



APPENDIX 4
ATTACHMENT 1

CORRUPTION AND CRIME COMMISSION



REPORT ON THE MISCONDUCT INTELLIGENCE ASSESSMENT OF THE WESTERN AUSTRALIAN PUBLIC SECTOR

26 MARCH 2015

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CORRUPTION AND CRIME COMMISSION

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President of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Hon. Michael Sutherland, MLA
Speaker of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear President
Dear Speaker

In accordance with section 88 of the *Corruption and Crime Commission Act 2003*, the Commission presents its *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Douglas'.

Neil Douglas
ACTING COMMISSIONER

26 March 2015

A handwritten signature in blue ink, appearing to read 'Christopher Shanahan'.

Christopher Shanahan, SC
ACTING COMMISSIONER

26 March 2015

ABBREVIATIONS AND ACRONYMS

("the CCC Act")	<i>Corruption and Crime Commission Act 2003</i>
("the Commission")	Corruption and Crime Commission
DLGC	Department of Local Government and Communities
DoTAG	Department of the Attorney General
GSE	Government and State-Owned Enterprise
ISA	Integrated Service Agreement
ICT	Information and Communications Technology
JSC	Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia
PwC	PricewaterhouseCoopers
SES	Senior Executive Service
("WA Police")	Western Australia Police

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FOREWORD

The Western Australian public sector has changed substantially over the last 10 years.

New forms of service delivery and funding arrangements have emerged, the fiscal environment has become one of contracting resource availability, and corrupting forces and influences have grown in sophistication.

Within their evolving operating environments public sector agencies necessarily adapt and innovate to find more efficient and effective ways of working and delivering services.

The dynamic nature of the public sector, however, inevitably gives rise to new corruption risks and misconduct threats requiring attention and makes the management of traditional threats more complicated.

This report is not intended as a critique of Government policy or the structure of the public sector in Western Australia. The analysis describes the existing pressures in the public sector for the sole purpose of identifying misconduct risk. It is misconduct risk that informs the role of the Corruption and Crime Commission ("the Commission") in improving continuously the integrity of, and reducing the incidence of misconduct in, the Western Australian public sector.ⁱ

For the Western Australian Government and public sector agencies to continue to effectively combat corruption and misconduct, better information is needed about the changing public sector environment and the range of current and emerging risks and vulnerabilities that exist within it.

Cognisant of this need, in 2014 the Commission undertook an extensive intelligence gathering and risk assessment exercise. Known as the misconduct intelligence assessment, this work provided the Commission with a broad picture of the "state of the sector", including the general trends and issues affecting it and areas of systemic pressure within it. Importantly, it also allowed the Commission to identify those public sector agencies and activities that are inherently more susceptible to corruption threats and misconduct risks.

One outcome of this exercise is that the Commission is working to realign its strategic business model to better address, and respond to, the challenges of the environment. To this end the Commission has committed to a comprehensive program of internal reform.

Those public sector agencies and activities identified as high risk through the assessment are now regarded as priority areas for the Commission moving forward. This ensures that the Commission's work continues to be relevant, intelligence-led and targeted towards those areas of the public sector where it is needed most.

ⁱ Section 7A(b) of the CCC Act.

As the Commission works to improve the integrity of the Western Australian public sector it is important that it acts visibly, strategically and cooperatively in combatting corruption and misconduct matters of significance to the State. Accordingly, the Commission is pleased to table this report, in the Parliament of Western Australia, detailing the results of its misconduct intelligence assessment.

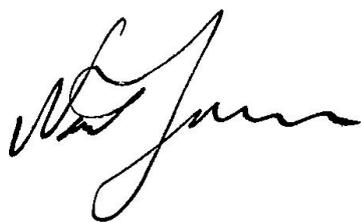
Importantly, this report will enable public sector agencies, and the public sector as a whole, to understand the current environment in which they operate. It will also assist agency headsⁱⁱ to identify where the corruption and misconduct risks and areas of susceptibility may reside within their agencies so that they can be appropriately managed.

In a fiscal environment that is increasingly characterised by contracting resource availability and economic pressures and constraints, effective corruption and misconduct management must move beyond the implementation of costly, impractical and unsustainable compliance and control measures. Public sector agencies, and agency heads specifically, should focus first and foremost on knowing where the inherent risks are and ensuring that the activities and decisions occurring across their agencies consistently recognise and take account of these risks.

The Commission acknowledges that our misconduct intelligence assessment process involved the valuable participation and cooperation of a number of key public sector agency heads. The Commission would like to thank those agency heads for their willingness to assist and openness in providing the Commission with information about the issues and pressures that they, their agencies and the public sector as a whole currently face.

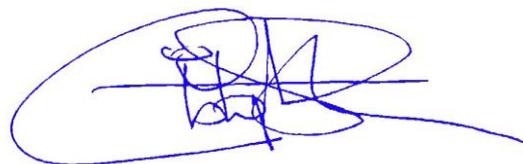
The Commission believes that this report will be useful to the State Government and to public sector agencies, including integrity agencies, as we work together in building and improving the integrity and corruption resistance of the Western Australian public sector.

Yours faithfully



Neil Douglas
ACTING COMMISSIONER

26 March 2015



Christopher Shanahan, SC
ACTING COMMISSIONER

26 March 2015

ⁱⁱ As defined by section 3 of the CCC Act, a "principal officer of a notifying authority".

CHAPTER ONE

INTRODUCTION

1.1 Strategic Intelligence Model

- [1] Successful implementation of corruption control strategies in a public sector environment requires knowledge of what and where the corruption threats are and an understanding of their nature, extent, organisation and characteristics. This knowledge:
- (a) allows resources to be directed where they are needed most and where they will have the greatest effect;
 - (b) identifies areas where interventions are likely to achieve the outcomes desired;
 - (c) identifies where corruption control mechanisms should be directed, what form they should take, the degree of intervention required and the intended outcomes;
 - (d) allows for corruption to be interrupted and controlled more efficiently and effectively; and
 - (e) allows the outcomes of intervention and corruption control activities to be tracked and measured.
- [2] Recently the Corruption and Crime Commission ("the Commission"), in the face of a rapidly changing operating environment, recognised the need not only for the Commission but for all Western Australian public sector agencies and other oversight bodies to have better information available to them concerning the range of corruption threats and misconduct risks facing the Western Australian public sector so that they can adopt effective corruption control strategies.
- [3] Accordingly, the Commission has developed a strategic intelligence model. This model is, in essence, a process by which strategic intelligence about the Western Australian public sector is gained, interpreted and applied to the Commission's operations. This model is intended to support and guide the Commission's operations, particularly in relation to its misconduct function, and its prevention function.
- [4] The chief output of this strategic intelligence model is a misconduct intelligence assessment, to be reviewed annually, that feeds into the Commission's strategic planning cycle and is used to determine and guide the Commission's strategic and operational priorities and objectives. The misconduct intelligence assessment identifies and assesses the current and emerging corruption threats to, and misconduct risks in, the Western Australian public sector.
- [5] The purpose of this report is to communicate the results of this assessment to Western Australian public sector agencies to assist them in adopting, within their agencies, effective corruption control strategies relevant to their operating environments. Agency heads, as principal officers, are accountable for the effective and efficient management of

their agencies and resources. These accountabilities include those articulated in legislation such as the *Public Sector Management Act 1994* and the *Financial Management Act 2006*, as well as other policy instruments such as Treasurer's Instructions.

1.2 Inaugural Misconduct Intelligence Assessment

- [6] In 2014 the Commission conducted its inaugural misconduct intelligence assessment of the Western Australian public sector. This:
- (a) provided a broad picture of the state of the sector, the trends and issues affecting it and the areas of systemic pressure within it; and
 - (b) identified those public sector agencies and activities that are more susceptible to corruption and misconduct risks requiring effective control strategies.
- [7] The process by which the misconduct intelligence assessment was conducted included the collection, collation and analysis of a range of data from approximately 300 entities comprised of government departments, Local Governments and other organisations.
- [8] This report provides an overview of the findings of the 2014 misconduct intelligence assessment. This is a risk assessment of the inherent corruption and misconduct risks within the public sector; it does not examine the adequacy of the control environment in place to mitigate those inherent risks. Importantly, Table 1 below shows those public sector agencies and activities (in alphabetical order) that were identified through the assessment as being at high risk or medium-high risk of corruption and misconduct.

High Risk
Department of Corrective Services
Local Governments
Procurement and Contract Management.
Regulation, Licensing and Fines.
Transport Portfolio ¹
WA Health ²
Western Australia Police

¹ The three key transport agencies (Department of Transport, Main Roads WA and the Public Transport Authority) were assessed and rated separately, however, for the purposes of this report they are dealt with collectively as the "Transport Portfolio".

² In this report "WA Health" refers to the whole of the Western Australian public health system and includes the Department of Health (the executive or management arm of WA Health) situated at Royal Street, East Perth.

Medium-High Risk
Department of the Attorney General
Department of Education
Department of Local Government and Communities
Universities
Relationships with industry.
Areas of Potential and Emerging Risk
Boards and committees.
Non-appropriated entities.

Table 1: High and Medium-High Risk Public Sector Agencies/Activities and Areas of Potential and Emerging Risk.

1.3 Changes in the Commission's Operating Environment

[9] The Commission was established in 2004. Since that time, in its more than 10 years of operations, it has seen substantial changes to its operating environment.

- (a) The Commission's jurisdiction has grown in size and complexity. According to reports on State finances published by the Department of Treasury expenses for the total public sector have risen from approximately \$18 billion in 2004-2005 to approximately \$42.4 billion in 2013-2014, with the States Asset Investment Program also increasing from approximately \$2.8 billion in 2004-2005 to approximately \$6.8 billion in 2013-2014.³
- (b) The demand for the Commission's services has shown a continuous upwards trajectory from 2,410 allegations of misconduct being assessed by the Commission in 2004-2005 to 7,260 in 2013-2014.
- (c) New forms of service delivery have emerged in the public sector, including privatised and partially-privatised business models and the use of non-government organisations, including not-for-profit organisations, which not only give rise to new corruption threats and misconduct risks but raise jurisdictional issues for the Commission.
- (d) Service delivery arrangements are increasingly characterised by complex and multiple/dual source funding arrangements and close

³ Government of Western Australia, Department of Treasury Website at <http://www.treasury.wa.gov.au/cms/content.aspx?id=518>, viewed 13 February 2015. The "total public sector", also known as the "whole-of-government", in this context consolidates the general government, public non-financial corporations and public financial corporations sectors.

partnerships with industry, which make dealing with financial misconduct and compliance risks more complex and challenging.

- (e) The fiscal environment is one of contracting resource availability, creating systemic pressures and constraints within the public sector and causing public sector agencies to look for more efficient ways of working.
- (f) Corrupting forces/influences are more complex in nature and sophisticated in operations making it difficult for public sector agencies, including oversight bodies, to combat.

[10] It is these pivotal changes that demand a more strategic approach be taken by the Commission to understand, address and respond to its complex and changing operational context to ensure it continues to perform its functions effectively and efficiently.

1.4 Changes to the Commission's Strategic Business Model

[11] In conjunction with its enhanced approach to strategic intelligence the Commission is also working to realign its strategic business model to better address, and respond to, the challenges of the external operating environment.

[12] To this end the Commission has committed to a comprehensive program of internal reform, with those public sector agencies and activities identified as high risk through the misconduct intelligence assessment now regarded as priority areas for the Commission moving forward. This ensures that the Commission's work continues to be relevant and intelligence-led and its activities and resources targeted towards those areas of the public sector where they are needed most.

