilbara are facing an escalating risk.
- [36] Over the next two-and-a-half decades, the Pilbara residential population is expected to grow from 47,500 in 2009 to over 140,000 by 2035. This growth will be largely driven by the State Government’s “Pilbara Cities” initiative, on the back of the burgeoning growth and demands of the mining and resources industry. Under the initiative, Karratha and Port Hedland will be developed into cities with resident populations of 50,000, supported by Newman as a sub-regional centre with a population of 15,000. Tom Price is expected to grow from 2,700 to 5,000. Significant growth is also anticipated in the resource-related “fly-in/fly-out” population, rising from an estimated 15,464 in 2010 to around 33,685 by 2020.¹¹
- [37] In its letter of 25 May 2012 responding to the Commission’s working paper and subsequent visit, the Shire of Roebourne described the scale of work to be completed in Karratha alone for this regional vision to be achieved:

For Karratha to be a City of 50,000 people, there is a need to address its aging infrastructure and road transport network, development of a range of recreational and leisure facilities to cater for an expanding diversity of population, improving the streetscape and revitalising the central business district, working with Landcorp in releasing land for residential and commercial development, expanding the Karratha airport to support an increasing number of passengers travelling to and from the Pilbara, attracting a diverse

¹⁰ Letter to Commissioner Roger Macknay QC, of 17 June 2012 from Mr Ian Hill, Acting Chief Executive Officer, Town of Port Hedland responding to the Commission’s working paper and subsequent visit.

¹¹ *Pilbara: a region in profile 2011* (Department of Regional Development and Lands), p.2.

economic and commercial base to complement the resources industry and maintain the future viability of the Pilbara towns.¹²

- [38] The extent of the engagement between the private sector, local governments, and public sector authorities endeavouring to deliver services in the area, particularly through partnering arrangements, is considerable. In particular, hundreds of millions of dollars of mining company money is being offered to local governments for the improvement and development of community infrastructure through a range of schemes and partnering arrangements. In 2011, the Department of State Development, in conjunction with the Department of Mines and Petroleum, reported that a total of \$135 billion from all funding sources is either committed, or under consideration, to significant resource and resource-related infrastructure projects in the Pilbara.¹³ While some of these projects are not in direct partnership with local governments in the Pilbara, all significant projects in the region impact on the operations of those local governments.
- [39] The Town of Port Hedland and the Shire of Roebourne are at the forefront of the growth and development pressures impacting on the region. To date, the Shire of East Pilbara and the Shire of Ashburton have not been subject to development pressures on the same scale. What is clear, however, is the increasing pressure for change.
- [40] During the review, staff at some Pilbara local governments indicated they felt significant pressure in responding to and delivering outcomes associated with large mining companies, their development proposals and their expectations. This situation is complicated by the fact that, in certain cases, mining companies were also offering significant financial assistance to local governments. These proposals were said to be, most often, extraordinarily complex in regional local government planning terms, involving development costs and profit implications on an equally extraordinary scale.
- [41] In its letter of response to the Commission's working paper, the Shire of Roebourne illustrated how this situation increases the likelihood of misconduct occurring:

With the mix of monies from private organisations, there is potential for conflict in the understanding and management of appropriate governance structures and processes, lack of adequate resourcing to project manage complex and multi-disciplinary projects, potential for misconduct behaviours to arise by fast tracking processes without due consideration towards internal controls enforced by organisations or legislation. [...] Where there is such a blend of

¹² Letter to Commissioner Roger Mackay QC, of 25 May 2012, from Mr Simon Kot, Acting Chief Executive Officer, Shire of Roebourne letter responding to the Commission's working paper and subsequent visit.

¹³ The Department of State Development in conjunction with the Department of Mines and Petroleum *Prospect Magazine* (December 2011), p.6.

interests mixed with unrealistic timeframes, this then creates opportunities for misconduct activity, inappropriate behaviours or favours to shortcircuit proper processes and controls.¹⁴

[42] Managers across the region expressed concern about the pressure to deliver outcomes in this environment. The Town of Port Hedland described the expectations around their role as follows:

Town [of Port Hedland] will be expected to be involved in various advocacy, lobbying, consultation and comment and approval processes for in excess of \$5 billion of State Government projects over the next 10 years and similarly for a projected \$150 billion of projects in the resources sector.¹⁵

[43] In determining how to prevent, identify and deal with misconduct in these circumstances, Pilbara local governments need to make informed assessments about the cost and benefits of developing systems to do so. In that regard, it is worth noting that serious misconduct has real potential to undermine the viability and reputation of local governments.

