

**MISCONDUCT BY A CORRUPTION AND  
CRIME COMMISSION OFFICER:  
MATTHEW JOHN LYNCH**

Sections 199 and 201 of the *Corruption, Crime and Misconduct Act 2003 (WA)*

8 February 2017

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## 1. THE AVAILABLE EVIDENCE

Mr Matthew John Lynch was employed by the Corruption and Crime Commission (Commission) on 9 February 2015 as a Surveillance Team Member in the Commission's Investigative Support Services (ISS).<sup>1</sup> Mr Lynch had previously been employed in a similar capacity by the Australian Federal Police (AFP).

On 23 March 2015 Mr Lynch was interviewed by the Commission's approved security vetting officer, a Mr Gates, for purposes which included to confirm Mr Lynch's entitlement to the necessary security clearance for his employment with the Commission, and to assess his honesty and trustworthiness (also essential if he was to continue in his employment with the Commission). During the interview Mr Lynch was asked the following three questions:

1. Have you been the subject of an internal investigation?
2. Left a job under difficult circumstances?
3. Been asked to leave, or been dismissed?

Mr Lynch answered each of these questions by shaking his head in the negative. He was then asked a fourth question:

4. Is there any further information you believe may be relevant to your suitability for a clearance and which has not been covered during this interview?

Mr Lynch verbally answered 'no' to this question.

At the conclusion of the interview Mr Lynch signed the record of the interview to adopt it as correct and acknowledged in writing that providing false or misleading information in the interview may result in his security clearance being withdrawn. Maintaining this security clearance was a term of his contract of employment.

It was subsequently ascertained that Mr Lynch's answers to questions 1, 2 and 4 were false, in that he had been the subject of an internal disciplinary investigation in respect of his conduct between July 2010 and April 2011 during his employment with the AFP; that he had been suspended by notice served upon him on 7 April 2011 as a consequence of two adverse findings made against him, and that he had resigned from the AFP.

In April 2016, following written inquiries of the AFP by the Commission, the AFP wrote to advise that following an internal investigation it had made two disciplinary findings against Mr Lynch as follows:

1. On 5 April 2011 he seriously breached s 8.2 of the AFP Code of Conduct by lying to its Professional Standards Section whilst under direction, contrary to s 40VH(1)(c) of the *Australian Federal Police Act 1979 (Cth)*; and

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<sup>1</sup> Formerly known as the Operational Support Unit or the OSU until recent changes made connected to misconduct and criminal investigations conducted in respect of some of the OSU's officers.

2. Between July 2010 and March 2011 he seriously breached s 8.3 of the Code of Conduct by submitting in bad faith complaints against another federal agent.

On 15 April 2016 Mr Lynch was again interviewed by Commission officers about this information and the accuracy of his answers given during his security vetting interview, but he was not placed under criminal caution, nor was the interview video-recorded. He admitted that his answers given during the security vetting interview on 23 March 2015 were knowingly false, and gave an explanation for his conduct.<sup>2</sup>

It is convenient for me to observe here that I was surprised when I learned later, when the Commission provided me with its file, that it had not proceeded at the interview held on 15 April 2016, at least by making an audiovisual recording so that any admissions made would not be held to be inadmissible at a trial upon indictment for a criminal offence: *Criminal Investigation Act 2006 (WA) s 118*, which applies to an admission made to a Commission officer as well as to a police officer.

I expected that, until their investigation was complete and my view about serious misconduct and whether there was evidence of the commission of a criminal offence serious enough to have to be dealt with on indictment was obtained, the investigators would not act in a way which might foreclose the provision of admissible evidence in criminal proceedings. After all there could be no reasonable excuse for the absence of an audio-visual recording of any admission made.

## 2. BACKGROUND

On 11 March 2016 the Commission notified me under s 196(4) of the Act of the allegation made against Mr Lynch. The essence of this allegation was that another Commission officer (X) had reported to the Director Legal Services on 19 February 2016 that X had been approached three days earlier by three AFP officers who asked about Mr Lynch's employment with the Commission.

One of the AFP officers told X that Mr Lynch had received a 12 month suspension from duty because he had made a false report against another AFP officer, and that he had resigned from the AFP. In light of Mr Lynch's employment history and his subsequent employment with the Commission, the AFP officers questioned X about the efficiency of the Commission's integrity checks for new employees.

As I have said, the Commission subsequently made written enquiries with the AFP about Mr Lynch's employment history. In April 2016 the AFP wrote to the Commission saying that it had made the two disciplinary findings to which I have referred above against Mr Lynch during his employment with that agency. The AFP letter said that on 7 April 2011 Mr Lynch was served with a notice of suspension

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<sup>2</sup> To which I refer more fully below when discussing the action taken by the Commission, but in essence he said that he did not think what had happened five years ago was relevant to his work with the Commission, and that it was a "drastic" part of his past and he did not want to go over it again and have to struggle to explain what had occurred.

under r 5 of the *AFP Regulations 1979*, and that its internal disciplinary investigation of him was completed in August 2011.

The AFP investigation's recommendations were that Mr Lynch's suspension be lifted and his return to work arranged; that consideration be given to redeploying him from the AFP's Perth office to the Airport; that he be removed as a Confidant from the Confidant Network due to his lack of commitment to it; that he be formally counselled by management; that he be issued with a formal warning that should he be found to be involved in further misconduct (particularly serious misconduct) his suitability for continuing employment would be considered, and that he send a letter of apology to the affected federal agent.

A notice revoking Mr Lynch's suspension was served on him by the AFP on 15 August 2011.

I saw no reason to remove the matter from the Commission pursuant to s 196(5) of the *Corruption, Crime and Misconduct Act 2003 (WA)* (the Act) as I was content to be informed of the progress of the Commission's investigation so that I could complete my review of the matter when the Commission had made its assessment. As I have said, I expected that the Commission's investigation would initially be directed to the probability that Mr Lynch's conduct may have involved the commission of one or more criminal offences.