1.5 Purpose of the Report

[13] This report is made in accordance with section 88 of the *Corruption and Crime Commission Act 2003* ("the CCC Act") in support of:

- (a) one of the two main purposes of the CCC Act, pursuant to section 7A(b), that is,

to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector, and

- (b) the achievement of this purpose, pursuant to section 7B(3) of the CCC Act, that is,

[t]he Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so ...

[14] Just as this report has informed the operations of the Commission, there is a need for better information to be made available to Western Australian

public sector agencies to assist them in adopting, within their agencies, effective corruption control strategies relevant to their operating environments. Agency heads, as principal officers, are accountable for the effective and efficient management of their agencies and resources. These accountabilities include those articulated in legislation such as the *Public Sector Management Act 1994* and the *Financial Management Act 2006*, as well as other policy instruments such as Treasurer's Instructions.

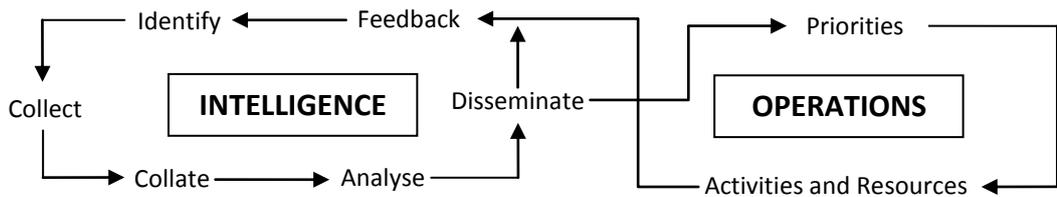
- [15] Accordingly the purpose of this report is to provide the Western Australian Government and public sector agencies with an overview of the results of the Commission's 2014 misconduct intelligence assessment to inform their corruption and misconduct control strategies. This is a risk assessment of the inherent corruption and misconduct risks within the public sector. It does not examine the adequacy of the control environment in place to mitigate those inherent risks.
- [16] For operational reasons this report provides high-level information only in relation to the methodology used and the findings of the misconduct intelligence assessment. During its assessment process the Commission relied upon additional information not otherwise available publicly.
- [17] In terms of the structure of the report, Chapter Two describes the process by which the 2014 misconduct intelligence assessment was conducted as part of the Commission's strategic intelligence model. Chapter Three presents the findings of the Commission's 2014 misconduct intelligence assessment in terms of the broad trends and issues affecting, and areas of systemic pressure within, the public sector, and those public sector agencies and activities identified as being at high and medium-high risk of corruption and misconduct. Importantly, Chapter Four then details the application of these findings by both the Commission and the wider public sector.

CHAPTER TWO METHODOLOGY

2.1 Introduction

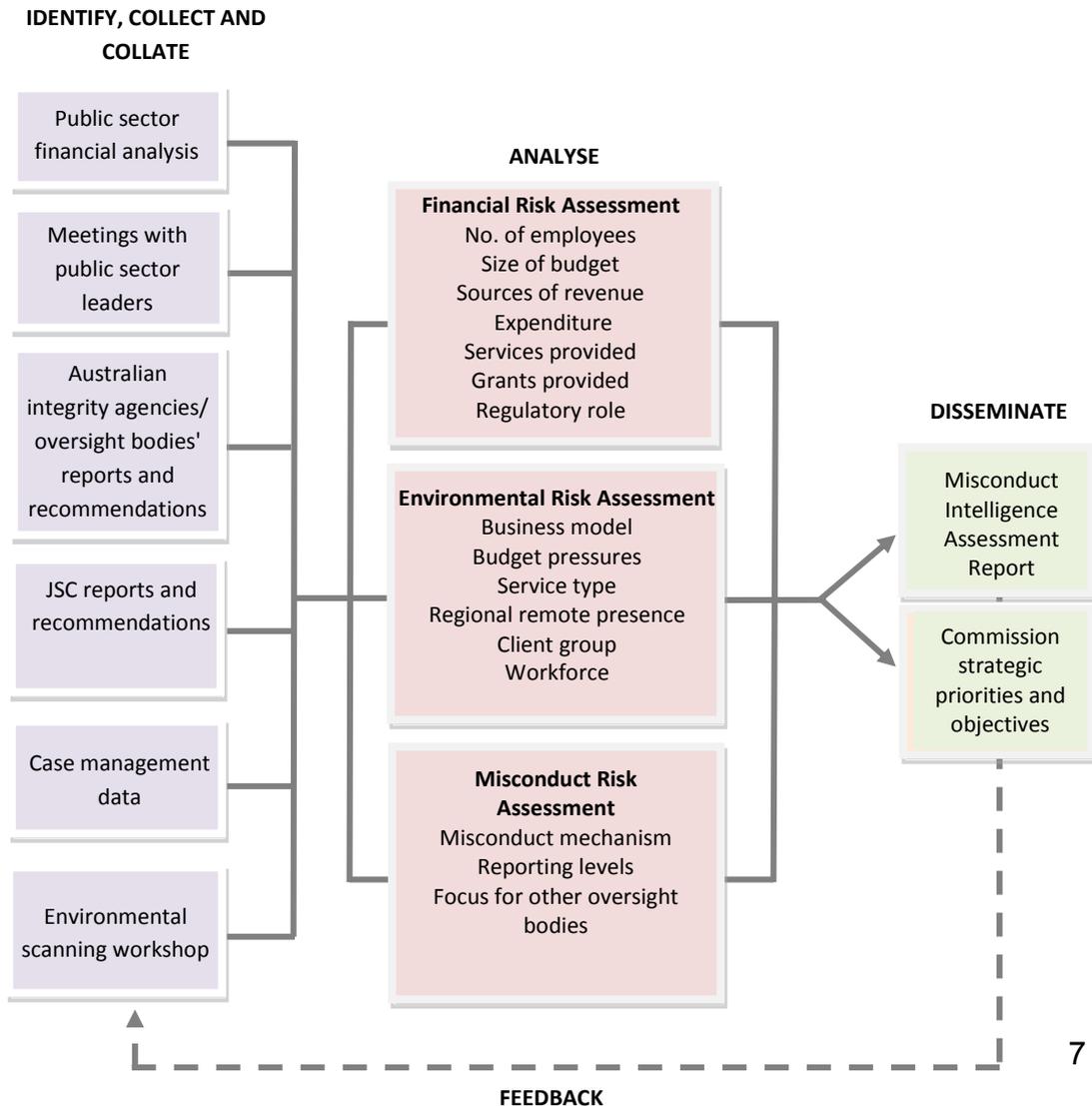
[18] The Commission's strategic intelligence model is based on applying a standard six-stage intelligence cycle: Identify; Collect; Collate; Analyse; Disseminate; and Feedback. These stages, and how they relate with each other and the Commission's operations, are illustrated in Figure 1.

Figure 1: Stages of the Intelligence Cycle and Commission Operations.



[19] The methodology used during the stages of the intelligence cycle for the 2014 misconduct intelligence assessment is detailed in Figure 2 below and in the following sections (Sections 2.2-2.6).

Figure 2: Intelligence Cycle for the 2014 Misconduct Intelligence Assessment.



2.2 Identification

[20] The Commission identified its broad intelligence requirements, in terms of areas where better information is needed about the corruption threats facing the Western Australian public sector, as:

- (a) threats to the whole of the public sector;
- (b) threats to specific sectors;
- (c) threats to specific regions;
- (d) types of threats arising in specialist or specific areas; and
- (e) conduct of high-risk individuals.

2.3 Collection

[21] A number of activities were undertaken by the Commission to collect information. To assist in providing a broader and more representative picture of the Western Australian public sector and a context in which to view specific information, the range of activities conducted included:

- (a) a range of key stakeholders;
- (b) Commission-specific sources as well as those relating to Western Australia and to Australia;
- (c) both simple and complex activities, one of which collected data retrospectively over a five-year period; and
- (d) activities that were independently (and externally) conducted as well as those that were focussed on gathering subjective information based on internal and external corporate knowledge.

[22] The activities undertaken by the Commission included:

- (a) a high-level review and analysis of the State Government Budget in terms of allocation, income and expenditure (involving Departments, Senior Executive Service (SES) organisations, non-SES organisations, Local Governments, Schedule 1 entities as prescribed by the *Public Sector Management Act 1994* and other entities), using publicly available information, including *2013-2014 Budget Papers* issued by the State Government, and financial statements and budgets published by agencies, to identify areas of potentially significant financial-related corruption and misconduct risk;⁴

⁴ 2020 Global, *Financial Analysis of Western Australian Public Sector Funding and Spending*, 5 March 2014. Refer [54] and [60] of this report.

- (b) meeting with Chief Executive Officers, Directors General and various public sector leaders to discuss emerging trends and issues, programs and initiatives and systemic pressures affecting individual agencies and the sector as a whole;
- (c) reviewing reports and recommendations made by Australian integrity agencies and oversight bodies to identify reoccurring themes, trends and areas of focus in similar jurisdictions;
- (d) reviewing reports and recommendations made by the Joint Standing Committee on the Corruption and Crime Commission (JSC) to identify themes and areas of interest to the JSC;
- (e) analysing the Commission's data for the last five financial years to identify any high-level trends in reporting and notifying allegations; and
- (f) conducting an environmental scanning workshop to identify potential emerging trends, issues, risk areas and opportunities across the sector.

[23] A number of different types and sources of information were used during the collection process in order to check and establish validity by the cross-verification of results. This process of triangulation was used to add depth to, and increase the reliability of, the resulting analysis.

2.4 Collation

[24] The information obtained during the collection stage was then organised and processed to confirm its reliability and validity and to render it into a useable and standardised format to allow for analysis in accordance with Figure 2.

2.5 Analysis

[25] The Commission then analysed the information collected and collated through the above stages to identify:

- (a) the broad trends and themes across the Western Australian public sector in regards to financial, environmental and misconduct reporting risks and pressures; and
- (b) where the high risk and medium-high risk areas reside within the Western Australian public sector for consideration as potential priority areas or areas of interest for the Commission.

[26] To ascertain an overall risk rating for public sector agencies and activities they were subjected to the following assessment process.

- (a) Financial risk assessment - based on the nature of their operations, complexity and volume of transactions, percentage of own source income to total income, nature of income, investment income/surplus assets, nature of expenditure, value of expenditure and number of employees.

- (b) Environmental risk assessment - based on their exposure/susceptibility to environmental factors identified (budget pressures, workforce skills, business model, services delivered, regional presence and client group).
- (c) Misconduct risk assessment - based on their misconduct mechanism, reporting levels and focus for other oversight bodies.

2.6 Dissemination

- [27] As a result of the misconduct intelligence assessment the Commission has realigned its strategic and operational objectives, to better reflect its operating environment, with those Western Australian public sector agencies and activities identified as high risk now regarded as priority or interest areas for the Commission (see section 4.1 for further information on how the Commission is using the results of the misconduct intelligence assessment).
- [28] This is the first publicly available report produced from the 2014 misconduct intelligence assessment. It is intended to provide an overview of the Commission's findings and how those findings will be applied to direct the Commission's operations and inform the wider Western Australian public sector.

CHAPTER THREE FINDINGS

3.1 Broad Trends and Themes

[29] This chapter details the findings of the 2014 misconduct intelligence assessment of the Western Australian public sector in terms of:

- (a) the broad trends and themes across the public sector, issues affecting it and the areas of systemic pressure within it; and
- (b) those public sector agencies and activities deemed to be inherently more susceptible to corruption and misconduct risks requiring effective control strategies.

