



***JOINT STANDING COMMITTEE ON
THE CORRUPTION AND CRIME
COMMISSION***

**EXAMINATION OF THE 2005-2006
ANNUAL REPORT OF THE CORRUPTION
AND CRIME COMMISSION**

**Report No. 23
in the 37th Parliament**

2007

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Joint Standing Committee on the Corruption and Crime Commission

Examination of the 2005-2006 Annual Report of the Corruption and Crime Commission

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AND CRIME COMMISSION**

Report No. 23

Presented by:

Mr John Hyde, MLA and Mr Ray Halligan, MLC

Laid on the Table of the Legislative Assembly and Legislative Council
on 5 April 2007

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COMMITTEE'S FUNCTIONS AND POWERS

On 31 May 2005 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.

CHAIRMAN'S FOREWORD

As with any Government agency, the Corruption and Crime Commission's Annual Report is the principal document by which the Commission reports to the Parliament and the people of Western Australia on corporate governance. This includes the way the Commission is administered or controlled, the laws underpinning its functioning, policies, processes, accountabilities, financial management and so forth.

The Corruption and Crime Commission is subject to a number of fairly robust external accountability mechanisms, providing a check on various aspects of the Commission's performance. The majority of these 'oversight bodies' have legislatively prescribed reporting requirements to either Parliament, the responsible Minister (in this case the Attorney General), or to a Commonwealth entity when the function is related to Commonwealth legislation. The Joint Standing Committee on the Corruption and Crime Commission reports to Parliament in relation to the Commission's overall exercise of its functions. Detailed scrutiny of the Annual Report of the Commission is therefore critical to this role. This is supplemented by regular quarterly hearings of the Committee with the executive of the Commission.

The Annual Report highlights the evolution of the agency and reflects the Corruption and Crime Commission's regard to issues that impinge on its efficiency and effectiveness. Notably a number of these have arisen in the context of recent high profile hearings and investigations and will require consideration by Government for legislative amendment, or procedural change by the Commission. The issues pertaining to legislative amendment have and will be considered further in the Committee's *Inquiry into Legislative Amendments to the Corruption and Crime Commission Act 2003* and no doubt by the Hon. Jim McGinty, MLA, Attorney General for Western Australia, who is conducting a similar review under Section 226 of the *Corruption and Crime Commission Act 2003*.

In commenting specifically on the Commission's 2005-2006 Annual Report, the recent hearings and impending Mallard Inquiry will result in additional expenditure for Government given associated investigative resources and the contract of external counsel by the Corruption and Crime Commission. The Commission has ensured the Committee that it has considered governance processes to ensure seamless service delivery on retirement of Mr Hammond, Commissioner, Corruption and Crime Commission. Of note with regard to the Corruption and Crime Commission's misconduct function is an increase of 33% in assessment work, principally related to the clearance of a backlog of matters inherited from the former Anti-Corruption Commission. There has also been an increase in notifications from Government agencies as a consequence of educational activity by the Commission. There has been a higher level of charges laid by the Commission, particularly multiple charges pertaining to individuals. The Commission details that this may be indicative of cases involving more systematic and serious criminal conduct. The Committee notes a drop in the number of complaints from Western Australia Police, although it is too early to ascertain the reason for the latter. Unauthorised access to and leakage of information by Government agencies continues to be the basis of a high level of complaints to the Commission. There is considerable collaborative work being undertaken between the Commission and Government agencies on improving complaint handling mechanisms. The report also notes

the benefits associated with the impending introduction of a new case management system, particularly in terms of data analysis.

The Committee will continue to monitor the progress of a number of outstanding or emerging issues.

MR JOHN HYDE, MLA
CHAIRMAN

ABBREVIATIONS AND ACRONYMS

“AAT”	Administrative Appeals Tribunal (Commonwealth)
“CCC”	Corruption and Crime Commission
“CMC”	Crime and Misconduct Commission (Queensland)
“FTE”	Full Time Equivalent
“ICAC”	Independent Commission Against Corruption (New South Wales)
“JSCCCC”	Joint Standing Committee on the Corruption and Crime Commission
“PIC”	Police Integrity Commission (New South Wales)
“TI”	Telecommunications Interception
“WA”	Western Australia

CHAPTER 1 INTRODUCTION

1.1 Background

Section 91 of the *Corruption and Crime Commission Act 2003* requires the Corruption and Crime Commission (CCC) to table its Annual Report within 3 months after the end of each financial year regarding its general activities. The Act is reasonably prescriptive in relation to matters for inclusion. This is critical given the special powers of the Commission, which are often covert in nature.

The Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) reviews the CCC's annual report in line with its responsibility of reporting to Parliament on the exercise of the functions of the Commission. This generally occurs via a public hearing however on this occasion examination of other issues of Committee inquiry at the quarterly hearing with the Commission on 22 November 2006 precluded review of matters pertaining to the Commission's 2005-2006 Annual Report.

In giving due regard to the Annual Report as the principal reporting mechanism to Parliament and in turn, the public of Western Australia (WA) on the Commission's activities and achievements in the performance of its functions during this financial year, the JSCCCC forwarded the Commission a number of questions on notice. This was principally to request clarification or elaboration on comments or data contained within the Annual Report.