¹⁴ Letter to Commissioner Roger Macknay QC, of 25 May 2012, from Mr Simon Kot, Acting Chief Executive Officer, Shire of Roebourne letter responding to the Commission's working paper and subsequent visit.

¹⁵ Letter to Commissioner Roger Macknay QC, of 17 June 2012 from Mr Ian Hill, Acting Chief Executive Officer, Town of Port Hedland responding to the Commission's working paper and subsequent visit.

CHAPTER THREE

PILBARA LOCAL GOVERNMENT REVIEW

3.1 Organisational Processes for Preventing, Identifying and Dealing with Misconduct

- [44] The Commission's review was unable to establish the existence of any formal organisational strategies or plans for the management of misconduct and misconduct risk in any of the four Pilbara local governments. Each Executive confirmed that there was no organisational system or mechanism in place for preventing, identifying and dealing with misconduct. As a result there were no planned or strategic approaches.
- [45] Over the course of the interviews in each of the local governments, it was confirmed that the management of misconduct and misconduct risk was not perceived as a core business function. Managers generally acknowledged that their organisation had not previously considered their capacity to prevent, identify and deal with misconduct, nor had they considered misconduct as a risk. During the review, staff interviewed acknowledged that the concept was new to them.
- [46] A minority of staff were not convinced of the likelihood that actual misconduct would materialise. In an interview at one Shire, a staff member said that while he understood the Commission's message, he questioned both the value and the cost of the efforts necessary to minimise misconduct and misconduct risk in the Shire. Furthermore, he believed that misconduct was "covered" because there hadn't been any issues at the Shire. When asked if the Shire would know if any misconduct was occurring, he acknowledged that the Shire not knowing could in itself be a risk.
- [47] Shortcomings in general administrative processes at each of the four local governments were also an issue. During the interviews, many staff observed that documenting and recording practices and procedures was generally poor. This was confirmed by senior management who agreed that policies and processes are not "well bedded down." As one staff member pointed out, the lack of process documents in this complex working environment heightened misconduct risk.
- [48] Without a specific misconduct management system in place, there are a number of other processes within an organisation's operating structure which can assist with identifying and dealing with misconduct. These include risk management, performance management of staff, a public complaints handling system, a staff grievance process, a disciplinary process and an Occupational Health and Safety reporting system. How many of these systems were in place and how effectively they were utilised varied across the four local governments. To the extent that these systems exist in each of the four local governments, none were linked to the management of misconduct.

3.2 Measures in Place Generally Related to Preventing, Identifying and Dealing with Misconduct

[49] Notwithstanding the lack of formal strategies or plans for the management of misconduct, a number of measures existed which had the potential to impact on misconduct management. These were as follows:

- Code of Conduct for Council Members, Committee Members and Staff;
- induction processes and/or manuals, including Finance Induction Manuals (where available);
- checks and balances within specific processes and procedures such as procurement of goods and services and tendering;
- the requirements of certain policies such as the Gifts and Benefits policy, Declaration of Interest policy and the conflict and disclosure of interest, use of confidential information and improper or undue influence policies;
- information technology staff user agreement, Computer Systems and Network Facilities Acceptable Use policy; and
- annual and interim financial audits (these are carried out by external auditors). It should be noted that none of these audits are concerned with amounts under \$10,000.¹⁶ None of the Pilbara local governments had an internal audit function.

[50] There were no references in any of these measures to the role of the Corruption and Crime Commission or the obligation to report suspected misconduct.

[51] With their purpose being solely to provide direction for the specific business activities they relate to, and without an overarching governance framework to unify policies and processes within the Shire or Town, these measures operate in isolation from one another. These are all elements which, if managed properly within a whole misconduct management system, should contribute to the prevention and identification of misconduct.