[30] The broad trends and themes across the public sector were identified in relation to environmental, financial and misconduct reporting risks and pressures, with some areas of overlap existing between them.

3.2 Environmental Risks and Pressures

[31] Key themes and systemic pressures identified with respect to the operating environments of the Western Australian public sector, which may give rise to increased corruption and misconduct risks include the following.

3.2.1 Budget (*Increased budget pressures and constraints and the need to find and demonstrate greater efficiencies.*)

[32] Considerable budget restraints and pressures across the public sector are causing public sector agencies to look for more efficient ways of working. To achieve these efficiencies, some public sector agencies are exploring, or have moved, toward outsourced, partially-privatised and privatised business models and arrangements whereby key public services are delivered (or partially-delivered) by non-government organisations. For example:

- various prisoner and court services are outsourced;
- various licensing and regulation services are contracted to Australia Post;
- the Department of Transport has outsourced inspection and licensing services;
- in 2012-2013 the Department of Communities (now the Department of Local Government and Communities (DLGC)) reported that it allocated \$33.3 million to 446 community

organisations (including not-for-profit organisations and Local Governments) for the delivery of community services;⁵ and

- the education sector continues to implement Independent Public School arrangements.⁶

[33] Faced with a constrained fiscal environment and other environmental factors public sector agencies are also exploring and utilising alternate funding source models, which can include the use of sponsorships, grants and donations. There are particular corruption and misconduct risks (including conflicts of interest, and gifts and benefits) inherently associated with commercialised activities and the use of sponsorships, grants and donations in the delivery of public sector services (including education).

[34] Coupled with economic pressures and the need for public sector agencies to deliver savings and more financially-efficient ways of working there is considerable political and community pressure and emphasis on maintaining front-line services particularly in core service areas such as education, health and policing.

3.2.2 Front-Line Services and Cost of Compliance (*Pressure to deliver front-line services coupled with the cost of compliance.*)

[35] With respect to corruption and misconduct, traditional compliance measures and controls can be costly. Coupled with the need to deliver operating efficiencies without affecting the delivery of front-line services, public sector agencies are looking for more efficient ways of achieving the compliance standards required of them. In this context there is a risk that corners may be cut and compliance and governance controls will suffer. There is a need to ensure that compliance and corruption control strategies are in place, adequate and, importantly, that they enhance the efficiency and effectiveness of public sector agencies.

3.2.3 Non-Traditional Service-Delivery Models

[36] As already noted a number of public sector agencies are exploring and shifting (or have shifted) toward new business and service-delivery models. Some public sector agencies that were traditionally service-delivery agencies (for example, the Department of Transport, the Department of Health and the Department of Corrective Services) are shifting (or have shifted) toward outsourced models and their business is now increasingly about procurement and contract management rather than traditional service delivery.

⁵ Department for Communities Annual Report 2012-2013, 19 September 2013, p. 8.

⁶ Through the State Government's Independent Public Schools initiative, an Independent Public School is a public school where the principal has been given (through the school meeting prescribed selection criteria and standards) increased flexibility and responsibility to make local decisions across a range of school operations. Further information is available on the Department of Education Website at <http://www.education.wa.edu.au/home/detcms/navigation/about-us/programs-and-initiatives/independent-public-schools/?page=4#toc4>, viewed 30 September 2014.

[37] In this context there are risks:

- (a) that some public sector agencies do not have the necessary skills (particularly procurement and contract management skills), controls and/or governance systems in place to manage this changed role and/or its associated risks; and
- (b) of outsourced service providers potentially falling short of outcomes to be achieved (for a variety of possible reasons), which consequently impacts on other service providers that are required to "fill in the gaps".

3.2.4 Emergence of the "Third Sector"

[38] A "third sector", that is, non-government organisations, including not-for-profit organisations, delivering services (typically community and social services) on behalf of the State, has emerged as a consequence of changes to the Western Australian public sector. Significantly these arrangements are often characterised by:

- complex funding arrangements;
- multiple or dual sources of funding (Commonwealth and State);
- joint ventures and partnership arrangements with industry; and
- limited audit, oversight and accountability.

[39] Furthermore, these non-government organisations are often involved in the delivery of complex social and community services, particularly in regional and remote areas, where issues of isolation, lack of supervision and visibility and complex cultural environments are features of the operating environment, which can give rise to increased risk of corruption and misconduct.

[40] The increasingly blurred line between the public and private sectors (considered further below) is potentially further exacerbated and complicated by the emergence (and increasing dominance) of this "third sector".

[41] Finally, through the assessment process it became apparent that legislative amendment may fail to keep pace with changes to the Western Australian public sector. This is particularly relevant in relation to jurisdictional and legislative impediments that inhibit the work of oversight and integrity agencies examining the activities and conduct of non-government organisations delivering services on behalf of the State using Government money.

3.2.5 Relationships to Private Industry

[42] "Relationships to private industry" emerged as a key issue for the Western Australian public sector particularly in circumstances where the divide between the public and private sectors is blurred. Public sector agencies

are increasingly operating in privatised/partially-privatised and highly-commercial operating environments where there is a close, and potentially conflicted, relationship to private industries. For example, where public sector agencies play a role in encouraging industry involvement and engagement but also play a role in regulating and licensing those same industries. Increasingly, joint ventures and partnerships with private industry feature in the Western Australian public sector. These relationships/arrangements bring with them increased inherent corruption and misconduct risks, particularly with respect to conflicts of interest, gifts and benefits and, in general, a more complex operating environment.

- [43] By way of example, public sector agencies, including non-appropriated entities (which are sources of considerable State revenue), necessarily operate along commercial business lines sometimes in collaboration or competition with private industry. Boards and committees both regulate and promote particular industries and their members are often chosen because of their relationship to, and knowledge of, the industry. This close and potentially conflicted relationship to industry may give rise to perceived and actual conflicts of interest. The corruption and misconduct risks in this context are considerable.

3.2.6 "Policing" Complex Social Issues (*Availability of and access to community and social services coupled with issues of vulnerable client groups.*)

- [44] The larger public sector agencies delivering core social services, such as Western Australia Police ("WA Police"), the Department of Health and the Department of Education, are sometimes the primary public sector agencies with a presence in some communities, particularly in regional and remote communities. These public sector agencies and their officers encounter and deal with complex social issues such as homelessness, mental health, impairment, children at risk etc. and are sometimes unable to adequately refer individuals to appropriate community and social services (largely because these services do not exist or are unavailable). As a result, police officers, teachers, nurses etc., by virtue of the circumstances they find themselves in, may feel pressure to respond and deliver services they are not trained or employed to deliver and deal with very complex social issues for which they may not be equipped or resourced.

3.2.7 "Casualisation" of the Workforce and Skills Gap

- [45] Coupled with the general workforce trend of "casualisation" (that is, increase in the number of workers employed as casuals or contractors),⁷ which is also applicable to the public sector workforce, economic constraints are creating, and contributing to, the risk that public sector

⁷ *Lives on Hold: Unlocking the Potential of Australia's Workforce*, Independent Inquiry into Insecure Work in Australia 2012, available at <http://www.actu.org.au/Images/Dynamic/attachments/6637/Lives%20on%20Hold%20-%20Unlocking%20the%20potential%20of%20Australia%E2%80%99s%20workforce.pdf>, viewed 6 March 2015.

agencies will be reluctant to invest in the training and development of employees. Through the assessment process it was noted that there is a potential skills gap (or lack of capabilities) just below the SES level which may be exacerbated by this reluctance.

- [46] Additionally the skills required by the public sector are increasingly shifting from those associated with traditional service delivery to business management, procurement and contract management. For example, while principals are traditionally educators, with the emergence of Independent Public Schools some are now administrators of large businesses. These new roles require a different set of skills potentially not readily available to the agency. The issue of attracting and retaining high quality staff is also exacerbated in regional and remote areas, and in sectors such as education, where significant staff shortages have been forecast.

3.2.8 Prominence of Procurement and Contract Management

- [47] With the move away from traditional service-delivery to greater outsourced business models, procurement and contract management play a more prominent role in the functioning of public sector agencies and for public officers. Within public sector agencies themselves, procurement and contract management is no longer the sole province of corporate service areas with many of these responsibilities now devolved to business areas to manage. The risk is that individual public officers, public sector agencies and the public sector as a whole do not possess the necessary skills, and the right controls are not in place, to appropriately manage this change in roles, giving rise to increased inherent corruption and misconduct risks.

3.2.9 Data, Information and Intelligence (*Value of data, information and intelligence to criminal elements and corrupting forces.*)

- [48] The management of data, information and intelligence is an increasing issue for the public sector because both the amount of information gathered, stored and circulated is increasing and the value of that information to criminal elements and other corrupting forces is high. There is an enormous range of very sensitive and valuable information collected and managed by, or on behalf of, public sector agencies. There is a risk that those who can access that information may do so inappropriately because of criminal and/or corrupting influences (including private business/commercial interests).
- [49] There are additional risks in public sector agencies where public services have been outsourced and third parties have access to valuable information systems, for example, licensing systems. In this context, issues of inappropriate associations between public officers and criminal elements, inappropriate access and disclosure of official information and pre-employment and post-employment screening are central.

3.2.10 Interagency Cooperation and Communication

- [50] The need for effective interagency cooperation and communication is a key feature of the Western Australian public sector's current operating environment. This is particularly the case given the prominence of partnership arrangements, joint ventures and interagency/whole-of-Government initiatives. Features of these arrangements can include: shared decision-making; shared outcome areas; the involvement of boards and committees; and complicated funding arrangements.
- [51] In this context, issues may arise in terms of: accessing and exchanging information; the failure of public sector agencies to cooperate, communicate and effectively exchange information; interactions between public sector agencies and boards and committees; and financial and other accountabilities and governance.

3.2.11 Environmental Risks and Pressures Summary

- [52] The changing nature and operating environment of the Western Australian public sector gives rise to new corruption threats and misconduct risks. For some public sector agencies, however, the traditional threats remain the same but the operating environment makes the management of those risks even more necessary and far more complicated.

3.3 Financial Risks and Pressures

- [53] The *2014-15 Budget Summary* indicates that the Western Australian public sector is responsible for the expenditure of more than \$28 billion of public funds.⁸ A considerable focus of this report, therefore, is the identification of potentially significant finance-related corruption and misconduct risk.
- [54] In early 2014 2020 Global, an independent financial and audit firm, undertook, on behalf of the Commission, a high-level review and analysis of the State Government Budget in terms of allocation, income and expenditure (involving 300 entities comprised of Departments, SES organisations, non-SES organisations, Local Governments, Schedule 1 entities as prescribed by the *Public Sector Management Act 1994* and other entities), using publicly available information, including *2013-2014 Budget Papers* issued by the State Government, and financial statements and budgets published by agencies, to identify areas of potentially significant finance-related corruption and misconduct risk. A summary of the findings identified by this analysis is outlined below.

3.3.1 Financial Risk Factors

- [55] In its review 2020 Global noted that the key factors influencing financial misconduct risk are the nature and extent of financial transactions

⁸ *Our State Budget 2014-15*, Government of Western Australia, Western Australian State Budget 2014-15, available at <http://www.ourstatebudget.wa.gov.au/>, viewed 5 March 2015.

undertaken by public sector agencies and the control environments established within the agencies to monitor and review those transactions.⁹

[56] Inherent financial misconduct risks are present, however, regardless of the controls put in place. In particular, according to 2020 Global, the key factors influencing the inherent financial misconduct risks are as follows.