### **3. SUBSEQUENT ACTION BY THE COMMISSION**

#### *The meeting on 15 April 2016*

I have referred to the relevant portion of the interview on 15 April 2016 when Commission officers met with Mr Lynch. He said in the interview, *inter alia*, that he did not divulge the AFP's internal investigation during the security vetting process interview on 23 March 2016 because:

1. he did not see it as relevant to his appointment and his work with the Commission;
2. it was a drastic part of his past;
3. he was not sure how to explain it because he did not know where to start;
4. he had to shut it out as it was such a difficult time;
5. he did not wish to divulge it as it was five years ago, and he had lost confidence in the system and in his colleagues, and
6. he did not want to put himself through having to explain it all again.

Mr Lynch added that he did not write the letter of apology to the affected federal agent as the AFP had recommended. Instead he burnt its warning letter. Generally, he confirmed that his conduct at the vetting interview involved deliberate untruths.

#### *The Commission's response*

On 15 April 2016, after this interview, the Commission set aside Mr Lynch's security clearance within the Commission and suspended him on full pay. A letter bearing the date 15 April 2016 addressed to him from the Chief Executive was delivered to him to explain that these measures had been immediately implemented, and to advise him that he would be required to attend a meeting on 19 April 2016 so that he could be informed of any further proposed action(s) after his eligibility to hold a security clearance had been formally reviewed.

At the meeting on 19 April 2016 the Commission gave Mr Lynch a letter which explained that, as a result of the information in its possession, it was considering revoking his security clearance; that if the Commission did revoke his security clearance it would terminate his employment (on the basis, *inter alia*, that his contract of employment required him to possess such a clearance); and that he would have an opportunity to make a submission to it by 26 April 2016 before it made a final decision on both issues.

After the meeting Mr Lynch requested an extension of time to 10 May 2016 to make his submission. The Commission agreed to that extension. In his submission on 10 May 2016 he accepted responsibility for the answers given during his security vetting interview on 23 March 2016; tendered his resignation; requested four week's pay; and asked the Commission not to hinder his desire to find other employment in law enforcement by endangering his security clearance status. There would appear to be no doubt about the admissibility in criminal proceedings of that submission and the admission made.

On 13 May 2016 the Commission replied to Mr Lynch's submission, stating that the submission provided the Commission with additional information to consider before a final decision was made in respect of his security clearance, and that the decision would be made prior to 10 June 2016. He was told that the Commission accepted his resignation effective from 10 June 2016 and he was not required to attend the Commission or to carry out his duties before his resignation took effect.

On 9 June 2016 the Commission wrote to Mr Lynch and said, relevantly, that its review of his conduct had concluded that he had engaged in a knowing attempt to mislead the security clearance process by withholding information about his disciplinary history with the AFP; his conduct caused an ongoing concern about his trustworthiness and honesty; and as a result of his conduct the Commission had decided to cancel his national security clearance and to advise the Attorney General's Security Vetting Agency of this action.

Mr Lynch's employment with the Commission ended on 10 June 2016.

#### 4. CORRESPONDENCE WITH THE COMMISSION

Copies of relevant correspondence between the Commission and me in relation to the Commission's notification under s 196(4) of the Act of the allegation made against Mr Lynch appear at the end of this Report in Annexure A.

The correspondence shows that the Commission's interpretation and application of the scope of s 196(9) of the Act<sup>3</sup> differs from mine<sup>4</sup> to such an extent that, in my view, the timely and effective fulfilment of my misconduct and other functions, and the exercise of my powers to gain access to the records and other information of the Commission under s 196(3), were obstructed on this occasion, and remain under threat of being obstructed again in the future.

The correspondence attached also shows that the Commission's approach to its investigation, which in my opinion gave insufficient attention to the question of corruption and the possible commission of a criminal offence by Mr Lynch, made difficult any subsequent criminal investigation of his conduct by the Police, upon a reference by me under s 196(3)(f) and (g) of the Act made in the course of my review of the matter.

These and related issues are discussed below. Suffice it to say now that in my view the Commission's use of its investigatory powers should not cause a hindrance, even unintentionally, as in this case, to the exercise of my oversight powers.

##### *S 196(9) of the Act*

In response to a request I made by a letter dated 21 April 2016 to the Commission to be advised about the Commission's final decision on the matter, and to be then provided with the Commission's file so that I could conclude my assessment, the Commission advised that it considered the allegation made against Mr Lynch to be simply an industrial matter within the meaning of s 196(9) of the Act, and therefore a matter which I could not review under s 196(4).<sup>5</sup> The file was not provided.

The Commission provided its file under cover of a letter dated 19 July 2016 and, by letter dated 26 July 2016 the Commissioner provided his views on the matter generally, and on the question of serious misconduct and the possibility of the commission of serious criminal offences to which I had earlier drawn attention.<sup>6</sup>

The Commission's interpretation and application of s 196(9) of the Act does not delineate from the outset between, on the one hand, issues purely of an industrial nature which may arise from the conduct of a Commission officer about which an

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<sup>3</sup> A section which precludes me from undertaking a review of a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979*.

<sup>4</sup> My view was expressed at pp 37-39 in the JSC's Report No. 25 dated 26 November 2015 to which my explanatory note dated 15 October 2015 is attached.

<sup>5</sup> The Commissioner's letter dated 11 March 2016 (provided to me under the Protocol which governs our mutual duties and obligations concerning the Commission's necessity to notify me under s 196(4) of the Act of allegations made against Commission officers), and The Director Legal Services' letter dated 24 May 2016 (which the Director sought to clarify by a letter dated 8 June 2016);

<sup>6</sup> The Commissioner's letter dated 26 July 2016 is attached.

allegation is made (such as determining the question of the officer's dismissal, or being disciplined by way of warning or some other contractual sanction), and on the other hand, issues that fall within my functions under s 195(1) of the Act.

The serious consequence of the Commission's view of the prohibition in s 196(9) of the Act, as seen in this instance, is that Parliament's intention for me to assess or audit the Commission's procedures and operations, or to determine misconduct on the part of a Commission officer, or to fulfil any of my other functions at the time of occurrence or immediately thereafter, may be at best delayed, and at worst defeated.<sup>7</sup>

In my opinion there is no reason why, in a proper case, such as this, the Commission should not be able to proceed with its investigation of an allegation concerning a Commission officer subject to my oversight and removal of the matter under s 196(5) of the Act. The Act is written on this basis, but it does not support the Commission's view that an industrial matter should be elevated in importance above the fulfilment of my functions. Nor has the Commission explained to me why it thinks that it does.