[52] If these individual policies and processes were developed in conjunction with a misconduct management strategy, they would be aligned to an organisational plan and a mechanism to prevent, identify and deal with misconduct. Consequently, not only would they contain appropriate references to misconduct and misconduct risk, their content would of necessity be made more relevant to the circumstances of the local government as a whole. As part of a whole of organisation misconduct management system each would become more effective.

¹⁶ This practice is common to most Western Australian local governments.

[53] With misconduct management in mind, the following observations are made, by way of example, about two of these key measures: the Code of Conduct and the induction process.

3.2.1 Code of Conduct

[54] Among staff interviewed, there was uncertainty about whether the Shire/Town had a Code of Conduct or not. Of those staff who indicated an awareness of the Code of Conduct, the detail of its contents was not well known. In addition, several staff stated that they did not consider it to be a document they would refer to when exercising their responsibilities and functions.

[55] All four local governments had a Code of Conduct closely aligned with the LG Act and were, therefore, similar in intent and content. However, not one of the four Codes of Conduct was tailored to the specific values, goals or expectations of that Shire or Town. None of the Codes of Conduct made reference to its organisation, its particular circumstances or its business activities.

3.2.2 Induction

[56] Generally speaking, induction was poorly executed. Regardless of their length of service, staff generally had only vague or no recollections of a formal induction. In discussions about induction with those that did recall such a process, no staff member in any of the local governments mentioned or referred to any induction manual or related document.

[57] Two Shires had induction documentation. At one, the online induction presentation appeared to be more of a self-directed guide to various Human Resources matters relevant to commencing employment, than a document guiding new employees through the policies, processes and practices that staff and councillors need to understand for the proper running of the Shire's business.

[58] Another had a comprehensive Induction Manual that included information about a range of issues related to behavioural expectations. In this regard it linked the Code of Conduct to the conditions of employment contract, to complementing certain objectives of local government in the LG Act and, in broad terms, to the Shire's objectives. Yet at no point was there any reference to misconduct or misconduct risk.

[59] One supervisor commented that the Shire's induction did not address the Shire's expectations of management staff, so he was unprepared for the risks that came with supervising a number of staff, the services being provided, and the specific responsibility he had for procurement.

3.3 Extent Misconduct Risk Formally Recognised

[60] The review identified that misconduct had not been formally recognised as a risk in any of the Pilbara local governments. Additionally, no misconduct

risk assessments had been undertaken and none of the local governments had a risk management plan.

- [61] At one Shire, a manager stated that he was mindful of misconduct risks, particularly those around building and assets. He said that this was not due to any formal processes or awareness-raising within the Shire, but from his past experience working for other local governments.
- [62] The Commission found that, across the region, in the place of any formal systems or mechanisms for the management of misconduct risk, there is a distinct over-reliance on trust. This includes confidence in the fact that, since the organisation is relatively small, there exists an inherent individual intuitiveness and organisational consciousness that minimises misconduct risk because all staff are known to each other, they know what everyone else is doing, and the CEO is aware of everything that is going on.
- [63] Discussions about community relationships in the Pilbara extended to how informal business practices were often seen as an acceptable alternative to more appropriate formal processes and procedures. Many staff indicated that this was part of a broader culture which takes a more relaxed approach to doing business in regional Western Australia.
- [64] It would appear that even large resource and development companies willingly engage on this basis from time-to-time. An example given involved an apparent preference by one company for discussing business over dinner, rather than in the Shire offices. The Commission was told that, as a result, staff often felt pressured and compromised.

3.4 Awareness and Understanding of Misconduct Management as a Management Responsibility

- [65] Over the course of interviews, the Commission gained the impression that supervisors and managers were willing and prepared to address misconduct issues, but that identifying suspected misconduct was not part of their role. It was apparent that the issue of preventing, identifying and dealing with misconduct was not a matter specifically identified by their organisations as a responsibility of their management roles and responsibilities, nor was it incorporated into any performance measures.
- [66] When there is no clear procedure for identifying, assessing and reporting suspected misconduct matters, subjective decision-making, as shown below, becomes likely. Inconsistencies of response and outcome may occur across the organisation.
- [67] A number of staff gave various explanations of how they thought they might be dealing with misconduct in their business areas. One manager felt she was managing potential misconduct by emphasising accountability and process. Another said he did so through his trust in his staff. A third manager also asserted that he could rely on his staff, confident that others had appropriately exercised checks and balances, but not exercising any checks of his own to verify that this was actually the case.