- a) Nature of operations such as service provision, regulation, policy development and administration.
- b) Complexity and volume of transactions such as high volume, small value retail transactions and complex financial instruments.
- c) Percentage of own-source income to total income such as reliance on income from non-Government sources.
- d) Nature of income:
 - cash versus electronic (each have different risks);
 - more fee for service arrangements (greater incentive for surplus); and
 - volume of transactions (large number of small transactions can hide numerous small value defalcations).
- e) Investment income can indicate surplus assets available that may be exploited.
- f) Nature of expenditure:
 - greater supplies and services compared with salaries and wages may indicate a greater extent of contracting, and use of private contractors may indicate a higher procurement and contract management misconduct risk;
 - volume of transactions (a large volume of transactions may conceal defalcations); and
 - value of expenditure (larger contracts provide an ability to exploit relationships with suppliers).
- g) Number of employees (small number may limit separation of duties while a large number may be difficult to control).

3.3.2 Trends and Issues

[57] 2020 Global noted that in the current economic environment public sector agencies are experiencing tight budgetary constraints and are looking to

⁹ Public sector agencies control environments are the responsibility of agency management and should be assessed as part of their risk management practices. These should be subjected to review and tested as part of each public sector agency's internal and external audit program.

reduce costs wherever possible. The impact on resources available to deliver services has resulted in public sector agencies looking to both the private and not-for-profit sectors to assist with their service delivery to the public, examples of which are provided below.

- a) Rather than just fully outsourcing their activities, many public sector agencies are undertaking partnerships and joint ventures with private sector entities. A common approach is known as Integrated Service Agreement (ISA). Public sector agencies such as Main Roads WA and the Department of Transport are key users of this type of arrangement for larger maintenance and construction contracts. The ISAs have an outcomes focus and shared decision-making approach. They also include a performance assessment process that determines the remuneration of the contractor and, occasionally, the continuation or cessation of their activities.
- b) Some State Government procurement initiatives, such as *Delivering Community Services in Partnership Policy*, have also changed the focus of acquittal-based funding provided to not-for-profit service providers to an outcomes-based assessment of performance.

[58] These new mechanisms for engagement with private and not-for-profit sector suppliers/providers are being used for some significant contracts within the public sector and may increase the risk of improper arrangements and, as a result, corruption and misconduct if they are not adequately managed, monitored and assessed. For example, remuneration based upon performance needs to be properly defined and suitable metrics developed to objectively assess supplier/contractor performance.

[59] In its Australian report of its Global Economic Crime Survey,¹⁰ PricewaterhouseCoopers (PwC) noted a number of trends and issues relevant to economic crime within the Australian public sector, particularly as follows.

- (a) Procurement fraud and the rising threat of cybercrime are the two greatest risks facing government organisations.
- (b) Government spending on new initiatives in response to economic conditions represents a risk where perpetrators of fraud are attracted to new programs and projects to take advantage of immature control frameworks that are still in their infancy. This can be further exacerbated where the integrity of controls have been compromised as a result of cost-saving measures implemented by Government and State-Owned Enterprises (GSEs).

¹⁰ PricewaterhouseCoopers, *Fighting Fraud in the Public Sector II: 6th PwC Global Economic Crime Survey 2011* (March 2012).

- (c) There was an increase in the number of occurrences across most types of fraud, with asset misappropriation continuing to be the most common type of fraud in Australia, accounting for 75% of incidents for GSEs. The number of GSEs suffering accounting fraud also rose in the 2009-2011 period, from 28% to 32% respectively.
- (d) While only a third of frauds are committed by external parties, organisations must remain vigilant of new threats such as GSE supplier fraud, which experienced a large increase in occurrences accounting for 32% of all external frauds in 2011 compared to 13% in 2009. Additionally, in relation to supplier fraud PwC identified that:

[w]hile the public sector seems to have taken action to bring the number of customer and agent frauds down in line with the private sector, it appears that organisations are increasingly at risk from their suppliers.

... false invoicing schemes and unauthorised changes of supplier details are all on the rise and these types of crimes can often involve some collusion from within the organisation.

One of the reasons for the increase in supplier fraud may be that public sector organisations are continuing to maintain business relationships with third parties that have defrauded them, with only a quarter terminating the relationship after the discovery of an incidence of fraud compared to nearly half in the private sector.¹¹

- (e) Procurement frauds are still prevalent, particularly since their prevention is often dependent on employee awareness and traditional control measures being able to detect fraud concealed within a large volume of transactions and number of suppliers.
- (f) While cybercrime is not yet as widespread in the public sector as compared to the private sector, it has emerged as an increasing risk for GSEs, with 14% now suffering from it compared to it being previously statistically insignificant. According to PwC:

... given the large volumes of data held by public sector organisations and high profile attacks on government departments, organisations need to ensure that they are addressing this threat.

3.3.3 Financial Risks and Pressures Summary

[60] 2020 Global in the analysis and review referred to in [22(a)] and [54] above stated that the Western Australian State Government sector is very

¹¹ *Ibid*, p8.

large with approximately \$57 billion in recurrent income from approximately 300 separate public sector and Local Government entities, with these entities undertaking a wide variety of transactions from simple credit card transactions through to complex financial derivatives.¹² 2020 Global also stated that the total annual recurrent expenditure for these bodies, at the time, was approximately \$54 billion plus \$3 billion in capital funded from \$36 billion of revenue generated from outside the sector and \$21 billion from within the State Budget process.¹³

[61] While focussing purely on the number, size or value of transactions undertaken by a public sector agency is only one part of the risk of fraud or misconduct, it does, however, provide some insight as to where the financial value is within the public sector. Each public sector agency's financial misconduct risk is a reflection of the nature of its activities (including the complexity of its transactions), its risk management processes and its control environment. The latter two are directly impacted by the agency's management.¹⁴

[62] Although some public sector agencies have very large, self-generated incomes and significant expenses, these are not always a primary indicator that they are more susceptible to fraud or misconduct. As noted previously, there is a combination of factors that influence the risk of misconduct.¹⁵

3.4 Misconduct Reporting Risks and Pressures

[63] The CCC Act requires heads of public sector authorities to notify the Commission when they reasonably suspect misconduct and, in addition, the Commissioner of Police is also required to notify the Commission of reviewable police action. In the Commission's experience a public sector agency's reporting profile, including the absence of notifications to the Commission, is an important indicator of its awareness of, and ability to deal with, misconduct.

[64] Through an analysis of its data over the last five financial years the Commission has identified key themes and trends with respect to the misconduct reporting levels of the Western Australian public sector, a summary of which is provided below.

3.4.1 Primary Reporters

[65] Historically large/key public sector agencies have been the primary source of the majority of notifications of allegations of misconduct received by the Commission pursuant to sections 21A and 28 of the CCC Act. Section

¹² 2020 Global, *Financial Analysis of Western Australian Public Sector Funding and Spending*, 5 March 2014, p.10.

¹³ *Ibid*, p.3.

¹⁴ *Ibid*, p.10.

¹⁵ *Ibid*.

21A requires the Commissioner of Police to notify the Commission of matters concerning, or that may concern, reviewable police action and pursuant to section 28 of the CCC Act certain officers are obliged to notify the Commission of any matter that concerns or may concern misconduct.

[66] Table 2 below provides a breakdown of the most prevalent "source agencies" for the 5,472 allegations received/assessed by the Commission during 2013-2014 pursuant to sections 21A and 28 of the CCC Act.¹⁶

Source Agency	Number of Allegations
WA Police	1,720 ¹⁷
Department of Corrective Services	1,630
Department of Education	995
Department of Health	464
Other Public Authorities and Independent Agencies	663 ¹⁸
Total	5,472

Table 2: Allegations Notified to the Commission in 2013-2014 by Public Authority (pursuant to section 21A and section 28 of the CCC Act).

[67] As a consequence these public sector agencies have received a considerable portion of the Commission's effort and focus over time, largely because the CCC Act requires that those notifications and reports be dealt with in a particular way. This has been reflected in the organisation of the Commission's systems, processes, structures and allocation of resources.

[68] The general nature and level of notification by these large/key public sector agencies often appears to be, either directly or in part, the result of the Commission's presence and activities in these areas over the years. For example, the Department of Education, as a result of Commission activities culminating in a 2006 Commission report,¹⁹ has since become a

¹⁶ The 5,472 allegations referred to in Table 2 above includes 4,724 allegations received from notifying authorities pursuant to section 28 of the CCC Act and 748 notifications of reviewable police action received from the Commissioner of Police pursuant to section 21A of the CCC Act (refer Table 2, p.11, of the *Corruption and Crime Commission Annual Report 2013-2014*). "Source Agency" is the public sector agency from which the notification is received by the Commission. The "Subject Authority" on the other hand is the agency to which the notification relates (refer Table 4, p.13, of the *Corruption and Crime Commission Annual Report 2013-2014*).

¹⁷ This includes 748 allegations received from WA Police pursuant to section 21A of the CCC Act.

¹⁸ This represents notification of allegations by 93 other public authorities and independent agencies.

¹⁹ Corruption and Crime Commission Report, *Sexual Contact with Children by Persons in Authority in the Department of Education and Training of Western Australia*, tabled in the Parliament of Western Australia on 16 October 2006.

steady reporter and shows signs of having a relatively mature misconduct mechanism in so far as it appears to detect, report and deal with misconduct adequately.

[69] Similarly, WA Police has been an area of focus for the Commission since the Commission's establishment in 2004 coming out of the Kennedy Royal Commission.²⁰ The effect of this presence is reflected in the relative maturity of WA Police's misconduct mechanism and reporting as evidenced by its steadily increasing reporting levels punctuated by one-off reporting matters such as those relating to the management and use of the BriefCase system.²¹

[70] Within this primary reporting group several trends are evident including the following.

- (a) Steadily increasing reporting, which suggests relatively mature misconduct mechanisms.
- (b) Inconsistent reporting, which suggests either immature or problematic misconduct mechanisms.
- (c) Suspected under-reporting, which suggests potentially disparate and problematic misconduct mechanisms and perhaps reflects difficulties the Commission has experienced in getting a foothold in particular sectors.
- (d) In addition to "regular" reports the Commission receives one-off reports of mass/bulk allegations of misconduct from particular public sector agencies, referred to as one-off reporting.

[71] Historically the bulk of allegations received by the Commission come from the "primary reporters". Fulfilling the Commission's legislative obligations with respect to those allegations consumes considerable resources and effort. In the end, however, these "primary reporters" can only notify the Commission of allegations of misconduct about which they are aware. They, and consequently the Commission if it was to rely only on their notifications, "only know what they know".

[72] The most revealing aspect of the analysis of Commission holdings is what is not there, either because it is not known by public sector agencies and/or because it is not reported to the Commission. The primary trend observed with respect to misconduct mechanisms and reporting levels of the Western Australian public sector is the issue of non-reporting to the Commission.

²⁰ *Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers* ("the Kennedy Royal Commission").

²¹ BriefCase is the WA Police system for recording and progressing charges against alleged offenders and is an example of one-off reporting. For example, in 2012-2013 allegations related to the WA Police BriefCase system accounted for 2,220 of the 3,120 finalised allegations.

3.4.2 Non-Reporting

- [73] The work of the Commission necessarily corresponds to, and is primarily determined by, reports and notifications made to it. This is because the CCC Act requires the Commission to respond to, and deal with, those reports and notifications. As noted previously this has led to the "primary reporters" receiving a considerable portion of the Commission's focus over time, but there is a range of public sector agencies that potentially constitute a greater risk due to the absence of notifications or non-reporting. Consequently, the Commission has a limited "picture" of the corruption and misconduct that has or may have occurred, is or may be occurring, is or may be about to occur or is likely to occur in those agencies.