In many instances an allegation made against a Commission officer – whether made to the Commission itself and notified to me under s 196(4) of the Act, or made to me and communicated to the Commission as part of my investigation – will involve the possibility of disciplinary action eventually being taken by the Commission against the officer concerned (or the possibility that the Commission is the object of industrially-based proceedings).

It may be, as it was in this case, that an industrial or contractual process may involve suspension from office and the ultimate termination of the officer's employment (as well, in this case, as the loss of the security clearance necessary to be held if the employment was to continue).

Should disputation arise between the Commission and the officer concerned, s 196(9) of the Act makes it clear that I may not undertake a review of those matters pursuant to the Act. They are to be dealt with by the parties in accordance with the processes and remedies provided in the *Industrial Relations Act 1979 (WA)* and the general law.

As I have said previously, it is a matter of identifying the subject matter and timing of the issues which may arise and be protected from the operation of the Act by s 196(9) of the Act. It is evident that the Commission holds a different view and for the sake of clarity I make my recommendation at the end of this Report to amend s 196 of the Act to bring certainty to its scope.

### *S 196(3) of the Act*

Section 196(3)(b), (c) and (d) of the Act give me power to have full access to the Commission's records and to take or have copies made of such records; to require Commission officers to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or to the conduct of its officers; and to require Commission officers to

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<sup>7</sup> See footnote 3.



attend before me to answer questions or produce documents or other things relating to the Commission's operations or the conduct of its officers.

These powers are fundamental to the timely and efficient fulfilment of my functions. The subsections which create them are not limited in their scope or application unless a provision of the Act, or some other law,<sup>8</sup> expressly does so.

The full co-operation of the Commission and its commitment to the subsections are critical because the Commission is solely able to retrieve and deliver information or documents required to fulfil the functions Parliament has provided to me. Whilst the Commission usually abides by the purpose of these subsections, on this occasion it did not.

On 21 April 2016 I wrote to the Commission and requested that the Commission's file be delivered to me when a final decision was made about Mr Lynch's employment so that I could conclude my assessment pursuant to s 196(4) of the Act. My assessment is not restricted to my misconduct function under s 195(1)(b) in respect of Mr Lynch's conduct (or the conduct of any other Commission officer whose involvement in the matter is known), but involves the fulfilment of any of my other functions which may be triggered by the process (limited only by the prohibition in s 196(9)).

On 24 May 2016 the Commission's Director of Legal Services simply withheld the file, referring to my asserted incapacity to review the matter having regard to the terms of s 196(9) of the Act. Following my response by letter dated 2 June 2016, the Director's letter dated 8 June 2016 said that the reason for not providing the file as requested was that 'the file remains active'. The Commission eventually delivered its file to me on 19 July 2016.

Perhaps the Commission's use of the term 'active' related to the fact that Mr Lynch's employment had not yet ceased. However, my request for the Commission's file was not conditioned upon the cessation of his employment, but on the decision about his employment having been made by the Commission. That decision had been made on 10 May 2016 when Mr Lynch submitted his resignation.

The Commission's refusal to provide me with its file on request had the capacity to interfere with my ability to fulfil my functions under s 195(1) of the Act. Its decision in that regard, while a serious problem in itself and contrary to s 196(3), was ultimately derived from the Commission's continuing misinterpretation and misapplication of the scope of the prohibition in s 196(9) of the Act.

## **5. MY ASSESSMENT**

### *Serious misconduct and possible criminality*

In my letter dated 2 June 2016 I expressed my concern to the Commission that, by categorising Mr Lynch's conduct during the security vetting process interview on 23 March 2015 as an industrial matter, it had not considered the possibility that he had

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<sup>8</sup> Such as the *Telecommunications (Interception and Access) Act 1979 (Com)*.

committed a criminal offence under the *Criminal Code*, or the possibility that he had committed misconduct under s 4(d) of the Act. The Commission's file shows that the Director Legal Services requested advice on 22 June 2016 from a senior lawyer in the Commission in respect of the following question:

Does the failure of a Commission officer to disclose information that he was required to disclose as part of his Negative Vetting Level 1 ("NV1") security clearance process amount to a breach of the *Criminal Code* ("the Code") s. 85 or s. 424?

The factual context of the question was the conduct of Mr Lynch in his security vetting interview conducted on 23 March 2015. However, the question itself did not completely reflect the facts known to the Commission, in that Mr Lynch did not simply fail to disclose information in response to the questions asked of him, but, on the available evidence, he concealed that information by deliberately lying.<sup>9</sup>

Section 85 of the *Criminal Code* provides:

Any public officer who, in the performance or discharge of the functions of his office or employment, corruptly –

- (a) makes any false entry in any record; or
- (b) omits to make any entry in any record; or
- (c) gives any certificate or information which is false in a material particular; or
- (d) by act or omission falsifies, destroys, alters or damages any record; or
- (e) furnishes a return relating to any property or remuneration which is false in a material particular; or
- (f) omits to furnish any return relating to any property or remuneration, or to give any other information which he is required by law to give,

is guilty of a crime and is liable to imprisonment for 7 years.

'Function' is not defined by the section, but is defined by s 5 of the *Interpretation Act 1984 (WA)* to include 'powers, duties, responsibilities, authorities and jurisdictions.'

While correctly stating that the authorities interpret widely the phrase 'in the performance of the functions' in statutes, and that it is likely to extend to conduct that is incidental to performing the functions within the scope of the office or those essential to the accomplishment of the main purposes for which the office was created, the relevant part of the senior legal officer's advice to the Director Legal Services was:

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<sup>9</sup> Whether or not Mr Lynch conceded when questioned after his interview that his motivation for deliberately lying was to keep his security clearance and thus his employment with the Commission, these two things would most likely have occurred had his disciplinary history with the AFP not surfaced.