The CCC tendered a considered and detailed response to the Committee's queries. This is attached at Appendix One of this Report. The following provides a synopsis of key comments which in assessing the efficacy of the performance of the Commission should be considered in the context of the Commission's Annual Report.¹ At the risk of being duplicative however, the Committee has opted to limit the provision of information to the additional data provided by the CCC.

(a) Adequacy of the *Corruption and Crime Commission Act 2003*

Issues raised in the context of the recent Commission hearings and associated investigations, particularly Smiths Beach, have raised concerns for the Commission about the adequacy of certain provisions of the *Corruption and Crime Commission Act 2003*, particularly the lack of flexibility in the non-delegable functions of the Commissioner and the ability to achieve its stated purpose, 'to combat and reduce the incidence of organised crime'. The Commission contends that it requires an investigative crime function in line with its role as an investigative agency and in order to provide supplementary investigative skills and capacity to the WA Police.

¹ Corruption and Crime Commission, Available at: http://www.ccc.wa.gov.au/pdfs/annualreport_2005-2006.pdf Accessed on 4 April 2007.

(a) Budget

The Commission detailed in its Annual Report that it envisaged an overspend in the 2006-2007 budget due to the need to engage external counsel for a number of complex and high profile cases. The CCC indicated that further information on likely figures may be available by February 2007.²

The CCC elaborated stating that the requirement to engage external legal practitioners for the recent series of public hearings and the investigative and legal resources and appointment of an Acting Commissioner for the inquiry into the Andrew Mallard matter, has and will result in significant additional cost for the 2005-2006 financial year. In October 2006 the Commission foreshadowed to the Department of Treasury and Finance and the Attorney General that this would amount to \$1.5 million for this financial year. They now envisage that this will be less than that initially forecast.

(b) Continuity of service provision

The CCC notes in response to the Committee's concern about business continuity on the retirement of Mr Hammond, Commissioner, CCC, that this will be ensured by the two current Acting Commissioners of the CCC and the appointment of a Commissioner for the Mallard case.

(c) Misconduct function

The Annual Report notes a 33% increase in misconduct assessment work during the 2005-2006 financial year.³ The CCC attributes this to a reduction in the backlog of matters inherited from the Anti-Corruption Commission, predecessor to the CCC.

The Report also notes a substantiation rate of 22% in regard to misconduct allegations and notifications.⁴ The CCC informed that overall 20% of complaints are received by individuals and 80% from public sector agencies. In turn, approximately 90% of substantiations pertain to public sector agency related complaints, 10% to individual originated complaints. The Commission informed that the 22% rate of substantiation, perceived by the Committee to be quite low, is likely to be attributed to the threshold test prescribed under Section 28 (2) of the *Corruption and Crime Commission Act 2003* under which agencies are required to notify the Commission of a matter. The threshold test is based on suspicion of misconduct rather than a substantive or a reasonably held belief of occurrence of the latter. The CCC informed that it was impossible to make reasonable comparison with interstate equivalent agencies given variation in reporting or non-reporting of substantiation rates.

The Commission's Annual Report notes a significant increase in notifications (of approximately 240) from notifying authorities from 2004-2005 to 2005-2006.⁵ The CCC advised that this is as a

² Corruption and Crime Commission Annual Report 2005-2006, p.2.

³ Ibid.,p1.

⁴ Ibid.,p5.

⁵ Ibid.,p22.

consequence of the Commission educating non-police agencies regarding their obligations under Section 28 of the *Corruption and Crime Commission Act 2003*. WA Police are proficient in this regard.

The Committee noted a marked increase in Section 41 reviews of appropriate authorities' investigations from the previous financial year (1212 to 2083).⁶ Again this was attributed to a reduction in matters from the Anti-Corruption Commission as well as the Parliamentary Commissioner for Administrative Investigations (Ombudsman).

The Annual Report cites a figure of 144 charges against public officers, up from a figure of 30 for the previous financial year.⁷ The CCC informed that this was the result of a number of cases where multiple charges were laid against one individual. The CCC detailed that this may be indicative of cases involving more systematic and serious criminal conduct.

The Committee notes that agencies representing the majority of misconduct allegations continue to reflect those featured in the 2004-2005 financial year.⁸ These include WA Police, the Department of Justice (now the Department of Corrective Services and the Department of the Attorney General), the Department of Local Government and Regional Development and the Department of Health. The CCC indicated that this was as a consequence of:

- the size of the respective Departments, the Departments of Education and Health comprising 60% of the public sector workforce;
- the 'risk issues associated with the power imbalances between public sector officers and the public in the health and education sectors';⁹ and
- reasonably well-developed misconduct management systems (Police, Justice, Local Government and Regional Development).

That said, it was however noted by the Commission that the number of matters from the Health Sector appeared to be 'unusually low' for this financial year.¹⁰ The CCC detailed that they are currently liaising with the Department of Health in relation to the conduct of a review of their complaint handling mechanisms.

The Annual Report notes that complaints originating from WA Police have fallen considerably between the last and current financial year (decrease of 14.8%) and that there has also been a decrease of 8.6% for the rest of the public sector.¹¹ The CCC detailed that there is no clear

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.,p29.

⁹ Appendix One, p18.

¹⁰ Ibid.,31.

¹¹ Ibid.,p30.

evidence as to why this has occurred and that it is too early to assess whether this represents a trend or anomaly.