[68] Very few managers recalled handling situations involving suspected misconduct. Of those that did, some described matters involving low-level discipline issues, while others referred to instances or circumstances involving improper influence (e.g. gifts and benefits). These situations appear to have been dealt with on the basis of the individual's experience, perception of what had occurred, and what they considered was an appropriate response to the circumstances.

3.5 Awareness and Understanding of Misconduct Risk

[69] Supervisory staff and managers openly admitted that they had limited awareness and understanding of the circumstances that contribute to misconduct risk for their organisation both generally, and for specific business activity areas. However, most managers were able to recognise and describe situations within their area of responsibility where misconduct risks might exist. Not all were convinced of the likelihood that actual misconduct would materialise.

[70] The theme of misconduct risk associated with exercising discretionary decision-making with a particular regard for community relationships emerged during discussions. Some staff explained how the situation for local government staff is complicated because they both live and work in small towns with a complex mix of close personal, social and business relationships between staff and the community.

[71] A good example of the type of difficulties staff encounter came from one staff member talking about the misconduct risk factors in the regulatory and compliance aspects of his role. He felt the risks were elevated partly because the organisation's approach is one of educating the community in preference to achieving compliance through issuing infringements. One consequence of this approach is that he is required to use considerable discretion when exercising his authority. He said that he felt compromised without a formal process to guide him.

[72] The need for advice in managing particular misconduct risks was repeated in interviews with a number of staff. One manager raised the example of promotional items and gifts from service providers and clients – an example which, in the Commission's experience, presents a common problem for organisations. This manager said that a more systematic approach to dealing with the potential for misconduct would be beneficial if it helped identify such risks and informed him in advance of how to handle the situation.

[73] A number of managers identified risks in the pressures and demands from developers and the resource industry to speed up process requirements and time factors.

[74] One manager explained that misconduct risk was not an issue in his area because of his approach to processing applications and proposals. He said that because larger company submissions are completed correctly, they are the most straightforward to process and therefore are done first in

the name of efficiency and effectiveness. Smaller submissions are often put aside because they are incomplete, incorrectly done, or require more complicated assessments.

[75] A manager with 60-70 staff explained that he was in a situation in which he did not have the time or the means to verify the large volume of invoices he was authorising for payment. He also authorised the raising of the purchase orders. In the circumstances, he could not be sure goods or services purchased had actually been received. His concern was that any delay in payment because of a verification process would cause a “stop” on service by the supplier and “works will ultimately be held up”.

[76] Another manager took issue with showing favour to large resource groups. He felt that two sets of rules applied. He compared the failure to meet compliance standards in accommodation on a mine site where the company was given a warning and three months to fix, to a local small business receiving a fine and an order to comply immediately.

3.6 Conclusions

[77] In terms of the scope and purpose of the review, the Commission concluded that across the four Pilbara local governments:

1. There were no organisational processes specifically intended to prevent, identify and deal with misconduct, including:
 - no organisational strategies and/or plans to manage misconduct; and
 - no organisational systems or mechanisms to manage misconduct.
2. That notwithstanding, some measures in place had the potential to become useful tools to assist prevent, identify and deal with misconduct, but this potential was not being utilised.
3. Misconduct had not formally been identified as a risk.
4. Misconduct prevention was not perceived as a management role. Therefore, managers were not aware of, nor did they understand, misconduct prevention and awareness as one of their responsibilities.
5. Managers and supervisors had limited understanding and awareness of:
 - misconduct as a risk factor for their organisations; or
 - misconduct as a risk factor for their individual business service areas.

[78] From the Commission’s perspective, there are three key issues impacting on these conclusions. First, efforts to prevent, identify and deal with

misconduct are severely constrained without a central, cohesive system to enable effective management of both misconduct incidents and risks.