Our view is that answers provided in a security interview undertaken in a private capacity for the private purpose of obtaining employment or reviewing a security clearance for the purpose of retaining employment cannot be said to be conduct done or omitted to be done in an official capacity. NV1 security clearance attaches to a person and not to a position.

Our view is that the Commission officer's conduct did not occur in the course of the performance of the functions of the public officer's office or employment, even if the opportunity to provide the false answer arose because of his recruitment as a public officer, or review for ongoing employment as a public officer.

In my opinion this advice errs in that the security vetting process was directed to establishing Mr Lynch's continuing entitlement to hold the top level security clearance upon which his employment depended. He was required to participate in that process in the performance of the duties of his office and to ensure that the information he provided in response to questions asked of him was correct, to the best of his knowledge, and complete – certainly not calculated to mislead those who were conducting the integrity check.

It is noteworthy that the suspension of Mr Lynch's security clearance by the Commission was the basis upon which the Commission was prepared to terminate his employment, and in the end it cancelled his clearance after he tendered his resignation. The information he gave was given in the performance of the duties or functions of his office or employment. He could not refuse to participate on the ground that it was a private matter between him and the AFP.

### *Corruption*

The requirement that the conduct of the public officer must be corrupt, as that term is known to the law, is an element of the offence defined by s 85 of the *Criminal Code*. It will be evident from what I have written above that in my view the charge in this case would be that Mr Lynch committed the offence defined in s 85 when, in the performance of the functions of his office, he corruptly gave information which was false in a material particular, contrary to s 85(c).

If he was prosecuted and convicted of that offence (necessarily upon indictment), he would be guilty of serious misconduct under s 4(c) of the Act because he would have been found to have committed an offence punishable by 2 or more years imprisonment 'whilst acting or purporting to act in his or her official capacity', for the reasons given above.

In the alternative, or in any event, the question arose whether Mr Lynch should be found to be guilty of serious misconduct under s 4(a) of the Act because he acted corruptly in the performance of the functions of his office when he knowingly gave the false information in the course of the security vetting interview.

To my mind the answer is clear, and on this point it seems that I must express my respectful disagreement with the Commissioner. As I have previously said to the Joint Standing Committee, probably for the first time in a submission upon the recent

amendments to the Act dated 20 April 2015, the term ‘corruptly’, not defined by the Act, bears its natural or ordinary meaning.

In relation to the conduct of a public officer performed in the purported exercise of a function or duty of his office, it is not necessary that the conduct be unlawful or that it be outside the functions of the office, when properly understood. What is necessary is that there should be an element of fault, a wrongful motivation or intent, a perversion of the proper performance of the functions or duties of the office, to gain some benefit or advantage for the officer or another or to cause some detriment to another party.

Reference may be made to my judgment in *W A v Burke (No 3)* [2010] WASC 110 [74], upheld in relation to the statement of the law in *W A v Burke* [2011] WASCA 190 by Buss JA at [278] – [287], although reversed on the facts.

The evidence seems to me to establish clearly that when Mr Lynch gave the knowingly false answers, and therefore information, to which I have referred, he did so for the purpose of advancing the retention of the security clearance necessary if he was to retain his employment with the Commission, by avoiding scrutiny of the investigation of his conduct with the AFP and the consideration of the adverse findings made against him.

That was an obviously wrongful motivation when his duty was to answer honestly and with complete openness in relation to facts of clear materiality to the matter at issue. The evidence would sustain, indeed compel, a conclusion of corrupt conduct within the meaning of s 4(a), but, of course, a conclusion of serious misconduct under s 4(c) would have to await his conviction of the offence in s 85 of the Code. Until then, all that can be said is that there is evidence capable of sustaining that conclusion to the required standard of proof. In my view it would be wrong, in a case such as this, to rely on s 4(a) without testing the availability of s 4(c).

#### *Fraudulent provision of information*

An alternative approach to the question whether there is evidence of serious misconduct under s 4(c) of the Act, upon which the Commissioner and I are also in disagreement, not as to the facts which may be found upon the evidence available, but as to the law, is to consider whether Mr Lynch might be found to have committed the offence defined by s 424(c) of the *Criminal Code*.

Section 424 says:

Any person who with intent to defraud –

- (a) makes a false entry in any record; or
- (b) omits to make an entry in any record; or
- (c) gives any certificate or information which is false in a material particular; or
- (d) by act or omission falsifies, destroys, alters or damages any record;  
or
- (e) knowingly produces or makes use of any record which is false in a material particular,

is guilty of a crime and is liable to imprisonment for 7 years.

Summary conviction penalty: imprisonment for 2 years and a fine of \$24,000.

Again, it will be clear from what I have written above that in this case the evidence points to the offence defined in s 424(c) – giving information which is false in a material particular with intent to defraud. There are numerous useful authorities available for perusal, but for present purposes it is sufficient to refer to the judgment of Hasluck J in *CCC of WA v Moodie* [2009] WASC 72 at [74] – [88].

The earlier authorities, including the case of *Bolitho v WA* [2007] WASCA 187, are discussed before reaching the conclusion that in a case such as this, involving the deflection of a public officer from the proper performance of his public duty (the effective evaluation of Mr Lynch's entitlement to continue to hold his security clearance) there is no necessity to find an intention to place in jeopardy some economic interest. As Hasluck J put it:

... the notion of detriment to a lawful right or interest extends to deflecting the victim from the proper performance of a public duty.

To the same effect are the discussions of the law by McLure P, Buss and Mazza JJA in *Hunter v WA* [2014] WASCA 184 at [36] – [40], [98], [109] and [111] – [112]. For Mr Lynch to act as he did, if with the intention to deprive those officers who were conducting the security check of the capacity to perform that public duty effectively, having regard to all relevant information, exposed him to the conclusion that he acted with an intent to defraud in relation to a matter which, incidentally, had a clear economic implication in the continuing employment of Mr Lynch by the Commission.

In my opinion there was evidence potentially capable of establishing to the required standard of proof that he committed the offence in s 424(c) of the *Criminal Code* and was therefore guilty of serious misconduct under s 4(c) of the Act upon this alternative basis.