The Annual Report detailed that stringent notification requirements remain necessary for WA Police.¹² The Committee confirmed that this principally related to the fact that the police environment is characterised by a high risk of misconduct occurring, primarily because of vested statutory powers. The CCC attests that there is a need to ensure transparency and accountability in police decision making processes. The Commission informed that police generally conduct investigations adequately, although noted that some concerns were raised about the management of some investigations in the Commission's Report 'A Report on the First Two Years of the Western Australia Police Reform Programme'.¹³

The Annual Report notes that unauthorised access to and leakage of confidential information by public sector agencies is 'widespread' and of concern to the CCC.¹⁴ The Commission confirmed that this was a continuing source of complaint to the CCC, constituting 7.7% of complaints in the 2005-2006 financial year (fourth highest complaint category). This issue has been a point of discussion in a recent report of the CCC entitled '*Protecting Personal Data in the Public Sector*',¹⁵ and highlighted in recent hearings of the Commission related to lobbying activities and their influence on public officers, resulting in misconduct. There has been no indication that information has leaked from Commission activities.

The Committee queried whether there were Government agencies that were repeatedly failing to meet the requisite standard of investigation. The Commission referenced the '*Report into Sexual Contact with Children by Persons in Authority at the Department of Education and Training of Western Australia*'¹⁶ and '*Misconduct Handling Procedures in the Western Australian Public Sector: Department for Community Development*'¹⁷ as an example of varying levels of inadequate misconduct complaint management requiring amendment to related procedures. The CCC also noted that recent reviews of agencies' misconduct handling mechanisms (Department of Local Government and Regional Development and the Department of Consumer and Employment Protection) have recommended some action for improvement.

On page 23 of the appended document, the Commission provides a useful interstate comparison of statistics in relation to the number of allegations received proportionate to the number of public

¹² Ibid.,p30.

¹³ Corruption and Crime Commission, Available at: http://www.ccc.wa.gov.au/pdfs/report_2006-police-reform-program.pdf Accessed on 4 April 2007.

¹⁴ Corruption and Crime Commission Annual Report 2005-2006, p.46.

¹⁵ Corruption and Crime Commission, Available at: http://www.ccc.wa.gov.au/pdfs/Protecting_Personal_Data_in_the_Public_Sector.pdf Accessed on 4 April 2007.

¹⁶ Corruption and Crime Commission, Available at: http://www.ccc.wa.gov.au/pdfs/CCC_Sexual_Contact_Report_Complete.pdf Accessed on 4 April 2007.

¹⁷ Corruption and Crime Commission, Available at: <http://www.ccc.wa.gov.au/pdfs/dcd-parliamentary-report.pdf> Accessed on 4 April 2007.

sector officers. Although the CCC provide a rider that the differences in the functions and activities of Australian misconduct prevention agencies and their level of maturity restricts the usefulness of direct comparisons based on complaint or allegation numbers. The CCC however provide a general overview which indicates that WA is on a fairly equal footing with Queensland, whilst figures for New South Wales are significantly higher.

The Commission provides figures in its Annual Report under 'efficiency indicators' in relation to the average cost of CCC activities.¹⁸ The Committee asked the CCC how these compared to interstate costs for related agencies. The CCC detailed that variation in reporting requirements of relevant states make accurate and direct comparison with the CCC's performance indicators impossible. This is further hampered by variation in services and the manner in which they are delivered by agencies.

(d) Powers

With respect to warrant applications under the *Telecommunications (Interception and Access) Act 1979* the Commission informed that all were made to the Administrative Appeals Tribunal as a recognised body under the legislation. No warrant applications were rejected or further clarification sought by the approving authority regarding accompanying affidavits. The CCC attributed this to due diligence on the part of the Commission in ensuring that application is only made with respect to matters falling within the meaning of the *Corruption and Crime Commission Act 2003*.

The Annual Report cites a reduction in the number of assumed identity approvals (down from 66 to 11) and integrity testing programmes (down from 10 to 3) for this financial year.¹⁹ The CCC informed that figures for the previous years relate to initial issue of assumed identities to investigators which do not require renewal. The figures relating to integrity testing simply reflect the nature of the investigations conducted by the Commission at that particular time. The CCC envisages that this will increase in line with the establishment of the Integrity Testing Unit.

(e) Police Reform Programme

The Annual Report cites that the CCC will undertake several more targeted reviews of police reform arising from the Kennedy Royal Commission.^{20 21} The Commission detailed that current reviews entail WA Police progress with its reform programme and management by WA Police of internal investigations of complaints against Police officers.

¹⁸ Corruption and Crime Commission Annual Report 2005-2006, p.73/75.

¹⁹ Ibid.,p38.

²⁰ Ibid.,p47.

²¹ Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct By Western Australian Police Officers (2004).

(f) Implementation of recommendations by Government agencies

The CCC informed the Committee that it continues to work with agencies on the implementation of recommendations pertaining to systems and process improvements for misconduct handling and corruption prevention.²² The Commission highlighted their recent work with the Department of Education and Training as an example.

The Commission is required to report under Section 91 (2) (c) on the response of appropriate authorities to recommendations of the Commission. An 'appropriate authority' essentially comprises all public sector agencies. The CCC has requested that all agencies affected by its recommendations report on the implementation of those recommendations to the Commission who will in turn conduct appropriate analysis.

