



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
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Hon. Michael Sutherland, MLA
Speaker of the Legislative Assembly
Parliament House
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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.

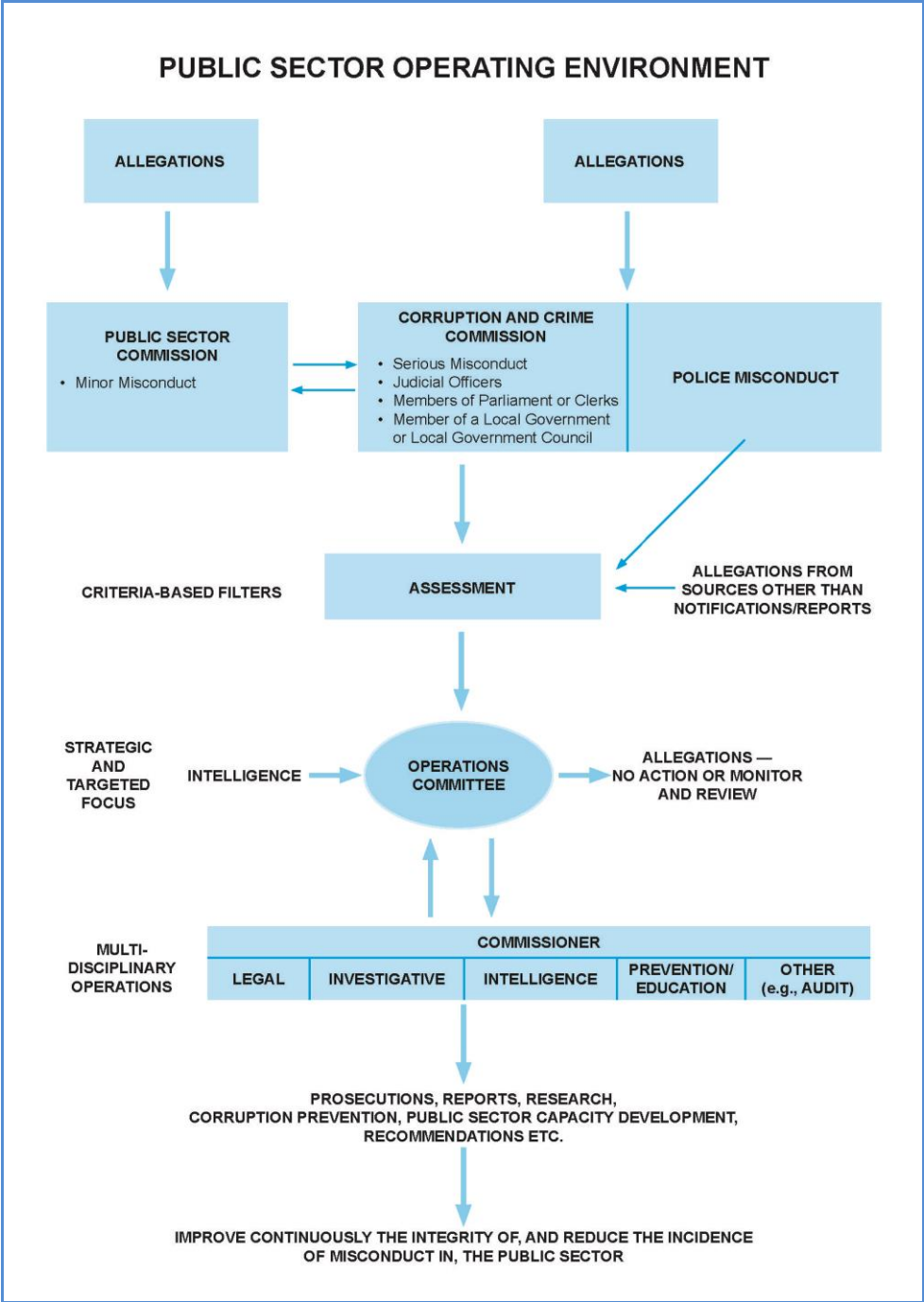


Figure 1: Enhanced Business Model

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.