- [79] Second, without a formal misconduct management system in place to provide guidance and direction to staff dealing with misconduct matters, incidents will continue to be dealt with in isolation and on the basis of respective managers' views and experience. Beside leaving staff open to misconduct risks, this also leads to inconsistencies in outcomes.
- [80] Third, when misconduct situations continue to be dealt with (or not) in isolation, trends cannot be identified, no organisational learning occurs and no consequent changes are made to mitigate the misconduct risks.
- [81] All three key issues can have a negative effect on the local government trying to do "good business" in its efforts to meet organisational goals, including maintaining good community relationships and serving the community in ethical ways.

CHAPTER FOUR

PILBARA LOCAL GOVERNMENT RESPONSES

- [82] As noted in the introduction, the Commission's review conclusions were communicated to all four Pilbara local governments in individual working papers. Meetings were held with each local government to discuss their response to the working papers. Responses from the four Pilbara local governments to the working papers and meetings have been included at section 4.1 below.
- [83] Subsequently, in October 2012, pursuant to section 86 of the CCC Act, the four Pilbara local governments were given the opportunity to comment on the draft of this report and update the Commission on their progress in developing their capacity to prevent, identify and deal with misconduct. These are discussed in section 4.2 below.

4.1 Working Paper Responses

4.1.1 Shire of Ashburton

- [84] Below is an extract from the Shire of Ashburton's letter of 31 May 2012 responding to the Commission's working paper and subsequent visit.¹⁷

The Local Management Misconduct Review Report for Shire of Ashburton dated 19 March 2012¹⁸ generally captured the essence of the situation in the Shire.

In regions such as ours, the distance to Perth can provide a sense of insulation from events that may be relevant to the manner in which we operate.

The level of awareness of, and the understanding of the broader definition of misconduct, it is fair to say, is lacking with Shire staff.

The point was made, and is accepted, that a lack of reporting of misconduct may be related to the culture of the organisation and may not be that no misconduct exists.

...

The Shire of Ashburton has commenced a risk management process that holistically encompasses all risks that the shire may be exposed to.

A risk framework which incorporates a risk tolerance matrix was approved by Council in March 2012.

¹⁷ Letter to Commissioner Roger Macknay QC, of 31 May 2012 from Mr Jeff Breen, Chief Executive Officer, Shire of Ashburton, responding to the Commission's working paper and subsequent visit.

¹⁸ The Commission's working paper for the Shire of Ashburton.

Council's risk management consultant, Risk ID, is doing some further work on the risk framework to reinforce aspects of misconduct risk.

When this is finalised a policy and procedure will be developed. This is expected to be completed by July 2012 after which it will be incorporated into our induction process and will be a discussion topic of the CEO "roadshow" that is conducted around all Shire work sites on a three monthly cycle.

Organisational Development opportunities are being explored to identify mechanisms to minimise the stigma, reluctance, unwillingness, etc. of reporting suspected misconduct.

The documentation of processes and the accessibility of policies and procedures is being addressed by a Knowledge Management project. This project will document workflow processes and, in some cases, mandate the process, provide a storage and retrieval system that is simple, based on key words (similar to a Google search) and residing on an intranet. This will be the portal for all Shire functions. Phase 1 will be implemented by August this year with stages 2 and 3 being completed by December 2013.

The recommendation of the report is agreed to and I welcome an input to and review of processes that are introduced to minimise the risk of misconduct.

4.1.2 Shire of East Pilbara

[85] Below is the Shire of East Pilbara's letter of 30 May 2012 responding to the Commission's working paper and subsequent visit.¹⁹

Thank you for your recent correspondence on the review of the Shire of East Pilbara's approach to misconduct and misconduct management.

We certainly appreciated the review that has been undertaken. As with any review, audit or compliance check that makes recommendations on how to improve our operations we will endeavour to put those recommendations into our place.

Some recommendations may be easily implemented whilst others may take some time.

I will certainly raise the matter with my executive team to determine how misconduct risk can become a more effective management tool.

As suggested, codes, guides and manuals will be reviewed to see that they are appropriate.

¹⁹ Letter to Commissioner Roger Macknay QC, of 30 May 2012 from Mr Allen Cooper, Chief Executive Officer, Shire of East Pilbara, responding to the Commission's working paper and subsequent visit.