(g) Business Services

The Commission informed that it has developed a pilot mentoring programme across all directorates of the CCC.²³ In elaborating on this initiative, the CCC cited that it will comprise a number of mentor/mentoree partnerships run over a nine month period with the assistance of the Human Resource Branch and an expert consultant. It will involve a structured program of regular partnership and formal group meetings facilitated by an expert consultant. The program will be formally evaluated.

The Commission also expanded on the development of its Code of Conduct detailing that this has been developed from the WA Public Sector Code of Ethics following extensive staff consultation. It reflects the behaviours required of Commission staff in the conduct of their duties.²⁴

The Commission also noted that five study scholarships of \$1000.00 per annum are provided each academic year to Commission staff following a process of expressions of interest.²⁵ The scholarships enable the pursuance of study aligned with the activities and operations of the Commission.

The Committee raised concerns with the Commission regarding significant gender differences in employment within the higher levels of the CCC.²⁶ The Commission acknowledged that traditionally law enforcement agencies have been male dominated however noted that it has identified the recruitment of females to senior positions as an objective of the Commission Equity and Diversity Plan. In saying that, the Commission noted that two of its Directors are female as was its first Acting Commissioner and its only General Counsel appointment.

²² Corruption and Crime Commission Annual Report 2005-2006, p.47/48.

²³ Ibid.,p55.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.,p57.

The CCC intends to implement a new case management system. The Committee queried the capacity this would provide in terms of data analysis.²⁷ The Commission informed that it would:

- improve accuracy in reporting against key performance indicators;
- increase the Commission's capacity to report on work undertaken given that the new system will enable the CCC to count individual allegations rather than being confined to case files; and
- advance data analysis through storing information in electronic format on a single data base.

(h) Corruption Prevention, Education and Research Function

The Committee queried whether there was benefit to be obtained through conducting visits to remote communities in the State in relation to education on access to misconduct reporting mechanisms. The CCC detailed that visits had been confined to date to regional centres, including several in the Northwest of the State. This provides some equity of access to Government Services for the more remote centres of the State. The Commission detailed that the requirement to educate the public sector as a whole in relation to the Commission's functions and each agency's obligations under the *Corruption and Crime Commission Act 2003* has precluded such activities occurring to date. The CCC will focus on the more remote localities once it is satisfied that levels of awareness have been achieved at metropolitan and regional centres.

²⁷ Ibid, p67.

APPENDIX ONE

QUESTIONS FOR THE CCC IN RELATION TO ITS ANNUAL REPORT 2005-2006

- **In the Commissioner’s Foreword it states that even in the short time since the CCC made submissions to the JSCCCC and the Attorney General on amendments to the *Corruption and Crime Commission Act, 2003*, “its position on a number of issues has continued to evolve.” Please elaborate.**

The Commission made submissions to the JSCCCC and the Attorney General concerning amendments to the *Corruption and Crime Commission Act 2003* (the Act) on 7 December 2005 and 20 January 2006 respectively. Since that time the number of matters before the Commission, and their relative complexity, has grown. The requirement to address issues arising from the Smiths Beach investigation and its extensions to the outcomes of the Burke and Grill lobbying investigations have exacerbated this effect.

The intensity of the level of effort required from the Commission in dealing with these matters has cast the functioning of the Act into more stark relief. Consequently, the Commission’s position on the following has further evolved:

Examiners

The Commission had concluded that the lack of flexibility in terms of the Commissioner’s non-delegable functions required a solution similar to that of Queensland’s CMC [Crime and Misconduct Commission], whereby an Examiner, appointed for a specific purpose, can exercise those delegable functions for the conduct of examinations.

Crime Commission Powers

The Commission continues to maintain that the Act does not permit its stated purpose of ‘*to combat and reduce the incidence of organised crime*’ to be achieved. Further, it maintains that it requires an investigative crime function, similar to the CMC’s and as recognised during the Committee phase of the Act. The CCC’s evolved position is that the Commission is first and foremost an investigative body and that the requirement to function in some quasi-judicial manner is at odds with the nature of the Commission. The recent WA Court of Appeal decision upholding the constitutional validity of fortification removal powers makes an argument for the quasi-judicial function to remain just that with regard to fortification removal and access to extraordinary powers and for the Commission to be able to bring its investigative skills and capacity to supplement the Western Australia Police’s capacity.

- **In the Commissioner's Foreword it states that you anticipate an overspend in the 2006-2007 budget due to the requirement to engage external counsel for a number of complex and high-profile matters (Mallard etc.). You mentioned in the hearing with the JSCCCC on 22 November 2006 that you may have further information available on this likely overspend in February 2007. Please elaborate.**

The Commission has recently held a series of public hearings as part of investigations into whether certain lobbying activities directed at public officials had resulted in public officer misconduct. These matters required the engagement of two external legal practitioners in the roles of Counsel Assisting for an extended period.

The investigation and forthcoming public hearings in relation to the Andrew Mallard matter have been consuming significant Commission resources over recent months and will continue to do so for the remainder of this, and into the next, financial year. The continuing investigation has required the engagement of two external legal practitioners as Counsel Assisting during this period. Additionally, an Acting Commissioner, and potentially support staff, will be appointed to manage responsibilities specific to the Andrew Mallard matter.

There are substantial costs associated with the engagement of qualified and experienced external staff to perform these roles, which constitute expenditure that could not have been anticipated at budget prior to the identification of the relevant matters as Commission investigations.