3.5 High Risk Areas

- [74] The following section provides a brief overview of the public sector agencies and activities (in alphabetical order) within the Western Australian public sector that were identified through the Commission's misconduct intelligence assessment as being at high risk of corruption and misconduct.²²

3.5.1 Department of Corrective Services

- [75] The Department of Corrective Services has a partially-privatised/outsourced and devolved business model. Like a number of traditional service-delivery public sector agencies, the Department of Corrective Services appears to be now shifting more toward contract management and business administration involving large supplies and services and substantial contracts with the private sector.
- [76] Within a difficult operating environment the Department of Corrective Services experiences particular vulnerabilities and issues related to:
- (a) the exercise of discretionary powers (for example, use of force, conditions of detention and prisoner placement);
 - (b) dealing with vulnerable client groups (for example, juvenile prisoners, mentally ill prisoners, pregnant prisoners and families of prisoners);
 - (c) access to sensitive information and intelligence; and
 - (d) outsourced services.
- [77] Particular corruption and misconduct risk areas identified for the Department of Corrective Services include:
- (a) workforce performance management (oversight and supervision);
 - (b) inappropriate associations and links with criminal elements;

²² This is a risk assessment of the inherent corruption and misconduct risks within the public sector; it does not examine the adequacy of the control environment in place to mitigate those inherent risks.

- (c) contraband entering and moving within prisons;
- (d) illegal and illicit drug use;
- (e) inappropriate access to, and disclosure of, information;
- (f) management of intelligence;
- (g) bribery, and gifts and benefits;
- (h) procurement and contract management;
- (i) major projects, infrastructure, and building and works;
- (j) use of force;
- (k) abuse of power, including internal prisoner disciplinary procedures, access to medical care, complaints mechanisms and legal representation; and
- (l) prisoner management, including witness protection, prisoner placement, transfer and transportation, and patient/prisoner management and hospital procedures.

3.5.2 Local Governments

- [78] The Local Government sector is large and disparate with a complicated structure that makes central oversight and control difficult. Due to its legislative mandate the Auditor General has a limited role in this sector and bodies such as DLGC face particular challenges in having to balance their dual roles of both regulator and facilitator.²³
- [79] Local Governments can have substantial budgets and revenue-raising capacity through rates, fines, approvals etc. They also typically have outsourced business models with the engagement of non-government organisations, including not-for-profit organisations, for the delivery of a wide range and variety of community services. Their operations include significant procurement and contracting particularly in relation to the awarding and management of contracts with the "third sector". The Local Government sector also has close and potentially conflicted relationships with industry, for example, Local Governments in general encourage industry involvement in their communities but also regulate that involvement through processes such as land approvals and developments.
- [80] Within their operating environment, Local Governments experience particular vulnerabilities and issues related to:
- (a) outsourced business models and services; and
 - (b) substantial revenue-raising capacities.

²³ Refer Recommendations One and Two contained in the Corruption and Crime Commission *Report on Misconduct Risk in Local Government Procurement*, tabled in the Parliament of Western Australia by the Hon. Tony Simpson, MLA, the Minister for Local Government, on 26 February 2015.

- [81] Particular corruption and misconduct risk areas identified for Local Governments include:
- (a) relationships to industry, including conflicts of interest, gifts and benefits, regulation (for example, land management and development) and sponsored travel;
 - (b) procurement and contract management;
 - (c) major projects, infrastructure, and building and works;
 - (d) regulation, fines and approvals, including discretionary decision making;
 - (e) overseas travel; and
 - (f) fraud.

3.5.3 Procurement and Contract Management

- [82] Procurement and contract management play an increasingly prominent role in the functioning of the public sector, agencies and public officers with the shift away from traditional service-delivery to outsourced business models. Within public sector agencies themselves many of the responsibilities associated with procurement and contract management are now increasingly devolved to business areas to manage. There is a risk that both the public sector as a whole and individual public sector agencies, particularly those traditional service-delivery agencies that are shifting (or have shifted) to an outsourced/partially-privatised business model, may lack the relevant skills, experience, people or governance systems to adequately manage these procurement and contract management functions.
- [83] Additionally, political, community or agency-level pressure to deliver major works can create an environment conducive to compromised governance and controls and the risk that "corners will be cut" at the expense of compliance measures. Similar pressure and difficulties may also exist when managing contract relationships with large companies and industries.
- [84] Within the public sector operating environment particular vulnerabilities and issues related to procurement and contract management are associated with:
- (a) major projects, infrastructure, and building and works;
 - (b) service providers, non-government organisations (including not-for-profit organisations) etc.; and
 - (c) Information and Communications Technology (ICT) systems and software.
- [85] Particular corruption and misconduct risk areas identified for procurement and contract management include:

- (a) fraud; and
- (b) conflicts of interest, and gifts and benefits.

3.5.4 Regulation, Licensing and Fines

[86] Regulation, licensing and fines is an area within the public sector that was identified as being at high risk of corruption and misconduct. This is particularly relevant for public sector agencies with a regulatory or licensing function (that is, land development approvals, mining approvals, licensing of the heavy haulage industry etc.). This risk is particularly heightened where:

- (a) there are "bottle necks" in the delivery of services;
- (b) transactions are undertaken by inexperienced workers;
- (c) there are relationships to industry (for example, Local Governments, in general, encourage industries such as the mining industry to operate in their community but also regulate and control those industries through land usage approvals and development approvals);
- (d) significant costs are incurred (such as the interest costs in land development); and
- (e) it occurs in the context of an agency's revenue-raising capacity.

[87] Particular corruption and misconduct risk areas associated with regulation, licensing and fines include:

- (a) conflicts of interest, gifts and benefits and bribery; and
- (b) fraud.

3.5.5 Transport Portfolio

[88] The Department of Transport, Main Roads WA and the Public Transport Authority are the three agencies that make up Western Australia's large, geographically dispersed and complex Transport Portfolio.

[89] Funding arrangements for the Transport Portfolio include substantial grants and subsidies provided by both State and Commonwealth sources. Considerable revenue-raising activities also occur, particularly through Driver and Vehicle Services and TransPerth, with significant own-source revenue generated from fares, some of which are collected by third parties.

[90] Commercial activities and service delivery within the Transport Portfolio occur in a privatised/partially-privatised environment as it appears it is shifting from being a traditional service-delivery agency toward an outsourced business model focussed increasingly on contract management. This involves substantial contracting out to third parties and significant costs for supplies and services associated with large contracts with the private sector for service provision (for example, bus services, security and cleaning).

- [91] Within its operating environment the Transport Portfolio experiences particular vulnerabilities and issues related to:
- (a) delivering front-line services, particularly where "bottle necks" are occurring;
 - (b) delivering services in regional/remote areas;
 - (c) the exercise of discretionary powers (for example, the policing of public disorder issues);
 - (d) access to sensitive and confidential information, particularly where employees are inexperienced and more susceptible to grooming;
 - (e) substantial revenue-raising capacities; and
 - (f) outsourced services (for example, licensing and inspections).
- [92] Particular corruption and misconduct risk areas identified for the Transport Portfolio include:
- (a) abuse of power, including the policing of public disorder issues (that is, security on trains and buses);
 - (b) procurement and contract management;
 - (c) safety and maintenance services;
 - (d) major projects, infrastructure, and building and works;
 - (e) fraud, including identity fraud;
 - (f) licensing and regulation, including the regulation of heavy haulage standards, taxi and charter vehicle industry, rail and maritime, and commercial and private licences;
 - (g) bribery, and gifts and benefits;
 - (h) inappropriate access to, and disclosure of, information; and
 - (i) employee screening (that is, security vetting of employees who have access to high-risk systems and information).

3.5.6 WA Health

- [93] WA Health has a large, complex and geographically dispersed business model and organisational structure which can make central oversight and control challenging. Within a difficult operating environment WA Health experiences particular vulnerabilities and issues related to:
- (a) high staff workloads;
 - (b) delivering social services to vulnerable client groups;
 - (c) delivering services to regional and/or remote areas;

- (d) outsourced services;
- (e) budget pressures; and
- (f) political and community pressures in relation to staffing, building hospitals, maintaining front-line services, waiting times, surgery delays etc.

[94] WA Health has a mixed funding model (receiving both Commonwealth and State funds) and its large operating budget includes significant capital investment being made in an infrastructure overhaul, major building and works and substantial procurement (from simple transactions to large equipment purchases and tendering processes). WA Health is traditionally a service-delivery agency. There is evidence that it is moving toward a partially-privatised/outsourced business model where extensive contracting out, including outsourced high-profile contracts for public services with private providers and non-government organisations, is a key feature.

[95] Particular corruption and misconduct risk areas identified for WA Health include:

- (a) relationships to industry (including gifts and benefits, sponsored travel, research grants, sponsorships and donations);
- (b) the purchase and management of, and access to, pharmaceuticals, including scheduled drugs;
- (c) illicit and illegal drug use;
- (d) procurement and contract management, particularly in relation to ICT; and
- (e) major projects, infrastructure, and building and works.

3.5.7 Western Australia Police

[96] WA Police is a large public sector agency with a significant number of employees dispersed over a wide area of the State. The continued growth, geographical spread and demographic changes of the State's population has resulted in increased and considerable pressure on WA Police's delivery of front-line services.

[97] This pressure is further exacerbated by budget constraints and Full-Time Equivalent staff "freezes" that affect other public sector agencies providing community and support services. In these circumstances WA Police often feel obliged to "fill the gaps" when these services are not available, particularly in remote and regional communities, but may not necessarily have the capacity or capability to do so. Similar "gaps" can also result from the privatisation of services within other public sector agencies.

[98] Within its operating environment, WA Police experiences particular vulnerabilities and issues related to:

- (a) delivering services in regional/remote areas (for example, isolation from the centre, and lack of supervision and oversight);
- (b) the availability of community services, particularly in rural and remote areas;
- (c) dealing with vulnerable or at risk client groups (for example, victims of crime, mentally ill and homeless);
- (d) access to sensitive information and intelligence, particularly by third parties through the privatisation of services within WA Police (for example, its Infringement Management Office); and
- (e) the exercise of discretionary powers (for example, use of force).

[99] Particular corruption and misconduct risk areas identified for WA Police include:

- (a) abuse of power, including inappropriate use of force, inappropriate use of powers to search and giving false evidence;
- (b) inappropriate associations and links to criminal elements;
- (c) illicit and illegal drug use by officers;
- (d) inappropriate access to, and disclosure of, information;
- (e) lock-up procedures and custody arrangements;
- (f) supervision and oversight, including discipline and use of the Managerial Intervention Model versus the performance management model;
- (g) user-pays policing;
- (h) high-risk policing activities/areas (for example, human source management and firearms management); and
- (i) procurement and contract management.

3.6 Medium-High Risk Areas

[100] The following section provides a brief overview (in alphabetical order) of the public sector agencies and activities that were identified through the misconduct intelligence assessment as being at medium-high risk²⁴ of corruption and misconduct.