To undertake the review of relevant documentation I will have the Manager Human Resources discuss the comments in the review with a member of the Commission. I will also have him discuss with the Commission the possibility of in-house training.

Thank you, once again, for the report and I look forward to working with you to implement the recommendation from the review.

4.1.3 Town of Port Hedland

[86] Below is an extract from the Town of Port Hedland's letter of 17 June 2012 responding to the Commission's working paper and subsequent visit.²⁰

...

As part of its response to the previous Commission reports, the Council has expanded the Terms of Reference of its Audit and Finance Committee to review and suggest improvements to Risk Management within the organisation.

There are internal assurances within the Town of Port Hedland that its culture has changed significantly for the better since the somewhat damning report of the Commission (November 2010).²¹ There is conflicting advice as to whether the officer believed to be the source of the irresponsible and bordering offensive comments recorded in the Working Paper remains in the Town's employ. However the writer is assured that those sorts of viewpoints are neither endemic, representative nor to be tolerated in the current culture of the organisation.

Work is continuing to be undertaken on the identification and management of risk including as part of the Integrated Planning requirements and a discrete Risk Management project being auspiced by the Pilbara Regional Council and undertaken by the WALGA's Local Government Insurance Service.

Planned reviews of the Town's various policies in 2012/13 including the Code of Conduct, now well out of date, and of the formal delegations under the Local Government Act, are expected to contribute to an improved focus on risk, conduct and ethical behaviour.

Given the warnings the Town of Port Hedland has received via the Commission's Working Paper of 2010 and the further paper dated April 2012, it is believed – and is to be recommended – that as a priority the Town reviews its apparent lack of appetite for a step change in relation to the prevention, identification and dealing with

²⁰ Letter to Commissioner Roger Macknay QC, of 17 June 2012 from Mr Ian Hill, Acting Chief Executive Officer, Town of Port Hedland responding to the Commission's working paper and subsequent visit.

²¹ The Commission's working paper for the Town of Port Hedland.

misconduct across the organisation. This change process, in the opinion of the writer, must move immediately from an incremental to a proactive approach, including staff training and adoption of appropriate policies and procedures.

The Town seeks the assistance of the Commission in developing an awareness and training program as a high priority, and in identifying leading practice local government models for the development of policies, procedures and codes which will collectively assist in moving the Town of Port Hedland from laggard to leader in this critical area.

4.1.4 Shire of Roebourne

[87] Below is an extract from the Shire of Roebourne's letter of 25 May 2012 responding to the Commission's working paper and subsequent visit.²²

...

The Shire is reviewing its structure, core and non-core operations and re-assessing its service levels to meet future growth and community demands. The introduction by the State Government to implement integrated strategic planning and reporting frameworks into local government as from 1 July 2013 begins a process of rationalising and collating regional development planning with community strategic plans and local government business and operational plans. Resourcing is critical to ensure that the delivery of these plans in a timely manner, together with informing documents such as long term financial plans and asset management plans, are essential in ascertaining a realistic and sustainable vision for the community.

The Shire is not only legislatively bound but also has a high reputation for being a leader with high integrity and values. It will not tolerate misconduct and will deal with breaches if they ever arise.

The review undertaken by representatives of the CCC did not uncover any instances of misconduct. It did highlight gaps in the Shire's armour that need to be addressed. After the release of the Report in 2011,²³ the Shire of Roebourne's Audit and Organisational Risk Committee undertook an immediate and proactive approach towards addressing the matters now rather than dealing with misconduct activity at a time when it could least afford to reallocate resources and focus.

For the past twelve months, the Shire of Roebourne have undertaken works through the creation of a Corporate Compliance Department,

²² Letter to Commissioner Roger Macknay QC, of 25 May 2012 from Mr Simon Kot, Acting Chief Executive Officer, Shire of Roebourne, responding to the Commission's working paper and subsequent visit.

²³ The Commission's working paper for the Shire of Roebourne.

undertaken a gap analysis in operations to assess poor levels of service, introduced business improvement practices and continues to update governance structures and processes for major capital works.