The Commission foreshadowed additional costs of up to \$1.5m in this financial year to the Department of Treasury and Finance and the Attorney General in October 2006. The Commission now anticipates that the costs will likely be less than that and will have a better idea once its submission to the 2007-2008 Budget Papers are complete at the end of March.

- **In view of the recent announcement of the Commissioner's resignation as at March 2007, will there be a handover period between the incumbent and new Commissioner?**

Commissioner Hammond's resignation will take effect at the end of March 2007. The process and associated timing of the appointment of a new Commissioner is not subject to Commission influence. Consequently, should a new Commissioner not be appointed prior to Commissioner Hammond's departure, no handover could occur.

However, prior to his retirement, Commissioner Hammond intends to appropriately conclude his involvement in continuing Commission matters and ensure that all such matters are passed to the Acting Commissioners if no appointment is made prior to this time.

While a seamless transition between Commissioners may be desirable, the two current Acting Commissioners, and the addition of a proposed third Acting Commissioner specifically for the Andrew Mallard matter, will provide continuity for the use of the Commission's powers in the performance of its functions.

- **Please state your views on the possible reasons for the 33% increase in misconduct assessment work from the previous financial year (p.1).**

Refer to the section on the 'Handling of 'Matters Assessed, Monitored and Reviewed' on page 36 of the Commission's annual report:

'These increases can be generally attributed to the continuing reduction in the backlog of matters that were inherited from the former Anti-Corruption Commission and the Ombudsman, as they have progressed from the assessment stage into the more resource intensive monitor and review stages.'

- **The report states that 22% of misconduct allegations and notifications were substantiated (p.5). What percentage of these allegations were agency reported and reported directly by individuals to the CCC? Does this percentage (22%) seem low to you? How does it compare with the Independent Commission Against Corruption and CMC?**

Overall, 20% of matters received were complaints made by individuals. The balance of 80% were notifications received from agencies. Based on a representative sample of the data, approximately 90% of substantiated matters were the subject of agency notifications and approximately 10% were the subject of individual complaints.

There are two main factors to consider in relation to the 22% substantiation rate. First, the threshold test to cause agencies to notify the Commission of a matter, prescribed by section 28(2) of the Act, is:

*...a person to whom this section applies must notify the Commission in writing of any matter:-
(a) Which that person suspects on reasonable grounds concerns or may concern misconduct... (Commission emphasis)*

That is, agency CEOs are not required to notify the Commission of reasonably suspected instances of misconduct. They are required to notify on the lower threshold of matters they reasonably suspect concern or may concern misconduct. Logically, this may result in a lower percentage of substantiated matters than for a requirement to notify on the basis of a reasonably held suspicion of misconduct.

Second, the requirement itself is that agencies notify on the basis of suspicion, as distinct from a substantive belief. This means that agencies are required to notify the Commission of a matter prior to conducting inquiries into to determine its merits. Suspicions arise easily therefore, the number of unsubstantiated matters should be higher by comparison to, for example, a system in which the requirement to notify is based on a reasonably held belief.

The Crime and Misconduct Commission and Independent Commission Against Corruption have different reporting regimes to the Corruption and Crime Commission. This makes comparisons of substantiation rates between the Commission and these agencies almost impossible to meaningfully interpret. In 2005-2006 the substantiation rate reported by the Crime and Misconduct Commission was 43%. The Independent Commission Against Corruption does not appear to report substantiation rates.

- **Under the section entitled “required reporting” on p. 7, please elaborate on the TI [telecommunications interception] warrants sought or obtained - out of hours, which courts, affidavit material etc.**

The Commission made no TI warrant applications out of hours. All TI warrant applications were made to nominated members of the Administrative Appeals Tribunal (AAT) and no applications were rejected, nor was any additional clarification sought concerning information in the affidavits which grounded the warrants, noting that when the applications are made the Commission Case Officer, who is the deponent of the affidavit, and the Investigation Team Solicitor both attend the AAT in order to answer any questions the nominated member may have.

Finally, the Commission’s internal checking processes are focussed on ensuring that only those matters that clearly fall within the scope and purpose of the *Telecommunications (Interception and Access) Act 1979* are submitted to the nominated member and that the applications themselves are complete and contain the required information to support the application.

Refer pages 13 and 14 under the section ‘Role of the Judiciary in Issuing Warrants’.

- **In the statistics reported under the misconduct function heading on p.22, please explain the significant increases in the following:**

- S.28 notifications from notifying authorities up from 518 (2004-2005) to 757 (2005-06);

Although the obligation to notify the Commission is well understood by Police, it is not as well understood in the remainder of the public sector. Consequently, during the 2005-2006 financial year the Commission invested considerable effort into advising non-police agencies of their notification obligations pursuant to section 28 of the Act, and during that period the number of matters received from non-police agencies grew from 518 to 757.

- S.41 reviews of appropriate authorities' investigations up from 1,212 (2004-2005) to 2,083 (2005-2006);

Refer to the section on the 'Handling of 'Matters Assessed, Monitored and Reviewed' on page 36 of the Commission's annual report:

'These increases can be generally attributed to the continuing reduction in the backlog of matters that were inherited from the former Anti-Corruption Commission and the Ombudsman, as they have progressed from the assessment stage into the more resource intensive monitor and review stages.'