3.6.1 Department of the Attorney General

[101] The Department of the Attorney General (DoTAG) performs various key functions relating to the administration and support for State courts, tribunals and boards (including the enforcement of outstanding fines), the

²⁴ This is a risk assessment of the inherent corruption and misconduct risks within the public sector; it does not examine the adequacy of the control environment in place to mitigate those inherent risks.

provision of services to victims of crime, trustee services, the registration of births, deaths and marriages, and the provision of legal, policy development and parliamentary drafting services. DoTAG operates within an environment where particular vulnerabilities and issues arise in relation to:

- (a) dealing with vulnerable or at risk client groups, for example, victims of crime;
- (b) access to, and sharing of, sensitive information and intelligence, for example, through the Registry of Births, Deaths and Marriages;
- (c) regulation/fine management, for example, regulatory fines (mainly court fees), and follow-up and enforcement of fines through the Fines Enforcement Registry;
- (d) engagement (through the performance of its functions) with criminal elements; and
- (e) the use of outsourced services.

[102] Particular corruption and misconduct risk areas identified for DoTAG include:

- (a) inappropriate access to, and disclosure of, information;
- (b) inappropriate associations and relationships with criminal elements;
- (c) procurement and contract management;
- (d) conflicts of interest; and
- (e) fraud, including identity fraud.

3.6.2 Department of Education

[103] The Department of Education is the biggest public sector employer with a significant geographical spread (large number of employees and large number of locations) including small and isolated regional/remote worksites (where staff may work without close supervision or contact with peers). The massive growth in student numbers and the forecast teacher shortages have resulted in increased and considerable pressure on the Department of Education's delivery of front-line services.

[104] The Department of Education receives significant Commonwealth funding and is subject to both Federal and State Government initiatives. Schools are also becoming progressively commercialised (through sponsorship and donations) and politicised (as the focal point for many communities).

[105] The Department of Education's business model is deliberately increasingly devolved in order to find greater efficiencies without affecting front-line services. Furthermore, the Department of Education is exploring an

alternate model to give more flexibility and autonomy to schools (that is, through Independent Public Schools and the student-centric funding model), with many schools as a result now equivalent to large businesses, which necessitates a shift in skill set (that is, principals are now required to be business administrators).

- [106] Within its operating environment the Department of Education experiences particular vulnerabilities and issues related to:
- (a) delivering services in regional/remote areas;
 - (b) delivering front-line services;
 - (c) dealing with vulnerable client groups (that is, children);
 - (d) budget pressures;
 - (e) operating within a devolved business model (that is, Independent Public Schools and student-centric funding model); and
 - (f) workforce issues (large workforce, significant teacher shortages forecast, staff availability in regional and remote areas, "casualisation" of the workforce (that is, increase in the number of workers employed as casuals or contractors), the additional roles required of teachers etc.)
- [107] Particular corruption and misconduct risk areas identified for the Department of Education include:
- (a) relationships between teachers/staff and students (for example, child grooming and inappropriate contact/conduct);
 - (b) supervision and oversight, particularly regional and remote locations;
 - (c) employee screening and performance management, including the large casual workforce (for example, relief teachers) and professional registration;
 - (d) procurement and contract management;
 - (e) fraud;
 - (f) neglect of duty and failures or inability to report child protection issues, including the transfer of information between public sector agencies; and
 - (g) inappropriate access to, and disclosure of, information.

3.6.3 Department of Local Government and Communities

- [108] DLGC focuses on compliance and building the strategic capacity of Local Governments, which can present challenges with DLGC having a dual role as both regulator and facilitator. There is great diversity between Local Governments (size, capacity, demographic profile etc.) and with more than two-thirds of the 140 Local Governments in remote or regional areas oversight by DLGC can be difficult.

- [109] The DLGC outsourced business model results in it managing significant funding for non-government organisations, including not-for-profit organisations, and administering Royalties for Regions funding to regional Local Governments.
- [110] Within its operating environment DLGC experiences particular vulnerabilities and issues related to:
- (a) an outsourced business model; and
 - (b) having a dual role as both sector regulator and facilitator.
- [111] Particular corruption and misconduct risk areas identified for DLGC include:
- (a) procurement and contract management;
 - (b) major projects, infrastructure, and building and works;
 - (c) conflicts of interest, and gifts and benefits;
 - (d) relationships to industry; and
 - (e) regulation and inspection (that is, of child care centres).

3.6.4 Universities

- [112] The tertiary education sector is a crowded market where competition is strong and there is a high dependency on international full-fee paying students and the foreign market. Universities have a mixed funding model which is comprised primarily of own-source revenue (for example, from student fees, sponsorships, industry and private grants and own investments) as well as Commonwealth and State grants.
- [113] Universities necessarily operate in a highly commercialised environment and along commercial business lines with strong links to industry and private companies (for example, through research grants, sponsorships and donations). Another key feature of University operations is the employment of an itinerant academic workforce.
- [114] Particular corruption and misconduct risk areas identified for Universities include:
- (a) relationships to industry (for example, funding, donations, sponsorships and grants);
 - (b) conflicts of interest, and gifts and benefits;
 - (c) procurement and contract management; and
 - (d) relationships between staff and students.

3.6.5 Relationships with Industry

- [115] Relationships with industry (in terms of grants, sponsorships, gifts and benefits and donations) is an area within the public sector that was identified as being at medium-high risk of corruption and misconduct,

which is particularly relevant for public sector agencies that operate closely with private industry and/or in commercialised environments (generally those with either high own-source or mixed-source funding).

- [116] Particular corruption and misconduct risk areas identified for relationships with industry include conflicts of interest, and gifts and benefits.

3.7 Areas of Potential and Emerging Risk

- [117] The Commission's misconduct intelligence assessment also identified areas of emerging and potential vulnerability within the Western Australian public sector that require further exploratory work to obtain a more comprehensive understanding of the specific corruption and misconduct risks that may exist and the context in which they arise. Two such areas are:

- (a) non-appropriated entities; and
- (b) boards and committees.

CHAPTER FOUR APPLICATION

4.1 Use of Findings by the Commission

[118] As the chief output of its enhanced strategic intelligence model, the findings from the misconduct intelligence assessment inform the Commission's priorities and, in particular, the determination of where its efforts and resources will be apportioned.

[119] Following its 2014 assessment of the Western Australian public sector the Commission is now working to realign its strategic business model to better address, and respond to, the challenges of its operating environment. To this end the Commission has committed to a comprehensive program of internal reform with those public sector agencies and activities identified as high risk through the assessment process now regarded as priority areas for the Commission moving forward. Specifically these high risk areas include (in alphabetical order):

- (a) Department of Corrective Services;
- (b) Local Governments;
- (c) Procurement and Contract Management;
- (d) Regulation, Licensing and Fines;
- (e) Transport Portfolio;
- (f) WA Health; and
- (g) Western Australia Police.

[120] Importantly the strategic realignment of its operations ensures that the Commission's work and the performance of its functions continue to be relevant, intelligence-led and targeted toward those areas of the public sector where there is most need.

[121] Just as the findings of the misconduct intelligence assessment has informed the operations of the Commission, there is a need for better information to be made available to public sector agencies to assist them in adopting, within their agencies, effective corruption control strategies relevant to their operating environments.

4.2 Use of Findings by the Public Sector

[122] A critical factor in combatting misconduct is that public sector agencies understand their operating environment and identify their specific risks and areas of susceptibility in order to implement suitable controls and strategies to appropriately manage and mitigate those risks. Agency heads, as principal officers, are accountable for the effective and efficient management of their agencies and resources. These accountabilities

include those articulated in legislation such as the *Public Sector Management Act 1994* and the *Financial Management Act 2006*, as well as other policy instruments such as Treasurer's Instructions.

- [123] To facilitate the risk identification and mitigation process this report will assist public sector agencies to gain a better understanding of, and insight into:
- (a) the current public sector environment and areas of systemic pressure within it;
 - (b) the range of corruption threats and misconduct risks facing the Western Australian public sector, now and in the future, and the context in which they arise; and
 - (c) those public sector agencies, and the specific areas/activities within agencies, that are more susceptible to corruption and misconduct risks requiring effective control strategies.
- [124] It is critical that all public sector agencies, and not only those identified through the misconduct intelligence assessment as being high and medium-high risk agencies, use these findings to both:
- (a) identify the risks and areas of vulnerability specific to them within the changing operating environment; and
 - (b) ensure they have appropriate control strategies and governance frameworks in place to adequately manage and mitigate them.
- [125] Effective corruption and misconduct management is not about costly, additional or cumbersome compliance measures, particularly given the current fiscal environment. It is first and foremost about public sector agencies, and agency heads specifically, knowing what their inherent risks are and ensuring that the decisions and activities occurring across their agency (for example, in relation to structure, effort and resourcing) consistently acknowledge and take account of these risks.
- [126] Practical first steps for applying these findings within public sector agencies involve agency heads using this report to inform, and provide input into the agency:
- (a) risk management processes;
 - (b) internal audit program;
 - (c) fraud and corruption control planning;
 - (d) program, project and change management activities;
 - (e) strategic and operational planning cycle; and
 - (f) organisational structure and design.
- [127] Furthermore, in the face of increased budget pressures and constraints public sector agencies have an opportunity to rethink their service-delivery models where a focus on eliminating ("designing-out") corruption and misconduct risks should be paramount.



ATTACHMENT 2

CORRUPTION AND CRIME COMMISSION



**REPORT ON AN ADMINISTRATIVE MATTER RELATING TO THE
FUNCTIONS OF THE COMMISSION PURSUANT TO SECTION 88
OF THE CORRUPTION AND CRIME COMMISSION ACT 2003
("THE REPOSITIONING REPORT")**

21 APRIL 2015

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CORRUPTION AND CRIME COMMISSION

Hon. Barry House, MLC
President of the Legislative Council
Parliament House
Harvest Terrace
PERTH WA 6000

Hon. Michael Sutherland, MLA
Speaker of the Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Dear President
Dear Speaker

In accordance with section 88 of the *Corruption and Crime Commission Act 2003*, the Commission presents its *Report on an Administrative Matter Relating to the Functions of the Commission Pursuant to Section 88 of the "Corruption and Commission Act 2003"* ("the Repositioning Report").

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Douglas'.

Neil Douglas
ACTING COMMISSIONER

21 April 2015

A handwritten signature in blue ink, appearing to read 'Christopher Shanahan'.

Christopher Shanahan, SC
ACTING COMMISSIONER

21 April 2015

ABBREVIATIONS AND ACRONYMS

("the CCC Act")	<i>Corruption and Crime Commission Act 2003</i>
("the CCC Amendment Act")	<i>Corruption and Crime Commission Amendment (Misconduct) Act 2014</i>
("the Commission")	Corruption and Crime Commission
ICAC	Independent Commission Against Corruption, New South Wales
("the Parliament")	Parliament of Western Australia
PSC	Public Sector Commission
("the MIA Report")	Corruption and Crime Commission <i>Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector</i> , tabled in the Parliament of Western Australia on 26 March 2015.
MIA	Misconduct Intelligence Assessment
("WA Police")	Western Australia Police

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CHAPTER ONE

PURPOSE AND BACKGROUND

1.1 Purpose

- [1] The purpose of this report is to:
- provide an account of how the Corruption and Crime Commission ("the Commission") seeks to reposition itself following an evaluation of the first 10 years of its operation and to respond to the rapidly and constantly changing Western Australian public sector environment;
 - explain how a more strategic, targeted and intelligence-led approach, as demonstrated by the *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector* ("the MIA Report") tabled in the Parliament of Western Australia ("the Parliament") on 26 March 2015 by the Commission, is to be employed to drive the Commission's operations and inform a newly configured business model; and
 - outline organisational changes that have been taken to implement an intelligence-led approach and to respond to specific internal governance and conduct challenges emerging from the Commission's evaluation of the first 10 years of its operation.