In preparation for the growth in the community, the Council is also taking appropriate action to improve their governance skills and personal development. The opportunity for the Shire to become a City is in the near future and as growth occurs comes new responsibilities and expectations. Members of Council have been given an opportunity to enhance their governance skills by undertaking professional development through the Australian Institute of Company Directors. Furthermore opportunities to understand risk management and financial management are at the forefront to our community leaders.

The attached Table indicates the concerns raised from the CCC's Review into the Shire of Roebourne's operations. This Table is a regular feature on the Audit and Organisational Risk Committee's agenda indicating the committee's high focus towards dealing with improvement in governance structures and operational integrity. The Table also indicates the Shire's response towards the actions taken to addressing these matters.²⁴

It is important for the Commission to understand that whilst we have these ongoing pressures to meet community expectations, we also have a requirement to meet current service and operational needs. The process that we follow, although not insurmountable, will require some time to complete and then be monitored by internal and external sources.

4.2 Section 86 Responses

4.2.1 Shire of Ashburton

[88] The Shire of Ashburton Council is currently suspended. It was therefore unable to provide a response at this time.

4.2.2 Town of Port Hedland²⁵

[89] The Town of Port Hedland's section 86 response noted that the Town continues to implement a range of initiatives to improve the Town's approach to preventing, identifying and dealing with misconduct since the initial review in 2010. These include:

- A commitment to implementing a strategic approach to misconduct through risk management principles and strategies. This includes

²⁴ The Table has not been included in this report.

²⁵ Letter to Commissioner Roger Macknay QC of 6 December 2012 from Mr Mal Osborne, Chief Executive Officer, Town of Port Hedland, responding to the section 86 letter from the Commissioner of 12 November 2012.

the commitment to “deliver high quality corporate governance, accountability and compliance” and expanding the Terms of Reference of the Audit and Finance Committee to take responsibility for reviewing and improving risk management within the organisation.

- The Town has taken steps to raise staff awareness and understanding of misconduct management as a management responsibility. For example, key performance indicators have been introduced for managers which include a criterion related to the management of misconduct risks. In addition, an Employee Performance and Behaviour Management Framework has been established, specifically integrating categories of misconduct-related workplace behaviours.
- The Town has scheduled a comprehensive training program relevant to the understanding and management of misconduct. The program includes Risk Management training, Department of Local Government training on declarations of interest, WA Electoral Commission training on gifts and benefits and conflicts of interest and Corruption and Crime Commission training on conflicts of interest, understanding misconduct and dealing with misconduct.
- The Town’s Council endorsed a Four Year Corporate Plan to ensure the council is governed in an ethically responsible way that meets all legislative and community obligations. It includes key actions to develop, implement and maintain initiatives to prevent, identify and manage misconduct. These feature a number of internal audits and reviews addressing primary areas of organisational governance.
- The Town is developing an Integrated Project Management tool, which incorporates risk management principles, internal and external compliance/approval requirements, contract management, knowledge management, records management and misconduct management as key components.
- Along with the above strategies and plans, the Town has also developed an Asset Management Framework, and is undertaking mitigation strategies to assist in reducing the inherent risk associated with the functions undertaken by the town, particularly in regulatory, planning and building areas.

4.2.3 Shire of East Pilbara²⁶

[90] The Shire of East Pilbara did not provide an update on their progress in developing their capacity to prevent, identify and deal with misconduct.

²⁶ Letter to Commissioner Roger Macknay QC of 26 November 2012 from Mr Allen Cooper, Chief Executive Officer, Shire of East Pilbara, responding to the section 86 letter from the Commissioner of 12 November 2012.

- [91] It was, however, critical of the Commission, which it said it did not properly consider the legislative framework governing the operation of local governments.
- [92] However, the review was not an audit. The intent of the review was not to test compliance with local government legislation, nor was it to identify instances of misconduct. Legislative requirements pertaining to all local governments as set out under the LG Act and Regulations do not directly reference or require the management of misconduct and were therefore out of scope.
- [93] The review focused on strategically evaluating organisational systems, processes and practices for preventing, identifying and dealing with misconduct and whether or not the local government had a specific approach to managing this issue. This is articulated in section 1.3 of this report.