- Number of charges against public officers up from 30 (2004-2005) to 144 (2005-2006); and

The number is attributed to an increase in public officers being charged and in a number of cases there are multiple charges against the individual, e.g. one public officer had a total of 54 charges against him and another had a total of 20. This perhaps indicates cases of a more serious nature involving systematic and more serious criminal conduct.

-Number of total charges up from 43 (2004-2005) to 147 (2005-2006).

Due to the number of public officers charged combined with multiple charges attributed to certain officers, there has been a significant increase in the total number of charges (see previous response).

- **As with the previous financial year, the main sectors representing misconduct allegations are Police (due to extra reporting requirements), education, justice, local government and health. Do you have any comments to make about this? Is this primarily due to the size of those departments?**

There are three main factors that affect the number of allegations received by the Commission from different sectors:

Size – The education and health sectors are easily the largest two sectors in the Western Australia public sector. Both employ over 30,000 people, accounting for approximately 60% of the public sector workforce between them. At 13,000 people, the local government sector is also a large employer.

Risk – There are particular risk issues associated with the power imbalances between public sector officers and the public in the health and education sectors. Students and patients are vulnerable because of incapacity or age while teachers and health care workers exercise significant power over them. In the police and justice sectors, staff have the legislated power to both deprive their clients of liberty and to use physical force. In the local government sector there are particular conflict of interest risks associated with council decision making around land and development issues.

Misconduct Management Systems – In organisations with well-developed misconduct management systems, misconduct risks are known and understood and allegations more readily identified, recorded and notified to the Commission. Police, in particular, and Justice have mature, sophisticated misconduct management mechanisms. In a report to Parliament the Commission expressed satisfaction with the Department of Local Government and Regional Development ('Report on Misconduct Handling Procedures in the Western Australian Public Sector: the Department of Local Government and Regional Development', 11 April 2006), however, it was critical of the Department of Education and Training ('Sexual Contact with Children by Persons in Authority in the Department of Education and Training', 16 October 2006), the Department for Community Development (Misconduct Handling Procedures in the Western Australian Public Sector: Department for Community Development, 5 February 2007), and the former Department of Justice (now Department of Correctional Services) in a submission to the 'Inquiry into the Management of Offenders in Custody and in the Community', in August 2005, which was completed by the Special Inquirer Hon. Dennis Mahoney QC in November 2005. In each of the areas where it was critical of the misconduct management systems the Commission is working with the departments to improve policy, processes, procedures and systems. With regard to the Department of Health, the Commission has started a process of liaison and review that will take some time due to the size and decentralised nature of the system.

- **On p.30 you state that there has been a decrease of 14.8% in the number of police related complaints versus 8.6% for the rest of the public sector. Why this decrease with police, is it attributable to cultural change?**

It is not clear why police-related complaints have fallen by 14.8%. Although cultural change may also be relevant, the Commission is not in possession of any substantive evidence of significant cultural change in Police from 2004-2005 to 2005-2006. While apparently significant, it is too early to tell whether this represents a trend or an anomaly.

- **On p.30 the report states that the stringent notification requirements for police remain necessary and appropriate. Do you think this need will reduce over time as the police culture changes more?**

As stated at page 30 of the annual report, there are several reasons why these reporting requirements are necessary and appropriate:

- The long history of public disquiet about the conduct of police officers;
- Serious misconduct often has its genesis in minor misconduct;
- Misconduct has not always been adequately dealt with by police line managers;
- External oversight of minor matters ensures that they are properly dealt with by police line managers; and
- There is a long-standing expectation by members of the public that there is external oversight of their complaints about minor matters.

The policing environment is characterised by a high risk of misconduct occurring, essentially because police are invested with significant statutory powers. The only meaningful way to reduce that risk is by police embracing transparency and accountability when they make policing decisions. In the absence of an external oversight mechanism this appears difficult.

The Commission does not believe that the need for stringent reporting requirements will reduce as police culture changes.

- **Are we seeing an improvement in the manner in which police deal with investigations? (p.30)**

The position in regard to police internal misconduct investigations remains much as it has for the past several years. That is, overall police generally conduct investigations adequately. However, as illustrated by case examples in the Commission report '*A report on the First Two Years of the Western Australia Police Reform Programme*', some investigations are handled quite badly.

- **On p.31 the report states that the number of matters received involving the health sector “appears to be unusually low.” You imply that it may be a consequence of misconduct handling mechanisms and that you plan to conduct a review of the latter this financial year. Has this commenced and with what effect?**

Other priorities have prevented the Commission undertaking this review to date. However, preliminary work on tackling the low number of matters received from the health sector is underway. Liaison with the Department of Health is occurring and it will take some time to complete a review of misconduct management mechanisms due to the size and decentralised nature of WA Health.

- **Please state why there has been a large reduction in the number of assumed identity approvals (down from 66 to 11) and integrity testing programmes (down from 10 to 3) this year (p.38)?**

Previous years' figures relate to the initial issue of assumed identities to investigators. Those assumed identities are retained from year to year and there is no need to renew them.

The reduction in integrity tests is due to the nature of the investigations being conducted by the Commission during that particular period of time. The Commission has recently established an Integrity Testing Unit and anticipates the number of Integrity Testing Programmes will increase.