#### *Minor misconduct*

For the reasons stated above, I determine that on 23 March 2015 Mr Matthew John Lynch committed an act of misconduct under s 4(d)(iii) and (vi) of the Act whilst an officer of the Corruption and Crime Commission of Western Australia by deliberately lying during a security vetting interview conducted by the Commission.

By so doing he engaged in conduct that constituted or involved a breach of the trust placed in him by reason of his employment as a public officer of such seriousness as to constitute a disciplinary offence providing reasonable grounds for the termination of his employment. I remind the reader of the basis upon which Mr Lynch's employment was terminated.

It will be evident from the terms of the Commissioner's letter dated 26 July 2016 and from the manner in which the Commission dealt with Mr Lynch when the matter came to light, that upon this issue the Commissioner and I are of the same view.

I observe that the nature of the misconduct was hardly 'minor' in the ordinary sense of the word, but that is the terminology by which differentiates between such conduct and that which it expressly defines as 'serious misconduct'. The terms are not mutually exclusive in the sense that minor misconduct as found may also amount to serious misconduct if so found.

### *Additional issues*

The Commission's early but erroneous conclusion that Mr Lynch's conduct did not constitute potential criminality undermined any subsequent criminal investigation which may have been conducted by the Police.

The Commission's investigative procedures used initially to respond to the allegation against Mr Lynch were inadequate, appeared to be directed at eventually removing him from the Commission rather than properly addressing the objective seriousness of his conduct, and resulted in the Commission obtaining confessional-type evidence from him without first placing him under caution or videotaping the interview, as required by the *Criminal Investigation Act 2006 (WA)*.

This is not the first instance in which I have reported on the Commission's flawed procedures adopted when initially investigating the conduct of its officers in circumstances where the nature of the conduct raised from the outset, or should have so raised, the possibility that the officer involved may have committed a criminal offence or criminal offences.<sup>10</sup>

A regrettable consequence of the Commission's procedures in this respect was to render impractical an effective exercise of my power under s 196(3)(f) or (g) of the Act to refer the materials gathered against Mr Lynch to the Police for criminal investigation and possible prosecution. I say that for two reasons. In the first place the Police would not be asked to gather new evidence, because the facts had been canvassed by the Commission investigators.

In effect, the Police would be asked to redo the investigation to see if there was a body of relevant evidence, free of doubt as to admissibility. The investigating police officer would then have the task of determining whether in all the circumstances criminal prosecution was warranted in the public interest.

The second reason for not taking that course, in my view, was that Mr Lynch had already been subjected to such an investigation, albeit in one respect flawed. A serious question arose as to whether there was any justification for subjecting him to that process again in circumstances which made it unlikely that any further or better evidence would be obtained against him. I thought not.

Instead of making such a referral, on 6 October 2016 I wrote to the Director of Public Prosecutions, Mr Joseph McGrath SC, to seek his advice as to whether, on the

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<sup>10</sup> See the Joint Standing Committee's Report titled *The Parliamentary Inspector's Report on Allegations of Misconduct made against Officers in the Commission's Electronic Collection Unit*, November 2015, 37-42; and The Joint Standing Committee's Report titled *The Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*, June 2015, 30-45.

information available, he would exercise his power under s 11(1) of the *Director of Public Prosecutions Act 1991 (WA)* to indict Mr Lynch for the appropriate criminal offences under the *Criminal Code*. On 7 November 2016 he declined to do so.<sup>11</sup>

It will be noted from the correspondence attached in Annexure B that the grounds upon which the Director refused to arrange for or to consider the exercise of the power to commence and conduct the prosecution of an offence in this case, whether upon indictment or not, were, in my view, matters of form rather than substance – the lack of a nominated ‘investigative organisation’ with an authorised prosecutor available to exercise the power to issue a prosecution notice and take such procedural steps as compliance with the prosecutor’s disclosure obligations.

This is not the place for a debate about the merits of such grounds for the Director’s decision, which in my view, in the circumstances of this case, marks the end of the road in respect of the capacity to consider further the criminal prosecution of Mr Lynch.

#### *Submissions made under s 200 of the Act*

Section 200 of the Act provides that before reporting any matters adverse to a person or body pursuant to s 199, I ‘must give the person or body a reasonable opportunity to make representations’ to me concerning those matters. Section 75(1) of the *Interpretation Act 1984 (WA)* applies.

On 25 November 2016 I posted a draft copy of my Report to both the Commission and Mr Lynch, giving them the opportunity to make submissions to me by 8 December 2016. The address to which my letter to Mr Lynch was posted was his residential address recorded in the Commission’s operations file which it used in some of its correspondence with him in relation to his conduct and subsequent departure from the Commission.

Mr Lynch did not make a submission to me by that date.

The Commission made a submission to me. One aspect of the submission was to request me not to name Mr Lynch in this Report. Reliance was placed upon what were described as ‘his fragile and extenuating personal circumstances set out in the letter of 26 July 2016.’ I am not persuaded that that material provides sufficient ground to affect my decision on the matter. I have had regard to s 208 of the Act and the terms upon which my relevant function is conferred under the Act generally.

No evidence was provided by the letter dated 26 July 2016 that Mr Lynch’s mental state, as at the time of finalising this Report, remained detrimentally affected by his workplace mishap. Mr Lynch’s mental state at the relevant time was not so detrimentally affected so as to cause the Commission to reverse its preparation to terminate his employment (before he resigned on terms) due to his confessed conduct.

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<sup>11</sup> Copies of my letter to the Director and his reply are attached in Annexure B. In his submission to the Joint Standing Committee’s Report No. 33 dated 17 November 2016, page 107, the Director said that his power under s 11 of the *Director of Public Prosecutions Act 1991 (WA)* ‘is not exercised except in rare circumstances.’

Mr Lynch resigned from the Commission as of 10 June 2016, and I am of the opinion that it was for him, rather than the Commission as a previous employer, to make representations in respect to matters relating to his state of health.