1.2 Background

- [2] The Commission was established on 1 January 2004 following proclamation of the *Corruption and Crime Commission Act 2003* ("the CCC Act") on 30 December 2003.
- [3] Since that time the Commission has had three substantive Commissioners:
- Kevin Hammond, AO, 23 December 2003 - 23 March 2007;
 - the Hon. Len Roberts-Smith RFD, QC, 5 June 2007 - 31 January 2011; and
 - Roger Macknay, QC, 21 November 2011 - 14 April 2014.
- [4] During periods in which the office of substantive Commissioner is vacant the performance of the office is undertaken by an Acting Commissioner, pursuant to section 14(1)(a) of the CCC Act. Those periods have occurred on three occasions:
- 23 March 2007 - 5 June 2007 (upon the retirement of Commissioner Hammond);
 - 31 January 2011 - 21 November 2011 (upon the retirement of Commissioner Roberts-Smith); and
 - 14 April 2014 - 28 April 2015 (upon the retirement of Commissioner Macknay).

- [5] During the period 14 April 2014 to 28 April 2015 the performance of the office is being undertaken by Acting Commissioner Neil Douglas (appointed as an Acting Commissioner effective 25 July 2012 - continuing) and Acting Commissioner Christopher Shanahan, SC (appointed as an Acting Commissioner effective 7 April 2014 - continuing). Mr Shanahan previously served as an Acting Commissioner during the period 22 August 2005 - 22 August 2010 (comprised of two consecutive terms).
- [6] During most of the first 10 years of the Commission's operation Mr Mike Silverstone served first as Executive Director and, ultimately, as Chief Executive. Mr Silverstone was appointed as Executive Director on 1 June 2004 and retired effective on 3 October 2014.¹ Since that time Ms Peta Mabbs has occupied the position of Acting Chief Executive.

1.3 Key Changes in the Environment

- [7] The Commission is currently operating within a rapidly and constantly changing Western Australian public sector and needs to be flexible and responsive to meet the challenges posed by:
- **increases in the number of allegations** dealt with from 3,246 in 2008-2009 to 7,260 in 2013-2014 (see Table 1), although it is anticipated that up to approximately one quarter of these allegations will fall within the minor misconduct jurisdiction to be transferred to the Public Sector Commission (PSC) upon proclamation of the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* ("the CCC Amendment Act"), which is expected to be later in 2015;
 - **legislative changes to its jurisdiction** and continuing debate as to whether the Commission should be tasked with an organised crime function;²
 - **the growing privatised service delivery** of government services, the emergence of the "third sector" (that is, non-government and not-for-profit organisations delivering services on behalf of government) and increasing numbers of public sector officers being tasked with procurement and contract management rather than traditional service delivery;

¹ The office of Executive Director became the office of Chief Executive on 28 July 2014, shortly prior to Mr Silverstone's retirement.

² The Commission facilitates investigations into organised crime by dealing with applications received from Western Australia Police ("WA Police") for exceptional powers findings and fortification warning notices by supporting, monitoring and reviewing the use of such powers and, when required, participating in the process of considering charges, prosecutions and appeals. The Commission is not empowered to investigate organised crime. Rather, it facilitates the use by WA Police of the exceptional powers available under the CCC Act. Application for the use of these powers by WA Police is initiated by the Commissioner of Police. The Premier in public comments on 4 February 2015, in *The West Australian* newspaper, observed: "I would prefer to see the CCC's powers and skills and abilities used in tackling organised crime".

- a **tightening fiscal environment** where the Commission, as with any public sector organisation, must demonstrate efficient and effective use of resources and outcomes for government;
- **the need to engage and participate** in the Western Australian integrity sector and a now Australian-wide network of standing anti-corruption bodies;
- **internal governance and conduct challenges** necessitating a range of remedial actions and the strengthening of the Commission's corporate governance and accountability arrangements;
- **growing expectations** in terms of oversight of the Commission by the Joint Standing Committee on the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission; and
- **recent High Court decisions** regarding the use of coerced evidence gathered by standing anti-corruption bodies, and the need to safeguard prosecutorial functions and processes.³

Number of Allegations Received/Assessed					
2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
3,246	3,340	3,208	5,944	6,148	7,260

Table 1: Number of Allegations Received/Assessed by the Commission from 2008-2009 to 2013-2014

- [8] Prior to the retirement of Commissioner Macknay in April 2014 the Commission commenced a "root and branch" review to:
- better align the Commission's functions, processes, systems, operations and organisational design to its legislative purposes and operating environment;
 - bring to account then pending changes to the Commission's jurisdiction, especially the transfer of "minor misconduct" to the PSC; and
 - enhance employee accountability and conduct and improve corporate governance, particularly with regard to historical managerial and conduct issues within the Commission's off-site surveillance unit first identified in July 2013.⁴

³ *X7 v Australian Crime Commission* [2013] HCA 29; *Lee v New South Wales Crime Commission* [2013] HCA 39 and, more recently, *Lee v The Queen* [2014] HCA 20. These cases deal with the use to which coerced evidence gathered by standing anti-corruption bodies can be put in the context of pending criminal prosecutions.

⁴ Refer to the *Corruption and Crime Commission Annual Report 2013-2014*, tabled in the Parliament on 26 September 2014, p.28, paragraphs [87] to [91].

- [9] The Commission's response to key changes in the environment (which is outlined in greater detail in Chapter Two of this report) has been to:
- reduce the number of investigations and other operational activities it conducts annually;
 - focus on a series of "high value" investigations that target corruption and serious misconduct "hotspots" identified through its intelligence assessment (as set out in the MIA Report); and
 - conduct those investigations in a strategic and focussed manner.
- [10] To support this approach in 2014 the Commission conducted its inaugural Misconduct Intelligence Assessment (MIA) of the Western Australian public sector that:
- (a) provided a broad picture of the state of the sector, the trends and issues affecting it and the areas of systemic pressures within it; and
 - (b) identified those public sector agencies and activities that are, by virtue of their function and the environments in which they operate, inherently more susceptible to corruption and misconduct risks, thus requiring particular and effective control strategies.
- [11] The process by which MIA was conducted included the collection, collation and analysis of a range of data from approximately 300 entities comprised of government departments, local governments and other organisations. Those entities and activities assessed as being "high risk" are now regarded as priority areas for the Commission.
- [12] In order to better target its investigations and support its intelligence-led approach the Commission has introduced processes for collecting and collating data on an ongoing basis and for reviewing MIA annually. Where appropriate the Commission will use the results of this to better inform the public, the Parliament and the public sector as to the perceived patterns of corruption and misconduct risks across the Western Australian public sector. The Commission has realigned its intelligence function in its organisational changes.⁵
- [13] The Commission's inaugural MIA has received international interest with the Commission being invited to address an audience of world-wide leaders in corruption prevention at an international conference to be held at the Columbia Law School in New York later in April 2015.⁶

⁵ Refer to [1] dot point three.

⁶ In April 2015 the Centre for the Advancement of Public Integrity (CAPI) is hosting an international conference "Global Cities I: Sharing Corruption Challenges and Successes". CAPI is a research centre at Columbia Law School dedicated to boosting the capacity of public offices (public sector agencies) to fight corruption. CAPI is a partnership between the New York City Department of Investigation and Columbia Law School. Acting Commissioner Shanahan, SC, and Dr Kristy Edmonds, Assistant Director Strategy and Governance, are to attend on behalf of the Commission.

- [14] The Commission's work has also attracted national interest with counterpart integrity agencies wanting to gain a better understanding of the work done by the Commission with respect to MIA.
- [15] The Commission has recently sent invitations to selected Western Australian public sector agency heads to participate in the 2015 MIA.

CHAPTER TWO BUSINESS MODEL AND APPROACH

2.1 Enhanced Business Model and Approach

- [16] Under the leadership of Acting Commissioners Douglas and Shanahan, and as a consequence of the "root and branch" review first initiated by Commissioner Macknay, the Commission has undergone a period of reflection and transformation. This has culminated in the introduction of, and transition to, an enhanced business model which better supports the more strategic, intelligence-led approach by the Commission in the performance of its functions and the conduct of its investigations.
- [17] The Commission's enhanced business model (see Figure 1) and approach is outlined in greater detail below.

2.2 Strategic, Intelligence-Led Approach

- [18] A key feature of the Commission's enhanced approach to its business is that it will **not** seek to focus on responding directly to each individual allegation received, reported or notified to it, but rather seek to engage identified corruption and serious misconduct "hot spots" by targeted investigations of strategic value.
- [19] The areas of corruption and serious misconduct risk, or "hot spots", will be identified not only by the nature of allegations received, reported or notified to the Commission from particular areas of the public sector but also by an active intelligence analysis culminating in a review of the MIA Report.
- [20] The underlying concept of this approach is that with fewer but "higher value" investigations conducted in a targeted and systematic manner the Commission will be better placed to reveal, disrupt and reduce systemic corruption and serious misconduct in the Western Australian public sector, and thereby deliver greater value to the Western Australian community and government.
- [21] This approach to its business reflects the Parliament's intention that the Commission focus on corruption and "serious misconduct" with "minor misconduct" being transferred, as aforementioned, to the PSC when the CCC Amendment Act is proclaimed, which is expected to be later in 2015.
- [22] The adoption of an operational strategy based on the identification of areas of significant risk through the continuous review and analysis of the Commission's intelligence, and investing the Commission's resources in fewer but "higher value" investigations, is an initiative of the Commission. However, the practice of fewer targeted, but "higher value", investigations is a proven approach which has worked well in other Australian States.⁷

⁷ The Independent Commission Against Corruption (ICAC), New South Wales, has adopted a similar investigative strategy, with fewer investigations, but of a "higher value".

2.3 Business Model

[23] In order to ensure that this strategic, intelligence-led approach drives the Commission's work, in particular its investigations, an Operations Committee was established in September 2014. Since that time the Commission has been working to align its functions, processes, systems, operations, investigations and organisational design to the Operations Committee model.

[24] Figure 1 below provides a schematic account of the Commission's enhanced business model.