- **On p.39 the report states that the AFP assisted the CCC in developing relevant training for integrity testing programmes. Please elaborate on this and advise how the experiences of ICAC and the CMC could help.**

The reference relates to specific training in relation to low-level, role-playing activities, adapted from AFP training towards national under-cover competencies, to support the conduct of integrity testing. The ICAC and CMC do not have this capability.

- **On p.46 the report states that the unauthorised access to and leakage of confidential information held by government agencies is “widespread” and a matter of concern to the CCC. Please elaborate. Has there been any leakage of confidential information from CCC stand-alone operations, or from Police-CCC joint operations? Under the CCC Act, are the CCC or the Police able to brief media on current operational matters or invite media photographers to raids?**

The unauthorised access to, and leaking of, confidential information by public officers is a continuing source of complaint to the Commission. This complaint category constituted 7.7 % of all complaints in 2005-2006, making it the fourth highest complaint category (refer page 32). The matter was extensively commented upon in the Commission’s report 'Protecting Personal Data in the Public Sector' in September 2005. More recently, issues of the inappropriate release of confidential information were again highlighted during public hearings as part of investigations into lobbying activities and their influence on public officers leading to alleged misconduct.

The Commission has no indication that any information has ‘leaked’ in relation to any of its own, or joint, operations. Further, the Commission does not brief the media on current operational matters or invite media photographers to the execution of warrants. Section 152 of the Act provides for a general prohibition of the disclosure of official information unless specific limited circumstances exist and the Commission has certified that the disclosure is necessary in the public interest under section 152(5).

- **On p.47 the report states that the CCC will undertake several more targeted reviews of police reform resulting from the Kennedy Royal Commission. When do you expect these to take place and what focus will they have?**

The Commission is currently undertaking reviews of:

- WAP's ongoing progress with its reform programme; and
- WAP's management of internal investigations of complaints against police officers.

These results of these reviews may be published as stand-alone reports or they may be integrated into Commission reports on specific investigations.

- **What is the opinion of the Commission in relation to the level and degree of success regarding implementation of recommendations by relevant agencies? (p.47/48)**

The Commission continues to work with agencies on the implementation of recommendations it has made for improvements to systems and processes concerning misconduct handling mechanisms and corruption prevention. A high-profile example of this work is the assistance provided to the Department of Education and Training in the design and commencement of its implementation of an appropriate misconduct management mechanism.

As part of the Commission's responsibilities for evaluating agencies' implementation of its recommendations pursuant to section 91(2)(c) of the Act, it has requested that agencies affected by its various reports provide their own report on the implementation of those recommendations. It is anticipated that these responses will have been received and analysed by June 2007.

- **On p.55 the report states that the Business Services Directorate has developed a mentoring programme, a CCC Code of Conduct programme and a study scholarship programme. Please elaborate on these initiatives.**

The Commission initiated a pilot Mentor Program with seven mentor/mentoree partnerships to be run over nine months with the assistance of the Human Resources Branch and an expert consultant. The partnerships work through a structured program involving regular partnership meetings and a formal group meeting each second month facilitated by the expert consultant. Formal review and feedback processes have been applied to assess the program quantitatively as well as qualitative feedback through interviews. A review of the pilot program shall be submitted for Executive consideration prior to June 2007.

The Commission's Code of Conduct has been developed from the WA public sector Code of Ethics and reflects the behaviours required of Commission staff. The Code was developed following extensive staff input and feedback. The Code is provided to each new officer to the Commission and is available on the intranet.

The Commission provides up to five study scholarships each academic year, valued at up to \$1,000 each for recipients to pursue studies in a field related to the activities and operation of the Commission. The recipients are determined by the Executive following a general call for expressions of interest issued to all staff. Upon completion of the academic year, recipients are required to report back on their performance and learning. The scholarships complement the study assistance scheme available to approved students to attend lectures and seminars.

- **The Committee notes that on p.57 (table) there are significant gender differences in employment at the higher levels within the CCC. Is this principally a reflection of the difficulties inherent in recruiting females in law enforcement agencies from which a significant proportion of CCC staffing is accessed?**

While it is acknowledged that traditional law enforcement agencies are male dominated, the Commission has identified the recruitment of females to senior positions as a continuing objective of the Commission Equity and Diversity Plan. That being said, the Commission notes that two of its four Directors are female, as were its first Acting Commissioner and its only General Counsel appointment. The Commission continues to try and attract and recruit highly qualified officers to the Commission, both Female and Male

- **Is there any reason or benefit to be obtained in conducting visits to remote communities regarding education on access to misconduct reporting mechanisms?**

The Commission has not conducted any visits to remote communities, however there have been visits to regional centres and towns, such as Kununurra and Derby, which may be attended by those from more remote locations. These visits are seen as essential in ensuring that people outside of the metropolitan area have access to government services of as near as possible equivalence to their city peers. Knowledge of mechanisms for the prevention and reporting of misconduct is equally as important in regional areas, which may also carry particular misconduct risks in relation to their isolation.

The Commission recognises the value that visits to remote communities may provide, however it has not had the time to focus on these when there has been the need to educate the public sector as a whole of the Commission's functions and of their obligations under the Act. Consequently, the Commission's focus has been on metropolitan and regional centres. Once it is satisfied with awareness levels at these centres the Commission will increase its attention to remote localities.