Mr Lynch's dishonest conduct requires that he be named in my Report. Government agencies and other employers who may wish to employ him in the future ought to know of his proven conduct and I believe that the proper performance of my function in the matter and the necessity to achieve accountability for the conduct dictates disclosure of his identity in the absence of evidence of compelling reasons to the contrary.

The Commission also provided a submission concerned to again present arguments previously relied upon in support of its views about relevant matters of law. It asked that the document in question be annexed to my Report, but I can see no purpose in doing so. It would merely repeat matters raised in correspondence and otherwise referred to above.

Suffice it to say that I have again given careful consideration to the matters at issue between the Commission and myself. Neither party resiles from the views they hold, but the disagreements between us, in the context of this report, are part of the background narrative, rather than anything upon which my Report turns.

On 14 December 2016 I tabled my Report with the Clerks of both Houses of Parliament pursuant to s 199(1)(a) and s 206(1) of the Act, and a copy of the report was placed on my office's website.

During the evening of 14 December 2016 I received a message from the Commissioner saying that he had reason to believe that Mr Lynch had not received my letter dated 25 November 2016, nor the draft copy of my Report that accompanied it.

On the following day my office ascertained through enquiries with the Commission that Mr Lynch had changed his residential address, and that the Commission's file maintained by its personnel unit had his correct residential address recorded in it. The Commission provided my office with the correct residential address. My Report was immediately removed from my office's website, and the Clerks of both Houses of Parliament were notified that Mr Lynch may not have received my letter to him.

I telephoned Mr Lynch and explained why my letter to him dated 25 November 2016 had been posted to the address I had. He confirmed that he had moved and left a forwarding address. He said he had not received my letter.

I explained that I intended to renew my invitation to him to make representations concerning my Report, and I did so on 15 December 2016 by writing to him by email and providing him with a copy of my Report, requesting that he respond by 12 January 2017. A hard-copy of the documents was also posted to him on that date. This time I received a response.



As can be seen, I do not think I need to finally decide what is the explanation for these events, or to rely on s 75(1) of the *Interpretation Act*, but I wanted Mr Lynch to have the opportunity to make his representations.

*Further submissions made under s 200 of the Act*

Mr Lynch's submission was dated 6 January 2017 and was received by my office four days later. Its thrust was that all references to his name should be deleted from my Report, thus giving him anonymity, and he offered a number of reasons why this should occur.<sup>12</sup>

He argued that if he was identified in the Report the security of his family would be jeopardised and they would be placed in a stressful situation. He referred to physical and emotional problems and chronic pain resulting from an accident at work and injuries he sustained. He said he was not sure how he would cope if his name was published.


I have carefully considered the reasons offered by Mr Lynch for his anonymity to be maintained, and the materials he provided in support of those reasons. However, I am not persuaded that they are of sufficient cogency to override the considerations of transparency and public accountability for his misconduct as a public officer to which I have referred, although I have considerable sympathy for the position in which he has placed himself.

## 6. MY RECOMMENDATIONS

I recommend the amendment of s 196 of the Act so as to make it clear that subsection (9) does not preclude the Parliamentary Inspector from fulfilling his functions or exercising his powers in respect of any matter, or any aspect of any matter, except in circumstances which are solely concerned with, arise from, or can be dealt with under, a jurisdiction created by, or that is subject to, the *Industrial Relations Act 1979 (WA)*.

The Commission makes no comment upon this recommendation, which, of course, does not concern itself with matters of legislative drafting, but merely seeks to have the position clarified.

Finally, I add the recommendation, foreshadowed above, that, in respect of the matter of minor misconduct under s 4(d)(iii) and (vi), the Commission should maintain a record of my determination and the factual basis upon which that determination is based. It tells me that it will, of course, do so.

  
**HON MICHAEL MURRAY AM QC**  
**PARLIAMENTARY INSPECTOR**

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<sup>12</sup> The reasons Mr Lynch offered need not be detailed here for privacy reasons, and do not pertain to his conduct assessed in my Report. However, certain materials he provided, or to which he referred in support of his argument, were unsigned, had missing pages, or were not attached to his letter.

# ANNEXURE A



CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: -  
Our Ref: 00605/2016/TC  
CMIS Auth No: -

11 March 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

Dear Parliamentary Inspector <sup>Michael,</sup>

**MR MATTHEW LYNCH**

On 17 February 2016, the Commission received information regarding Mr Matthew Lynch, a Physical Surveillance Officer in Investigation Surveillance Services (ISS).

At this stage, it is my view that the information does not constitute an allegation. However, in accordance with the terms of our protocol, I advise you of the following:

- *Date of receipt of the matter or information*

17 February 2016

- *From whom it was received*

[REDACTED] (Physical Surveillance Officer, ISS) and [REDACTED]  
[REDACTED] (Physical Surveillance Officer, ISS)

- *The particulars of the matter or information*

It is alleged that Mr Lynch has failed to disclose pertinent information that he was under an obligation to report as part of his security vetting.

I enclose copies of emails containing the allegation dated 19 and 25 February 2016, respectively, from [REDACTED]

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- *Any other information which may be relevant*

The matter was initially received as a public interest disclosure (PID). The PID Officer, Ms Wendy Endebrock-Brown, has assessed the information and determined that it does not constitute a PID as it does not relate to the "performance of a public function".

- *How the Commission is dealing, or proposes to deal, with the matter*

The Commission is making some initial enquiries into the matter in order to determine whether there is sufficient information to commence a suspected breach of discipline process. You will be advised once the outcome of these enquiries is known.

Yours sincerely



John McKechnie, QC  
**COMMISSIONER**

Encl.



**PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

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Our ref: 622/16  
Your ref: 00605/2016/TC

17 March 2016

Mr J R McKechnie QC  
Commissioner  
Corruption and Crime Commission

Dear Commissioner

**RE: MR MATTHEW LYNCH**

Thank you for your notification dated 11 March 2016, and I am grateful for your anticipated update of the Commission's enquiries.

I would also be grateful if the Commission could tell me in its update the date upon which Mr Lynch commenced his employment with the Commission.