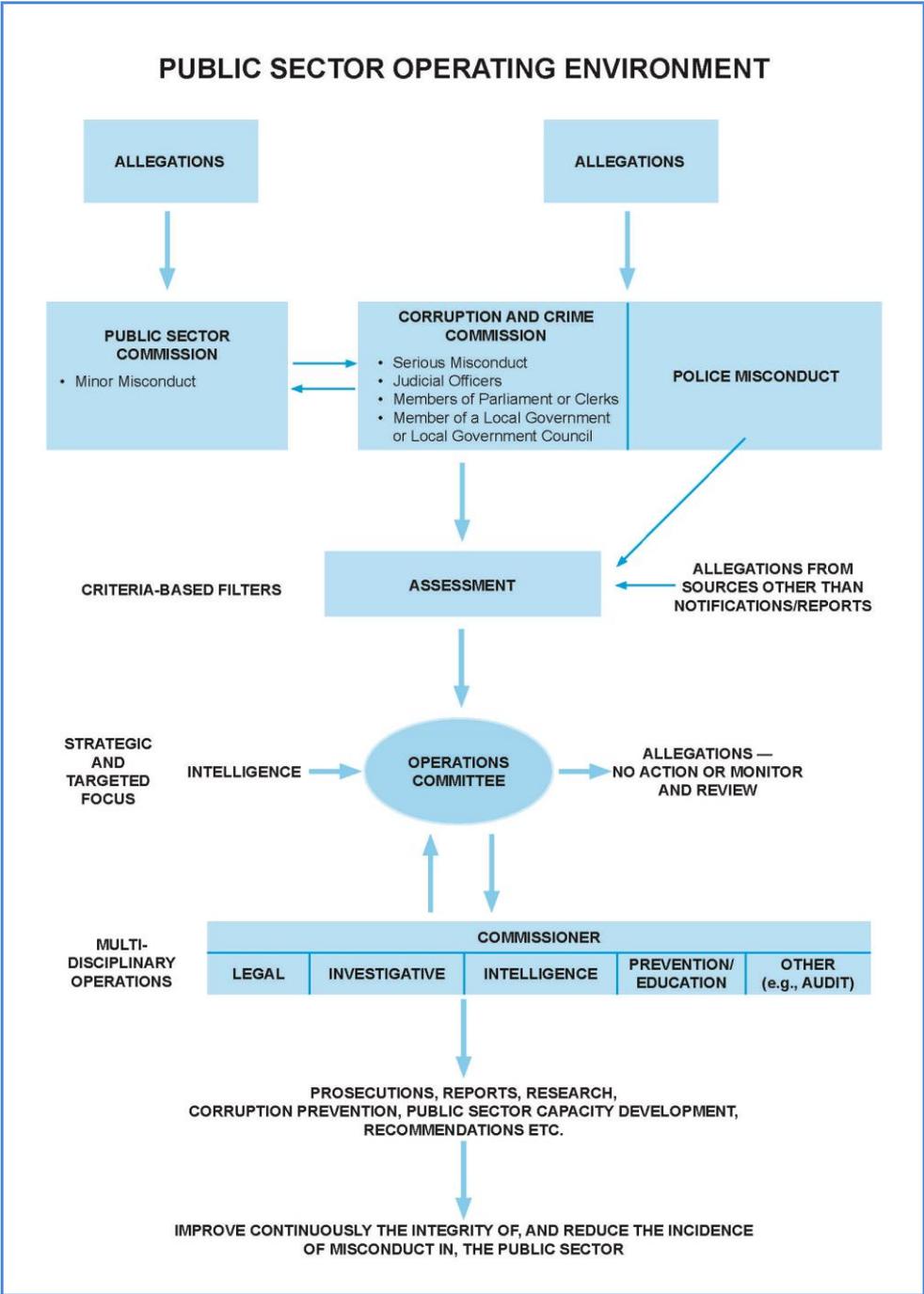


Figure 1: Enhanced Business Model

2.3.1 Operations Committee

- [25] As can be seen from Figure 1 above, the Operations Committee sits at the heart of the Commission's enhanced business model.
- [26] The Operations Committee is a key strategic governance mechanism that both directs and oversees the Commission's core functions and operations to achieve the two purposes of the CCC Act, set out at section 7A being:
- to combat and reduce the incidence of organised crime; and
 - to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.
- [27] Comprised of the Commissioner, Chief Executive, Directors and other invited officers (such as strategic governance officers) the Operations Committee is responsible for:
- the alignment of operational tasking decisions with the Commission's strategic and operational priorities and objectives;
 - the efficiency and effectiveness of all of the Commission's operational activities (for example, the process by which matters suitable for investigation are identified and approved);
 - ensuring that the allocation of Commission resources aligns with strategic objectives and is targeted toward those areas of greatest corruption and serious misconduct risk (informed, predominantly, by MIA); and
 - ensuring implementation of the Commission's strategic, targeted and intelligence-led approach.
- [28] In order to achieve the above the Operations Committee receives assessment reports and considers how allegations are best dealt with, albeit it is the Commissioner who exercises the statutory power to initiate an investigation or preliminary investigation having been provided with advice and recommendation(s) by the Operations Committee.⁸
- [29] Membership of the Operations Committee ensures that a strategic, "whole-of-Commission" approach is brought to major operational deliberations and decision-making, including decisions around whether the Commission will itself investigate, investigate in collaboration with another agency or agencies, or otherwise pursue particular allegations.
- [30] The establishment of the Operations Committee in September 2014 was an important step in the Commission's repositioning efforts and signalled a significant shift toward the enhanced business model and approach described in this report. A number of other important organisational changes followed, some of which are outlined below.

⁸ Pursuant to section 33(1)(a) of the CCC Act the Commission may decide to investigate or take action without the involvement of any other independent agency or appropriate authority and pursuant to section 33(1)(b) may decide to investigate or take action in cooperation with an independent agency or appropriate authority. Preliminary investigations are authorised pursuant to section 32(2) of the CCC Act.

2.3.2 Assessments

- [31] The process by which the Commission makes its initial deliberations and decisions in relation to allegations received, reported or notified to the Commission is known as the "assessment process". This multi-stage process involves consideration of the likelihood of the occurrence of misconduct and the significance of the alleged misconduct in terms of seriousness, the seniority of the public officer(s) involved, and where the allegations sit with reference to the Commission's strategic and operational priorities and objectives.
- [32] To support the targeting required to realise its more strategic, intelligence-led approach the Commission has made a number of significant changes with respect to the assessment process. Recognising the significance of the assessment process to its operations the Commission has developed a dedicated Assessment Unit, increased its prominence within the organisation and has introduced greater capabilities into the area (for example, a dedicated senior legal officer has been based within the Assessment Unit and greater intelligence and analyst capabilities have been introduced into the process).
- [33] Under the leadership of Acting Commissioners Douglas and Shanahan, and with the oversight of the Operations Committee, the Commission has also implemented an enhanced assessment process where it allocates different priorities and timeframes for the assessment of different categories of allegation. Those different categories reflect and support the Commission's strategic priority areas and operational objectives.

2.3.3 Monitor and Review

- [34] A new, and more strategic and intelligence-led, approach to the Commission's monitor and review functions has been introduced as part of the Commission's transition to an enhanced business model. This approach can be characterised as one in which the Commission oversees, pursuant to sections 40 and 41 of the CCC Act, fewer investigations and other actions undertaken by appropriate agencies but focusses instead on overseeing "higher value" matters based on the Commission's priority areas and misconduct "hotspots". Further, the manner in which the Commission oversees investigations and other actions undertaken by appropriate agencies is far more rigorous and inquisitive and, in this regard, is more closely aligned to the Commission's own investigative processes and methodologies.
- [35] To support this change in approach there has been a need to reduce considerably the overall number of outstanding matters which the Commission had, under its former approach, designated for monitor and review by the Commission. The process of reducing these matters has been closely overseen by Acting Commissioners Douglas and Shanahan and the Operations Committee.

2.3.4 Multi-Disciplinary Operational Teams

- [36] An important characteristic of the Commission's changed approach to its work is the prominence of multi-disciplinary operational teams and a "fit-for-purpose" approach to operations.
- [37] In order to ensure that the fewer, but "higher value", investigations the Commission conducts bring to bear all the available and necessary skills from within the Commission those investigations are overseen by the Operations Committee, driven by the Commissioner and conducted by multi-disciplinary operational teams. Typically those teams might involve an investigator, lawyer, intelligence analyst and additional skills sets (such as surveillance, audit etc.) as required depending on the nature of the allegations and the outcome sought by the operation.
- [38] The purpose of this approach is to "front-load" a critical evaluation of the authorised investigation, in particular its objects, design and likely ambit. This process encourages the team to consider the most effective and efficient investigative method and to bring to account the Commission's existing body of work and any applicable agency based strategy that impinges on the investigation. The Commission is seeking to produce investigative outcomes which can be measured against its strategic targets and which demonstrate the fulfilment of its statutory obligations.

2.3.5 Staff Development and Increased Capabilities

- [39] Recognising that the enhanced approach to its work requires new and increased capabilities the Commission is pursuing a number of strategies, including reciprocal secondments and placements with other public sector and integrity agencies with a view to developing lawyers, investigators and intelligence officers, in particular, who are better equipped to operate in the changing public sector environment and emerging integrity sector. This allows Commission officers to learn from the experiences of other agencies and develop more creative and effective strategies to further improve the Commission's operations.
- [40] Importantly, the Commission's investigators are drawn from different investigative backgrounds and the Commission is seeking to ensure that all investigators are trained in a manner to facilitate the Commission's goals. Thus those from a police background may be trained in public sector investigations, whilst those from the public sector (for example, from the Office of the Ombudsman or the Office of the Auditor General) may be trained in police methods. This reflects the Commission's dual jurisdiction in respect of misconduct generally and police oversight.
- [41] Hosting officers from other integrity agencies also allows for the cross-pollination of administrative, investigative and operational techniques, knowledge and solutions. To this end the Manager Assessments, Independent Commission Against Corruption (ICAC), New South Wales, was recently seconded to the Commission for a four-week period and a Commission Senior Lawyer is currently seconded to ICAC, South Australia, for a six-week period.

CHAPTER THREE ORGANISATIONAL CHANGES

3.1 Governance, Conduct and Management Issues

- [42] A range of organisational changes have been and are being made in response, not only to changes in the external operating environment necessitating a change in business approach, but also to specific conduct and management issues within the Commission.
- [43] In July 2013 the Commission became aware of allegations of misconduct by officers who were based at the Commission's off-site surveillance unit, which later resulted in criminal charges. The charges related to conduct that had allegedly occurred in 2011 involving two officers and the loss of \$1,000.
- [44] The Commission responded swiftly to those matters, standing down and subsequently dismissing the officers involved. A Fraud Risk Assessment of the surveillance unit was undertaken immediately and weaknesses that were identified were promptly addressed.
- [45] As a result of this work the surveillance unit is now more strongly aligned to the Commission's corporate policies, procedures and audit regime. Unless there are exceptional circumstances, where a clear business case can be demonstrated and appropriate assurance mechanisms are in place, a deviation from corporate policy is not permitted.
- [46] The matters arising in 2013 initiated a chain of remedial responses within the Commission under the leadership of Commissioner Macknay and, later, Acting Commissioners Douglas and Shanahan. These responses resulted in further strengthening the Commission's corporate governance and accountability arrangements.
- [47] Specific actions included:
- the establishment of a new dedicated strategic governance unit reporting directly to the Chief Executive;
 - a comprehensive review and revision of the Commission's corporate governance model to ensure appropriate oversight and accountability;
 - changes to the Commission's executive committee structure to provide greater transparency, centralised oversight and corporate accountability;
 - the establishment of new accountability systems including changes to policies, systems and processes such as those relating to strategic and operational risk management, fraud and corruption control and internal audit;
 - the establishment of a new, rationalised surveillance capability; and

- the transfer of responsibility for the surveillance unit's financial processing to the Commission's Chief Financial Officer.

[48] As with all public sector agencies, the Commission is not immune from misconduct. Importantly its response to the internal conduct issues which emerged in 2013 accords with its expectations of other agencies in similar circumstances.

[49] Furthermore, the Commission's remedial responses to these conduct issues contributed to it obtaining an "unqualified audit opinion" from the Office of the Auditor General for the 2013-2014 Financial Year reporting period, advising that no significant issues had been identified that were likely to impact on the 2014-2015 audit. The Commission also obtained the status of a "Best Practice Agency" from the Office of the Auditor General for the 2013-2014 Financial Year reporting period.

3.2 Independent Gateway Review Process

[50] Prior to embarking on its review and repositioning process the Commission engaged the services of the Department of Finance and its independent "Gateway Review" process.

[51] Independent consultants were engaged through this process to assess the Commission's readiness, clarity of purpose and general capacity to embark upon the process. This was a positive exercise that reinforced the Commission's sound approach in this regard.

3.3 Incoming Commissioner

[52] The Commission welcomes the appointment of the Hon. John Roderick McKechnie, effective from 28 April 2015, to the position of Commissioner and looks forward to continuing to meet the challenges of improving the integrity of, and reducing the incidence of misconduct in, the Western Australian public sector under his leadership.