- **What capacity will implementation of the new case management system give you in terms of data analysis? (p.67)**

The new case management system, CMIS, will:

- Improve the accuracy of Commission reporting against key performance indicators;
- Count individual allegations instead of complaint files, thereby improving the Commission's capacity to report the work it undertakes; and
- Improve the Commission's capacity to analyse data by storing the information in electronic format on a single database.

- **Are there agencies that are repeatedly failing to meet the appropriate standard of investigation? If so, what level of intervention is occurring with respect to the latter? (p.70)**

The Commission's *'Report into Sexual Contact With Children by Persons in Authority at the Department of Education and Training of Western Australia'* is an example of Commission intervention with respect to an agency repeatedly failing to meet appropriate investigation standards. Additionally, the Commission's report, *'Misconduct Handling Procedures in the Western Australian Public Sector: Department for Community Development'*, contained recommendations to establish an improved capacity to manage misconduct issues.

The Commission's reviews of agencies' misconduct handling mechanisms, which have also recently included the Department of Local Government and Regional Development, and Department of Consumer and Employment Protection, consider the way agencies conduct investigations and the resulting reports recommend action for improvement where appropriate.

- On p.70 the report states that the CCC received one allegation of misconduct for every 53 public officers in 2005-2006. How does that statistic compare to other states?

Differences in the functions and activities between the interstate misconduct prevention agencies restrict the usefulness of direct comparisons based upon complaint or allegation numbers. Factors including the maturity of the agencies' processes and of the relationships they have established with their jurisdictions, which contribute to the quality of the misconduct management mechanisms developed by the public sector agencies, combine to diminish the comparative value of this approach. However, for general overview purposes, this measure is practical in its application for providing a means of comparison of the incidence of reported misconduct between the states.

On a basis of dividing the number of full-time equivalent employees (FTE) within the jurisdictions by the total number of reported complaints, the results display some variation between states. While Queensland's figure is similar to Western Australia's, New South Wales appears to have significantly lower figures per officer.

Queensland: One complaint per 54 public officers
 Western Australia: One complaint per 53 public officers
 New South Wales: One complaint per 110 public officers

Misconduct Complaints in NSW and QLD 2005-2006

	NSW Public Officers	Complaints	QLD Public Officers	Complaints
Public Sector	294,376 ²⁸	2,191 (ICAC) ²⁹	163,486 ³⁰	3,924
Local Government	52,500 ³¹		37,000 ³²	
Police	18,607 ³³	1,141 (PIC) ³⁴	12,738 ³⁵	
Total	365,483	3,332	213,224	3,924
Ratio	1 : 110 FTE public officers		1 : 54 FTE public officers	

²⁸ 'Overview of the New South Wales Public Sector Workforce Profile 2005', p. 2, NSW Premier's Department Public Office Employment

²⁹ ICAC Annual Report 2005-2006, p. 17

³⁰ Growth in the Queensland Public Service Workforce 2000-2005, Office of Public Service Merit and Equity, p. 1

³¹ 'A New Direction for Local Government – A Position Paper, October 2006, NSW Department of Local Government, pp. 4-5

³² www.lgaq.asn.au/portal/dt?JSPTabContainer.setSelected=HRIR&last=false, accessed 13 Feb 2007

³³ NSW Police Annual Report 2005-2006, p. 107

³⁴ PIC Annual Report 2005-2006, p. 36

³⁵ QPS Annual Report 2005-2006, p. 12

- On pp.73 and 75 under “efficiency indicators” the report states the average cost of various CCC activities. How do these costs compare to other states?

The variation in the reporting requirements of individual states makes an accurate, direct comparison against the Commission’s performance indicators unachievable. Neither the CMC, ICAC [Independent Commission Against Corruption] nor PIC [Police Integrity Commission] uses a similar set of key performance indicators. As the services, and the manner of their delivery, differ substantially between agencies, there is no common denominator by which to establish accurate, indicative comparisons.

For example, the CMC’s performance, including its efficiency and effectiveness, is reported directly to its Minister pursuant to section 260 of the *Crime and Misconduct Act 2001 (Qld)* and estimated performance results appear in the Ministerial Portfolio Statements for the Queensland Attorney General and Minister for Justice. However, the CMC’s performance is assessed through outputs and based upon quantity and quality measures without direct reference to the cost of the component activities. The CMC’s functions, while similar in nature in several areas, are structured differently to those of the Commission. The CMC’s output of ‘Reducing Misconduct and Improving Public Sector Integrity’, is equivalently delivered by the Commission as two distinct services, each with assigned internal budgets.

While the quantity and quality of activities in these services and outputs could logically be compared and adjusted for total budget and jurisdiction, it must be recognised that performance indicators serve a different purpose. Being only indicators, they are particular to their individual organisations and are only effective for setting targets and comparing different periods of performance by the same organisation. For this reason and with the differences in the delivery of services between agencies a comparison of efficiency indicators of cost are unavailable.

As a point of reference, a budget comparison for the three jurisdictions for the 2005-2006 financial year appears below.

Net Cost of Services 2005-2006

	Net Cost
CCC	\$23.2m
CMC	\$36.1m ³⁶
PIC/ICAC	\$31.3m ³⁷

³⁶ Crime and Misconduct Commission Annual Report 2005-06, p. 105.

³⁷ Police Integrity Commission Annual Report 2005-2006, p. 67 and Independent Commission Against Corruption Annual Report 2005-2006, p. 72.