Yours sincerely,

  
HON MICHAEL MURRAY AM QC  
PARLIAMENTARY INSPECTOR



CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: 622/16  
Our Ref: 00605/2016/TC  
CMIS Auth No: -

12 April 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

*Michael,*  
Dear Parliamentary Inspector

**MR MATTHEW LYNCH**

I refer to your letter of 17 March 2016.

Mr Lynch commenced his employment with the Commission on 9 February 2015.

The Commission is continuing its inquiries into the matter.

Yours sincerely

John McKechnie, QC  
**COMMISSIONER**

*Notes  
John  
14/4*

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CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: 622/16  
Our Ref: 00605/2016/TC  
CMIS Auth No: -

15 April 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

Dear Parliamentary Inspector

**MR MATTHEW LYNCH**

On 4 April 2016, the Commission received information from the Australian Federal Police, Mr Lynch's former employer, raising doubts about answers given by him during his security vetting interview on 23 March 2015.

This information was put to Mr Lynch this morning, who admitted the relevant answers were false.

At the security vetting interview, Mr Lynch signed a statement acknowledging that providing false or misleading information could result in his security clearance being withdrawn. As a result of the admissions made, Mr Lynch's security clearance has been suspended.

In order to be eligible for employment with the Commission, a Commission officer must hold and maintain a current and approved security clearance. The Commission has acted expeditiously and exercised the power in section 179(4) of the *Corruption, Crime and Misconduct Act 2003* to immediately suspend Mr Lynch from duty on full pay.

*Murray - Noted - if we have any current matters reliant upon Lynch's statements for assessment vs a complainant, they should be set aside until more info. can be obtained from the ECC. Please bring to my attention older completed file of the same style, which you can recall.*

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*Jan*  
19/4

These developments obviously have major ramifications for Mr Lynch's continuing employment with the Commission. Mr Lynch will be afforded a further opportunity early next week to make representations in relation to this matter. However, it appears likely at this time that Mr Lynch's employment will be terminated.

Yours sincerely

A handwritten signature in black ink, appearing to read "John McKechnie". The signature is written in a cursive style with a large initial "J" and "M".

John McKechnie, QC  
**COMMISSIONER**





**PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

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Our ref: 622/16  
Your ref: 00605/2016/TC

21 April 2016

Mr J R McKechnie QC  
Commissioner

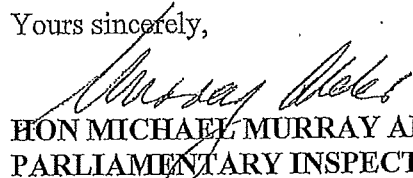
Dear Commissioner

**RE: MR MATTHEW LYNCH**

Thank you for your letter dated 15 April 2016.

I would be grateful if you provide me with your final decision about Mr Lynch's employment when it is made, along with the Commission's file, so that I may conclude my assessment of the matter under s 196(4) of the Act.

Yours sincerely,

  
**HON MICHAEL MURRAY AM QC  
PARLIAMENTARY INSPECTOR**



Your Ref: ~  
Our Ref: Personnel/PM:MS

**COPY**

13 May 2016

Mr Matthew Lynch (himself)  
c/o Corruption and Crime Commission

Dear Mr Lynch

**RESIGNATION**

I refer to your letter dated 10 May 2016, in response to my letter dated to you of 19 April 2016, in which you have asked me to accept your formal resignation from your position with the Commission.

I thank you for your written response and I acknowledge your genuine remorse for what has occurred and that you also take full responsibility for your actions. Your letter also provides me with additional information to consider before a final decision is made regarding your security clearance.

I accept your resignation which will take effect one month from the date of your letter on 10 June 2016. In accordance with Clause 21.3 of your contract of employment with the Commission you are not required to carry out your duties, nor attend the Commission premises during your notice period.

Prior to your formal separation with the Commission on 10 June 2016 the process of reviewing the status of your security clearance (revocation or otherwise) will be finalised. I will consider all of the additional information contained in your letter of 10 May 2016 and you will be informed, in writing, of my final determination in this matter.

Additionally I have granted you extended access to six sessions with the Commission's EAP provider, Davidson Trahaire Corpsych, to be used in the three months post separation, ending on 10 September 2016.

CORRUPTION AND CRIME COMMISSION

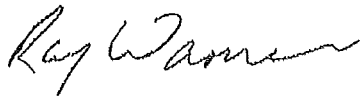
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Ms Fiona Jennings, A/Assistant Director People Services, and Mr Warren Cattell, Assistant Director of ISS, will also continue to be available as points of contact with the Commission between now and 10 June 2016.

Thank you for your contribution over the last 15 months since joining the Commission. I wish you well in your future professional endeavours.

Yours sincerely



Ray Warnes  
**CHIEF EXECUTIVE**



CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: 622/16  
Our Ref: 00605/2016/TC  
CMIS Auth No: -

24 May 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

Dear Parliamentary Inspector

**MATTHEW LYNCH**

I refer to Mr Alder's letter of 21 April 2016, signed under your hand.

Mr Lynch tendered his resignation in writing on 10 May 2016. His last day with the Commission will be 10 June 2016. A copy of our letter to Mr Lynch in this regard is attached, for information.

I note Mr Alder's reference to your "assessment of the matter under s 196(4) of the Act". I confirm this matter was notified to you under the protocol. The Commission considers this to be an industrial matter that falls within the scope of s 196(9) and therefore not a matter capable of review under s 196(4) of the Act.

Yours sincerely

Wendy Endebrook-Brown  
**DIRECTOR LEGAL SERVICES**

Code, s 85, 424  
(a) (253)  
Ack - letter, burden of proof

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**PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

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Our ref: 622/16  
Your ref: 00605/2016

2 June 2016

Ms Endebrock-Brown  
Director Legal Services  
Corruption and Crime Commission

Dear Ms Endebrock-Brown

**Matthew Lynch**

I refer to your letter dated 24 May 2016, to which you attached Mr Warnes' letter dated 13 May 2016, advising Mr Lynch that his resignation from the Commission was accepted with effect from 10 June 2016, noting, however, that Mr Warnes was still to make a final determination of the matter on behalf of the Commission.