4.2.4 Shire of Roebourne²⁷

- [94] The Shire of Roebourne's section 86 response referred to its original response to the review working paper in the context of it being on a continuous improvement journey. However, the section 86 response also observed that the Commission did not highlight work undertaken since the review was initiated in May 2010. This is incorrect. The draft report provided to the Shire included its May 2012 response to the review working paper which details the activities the Shire has undertaken as a result of the review since May 2010. This final report also includes the May 2012 response at section 4.1.4 above.
- [95] The Shire asserted that the Commission did not undertake an audit of their policies, procedures and processes. Rather, the review was based on one-on-one interviews with staff conducted by the Commission.
- [96] This is incorrect. In addition to interviews, all identifiable documentation relevant to preventing, identifying and dealing with misconduct was examined. This included any policies, procedures and records in relation to annual and primary returns, gifts and benefits, financial and impartiality interests, discipline, grievances, complaints, staff induction, and the Shire or Town's Code of Conduct.
- [97] On a related theme, the response requests that the Commission change the terminology used in the report from a "robust misconduct management system" to a "robust compliance management system."
- [98] This request confuses both the role of the Commission and the purpose of the review. The Commission does not impose compliance requirements on public authorities. It does not have a legislative mandate to do so. Capacity to prevent, identify and deal with misconduct is not achieved

²⁷ Letter to Commissioner Roger Macknay QC, of 30 November 2012 from Mr Chris Adams, Chief Executive Officer, Shire of Roebourne, responding to the section 86 letter from the Commissioner of 12 November 2012.

through compliance regimes. Such capacity is achieved by developing systems within local governments which take account of the business activities and, in that context, address the issue of preventing, identifying and dealing with misconduct in systematic ways.

- [99] The Shire of Roebourne commented that it understands that while local governments in the Pilbara are perceived to be vulnerable to misconduct, they have been viewed in isolation and this may suggest to the rest of the community that there are actual corruption and misconduct cases.
- [100] As discussed above, the Commission's review did not seek to identify substantive misconduct cases. Whatever community perceptions about the existence of such cases, the review did not identify any.
- [101] The Shire of Roebourne also expressed concern that the Commission's report casts the Shire of Roebourne in a negative light.

4.2.5 Misconduct and the Local Government Legislative Framework

- [102] Local governments sometimes express the view to the Commission that they are protected from misconduct because of the legislative framework within which they operate. This view appears to underpin the response from the Shire of East Pilbara.
- [103] The LG Act and associated Regulations establish requirements for local governments to have, for example:
 - a code of conduct for staff and councillors;
 - a purchasing policy and procedures manual;
 - financial compliance processes;
 - audit committee;
 - an induction program for all new employees;
 - annual returns;
 - performance management and appraisals;
 - policies around conflicts of interest and acceptance of gifts; and
 - a procurement and tender policy.
- [104] The Commission's experience is that compliance with these requirements is not enough to prevent, identify and deal with misconduct. Capacity to prevent, identify and deal with misconduct occurs when:
 1. these controls actually address, along with other things, the types of behaviours that occur within local government that amount to misconduct; and
 2. internal mechanisms within the local government exist to ensure that the processes described by the controls are actually followed.

[105] For example, the LG Act requires Audit Committees to take responsibility for ensuring that local governments comply with relevant laws and regulations. There is no mandatory requirement for these committees to consider, for example, how to prevent procurement fraud occurring. Assigning responsibility to the Audit Committee to do so involves a deliberate organisational decision to move beyond compliance.

4.3 Recommendations

[106] It is critical that the momentum for change in the four local governments achieved by the Commission's review is not lost. The Commission has consulted with the Department of Local Government about this issue and makes the following recommendations.

Recommendation 1

The Commission recommends that the Shire of Ashburton, the Shire of East Pilbara, the Town of Port Hedland and the Shire of Roebourne continue to develop a formal, comprehensive and effective misconduct management strategy and system.

Recommendation 2

The Commission recommends that by 30 June 2013, the Shire of Ashburton, the Shire of East Pilbara, the Town of Port Hedland and the Shire of Roebourne report their progress in developing effective misconduct management strategies and systems to the Department of Local Government.