In accepting the resignation Mr Warnes was no doubt acting pursuant to the contract of employment and under s 179(4) of the Act. In the circumstances, I must confess that I was rather surprised at the terms of the last paragraph of Mr Warnes' letter, but that is of no moment for present purposes.

May I remind you that the notification of the matter by the Commission, properly, was made in accordance with the protocol which is deliberately framed in such a way that it does not require any settled judgment at that time that the allegation made truly involves misconduct by a Commission officer, but the relevant provision of the Act, from my point of view, is s 196(4).

The allegation was, however, a failure to disclose 'pertinent information that he was under an obligation to report as part of his security vetting', presumably concerned with his alleged falsification of a report while he was with the AFP.

During the course of the Commission's investigation, in which I had made no intervention pursuant to s 196(5), in the course of my review of the Commission's processes, the Commissioner wrote his letter dated 15 April 2016, giving me an update on the course of the Commission's on-going investigation.

He then told me that the Commission had received certain information from the AFP which caused concern about answers given during his security vetting interview on 23 March 2015 (his employment having commenced on 9 February 2015). That

information, the Commissioner told me, was put to Mr Lynch on 15 April and he 'admitted the relevant answers were false.' Mr McKechnie QC said that the consequence was likely to be the termination of Mr Lynch's employment.

In the light of this background, I hope you may understand my surprise when, in your letter dated 24 May, you said that the Commission considers that this is purely an industrial matter, incapable of review by me under s 196(4).

I presume that by that observation you intended to explain why you failed to send me the Commission's file, as I asked by my letter dated 21 April 2016 should be done when the Commission had made a final decision upon Mr Lynch's employment.

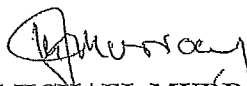
As to that, if that was your intention, I need to have clearly from the Commission whether you think this is a case of a type where my power under s 196(3)(b) will not run to require the Commission to provide access to your records. In any event, please now send me your file.

In essence, the question is the timing, rather than the effect, of the operation of s 196(9), in cases where that falls for consideration. My view about that is, perhaps, best expressed in a report I made in connection with allegations concerning officers in the Commission's ECU, dated 8 October 2015. It now appears most conveniently at Pp 37-39 of the JSC Report No 25 made in November 2015, to which is annexed also my explanatory letter dated 15 October 2015.

I see no reason to resile from the views I expressed at that time and the consequence is that, although I will not review any matter which may arise out of the industrial process by which Mr Lynch's employment with the Commission was terminated, your characterisation of the matter as 'industrial' has no effect upon my exercise of the function and duty to inquire into, including by reviewing the conduct of the Commission, the question whether Mr Lynch has been guilty of misconduct, serious or otherwise.

My particular concern in that regard, of course, is whether there is evidence, by Mr Lynch's confession or otherwise, of the commission of either or both of the offences defined in ss 85 and 424 of the *Criminal Code* or otherwise, or whether his conduct would at the least fall within s 4(d) of the Act. For that reason I ask that nothing be said to Mr Lynch about the provision of your file to me, or my interest in the matter, and, if you were minded to make any further inquiries beyond those which are purely industrial in character, you refrain from doing so without consulting me first.

Yours sincerely,



HON MICHAEL MURRAY AM QC  
PARLIAMENTARY INSPECTOR



CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: 622/16  
Our Ref: 00605/2016

8 June 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

Dear Parliamentary Inspector

**MATTHEW LYNCH**

Thank you for your letter dated 2 June 2016.

Before dealing with the particular matter, I wish to confirm categorically the Commission does not in any way dispute the functions and powers vested in you by the CCM Act to deal with and investigate matters of misconduct on the part of Commission officers. I regret that my letter gave you that impression.

The intention of my letter was to provide you with a further update and to advise you of the Commission's view of the matter, being an industrial matter falling within the scope of s 196(6) of the Act.

As at the date of my letter, I understood Mr Lynch to have provided false information to the Commission at a security vetting interview prior to commencing employment with the Commission. I now understand that to be incorrect. I apologise for the error and the concern it has caused.

I also wish to confirm the Commission had (and has) every intention of providing you with the Commission's file, as requested. The reason for not doing so to date is simply that the file remains active.

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The Commission is currently in the process of reviewing the status of Mr Lynch's security clearance, as referred to in Mr Warnes' letter dated 13 May 2016. Mr Lynch is to be advised of the outcome of that review on or before 10 June 2016. Unless you require otherwise, we will therefore provide the file to you as soon as possible thereafter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wendy Endebrock-Brown', with a long horizontal stroke extending to the right.

Wendy Endebrock-Brown  
**DIRECTOR LEGAL SERVICES**





**PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA**

---

Our ref: 622/16  
Your ref: 00605/2016

14 June 2016

Ms Endebrock-Brown  
Director Legal Services  
Corruption and Crime Commission

Dear Ms Endebrock-Brown

**MATTHEW LYNCH**

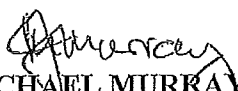
I acknowledge your letter dated 8 June 2016. I think we are back on track and there is a proper understanding of my view of the nature of my statutory functions and responsibilities in respect of a case such as this.

Today is my first day in the office following my absence in Sydney last week, so what you talk about in your letters may already have been concluded. I am content that you should send me your file and any other Commission documentation relevant to the possible misconduct described in my letter dated 2 June or otherwise, when your need for the file ends.

I am not sure that I understand what is involved in the review you are carrying out in relation to "the status" of Mr Lynch's security clearance with the Commission. Mr Warnes merely refers to "revocation or otherwise" and I am unclear as to what life such a clearance could possibly have upon the termination of Mr Lynch's employment.

However, you will no doubt make all that clear when you send me the relevant papers, at which time I would be pleased to have your views as to what has occurred, both within the terms of the contract of employment and generally concerning Mr Lynch's duties as an officer of the Commission, should you care to express them.

Yours sincerely,

  
**HON MICHAEL MURRAY AM QC  
PARLIAMENTARY INSPECTOR**



CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: 622/16  
Our Ref: 00605/2016/TC  
CMIS Auth No: -

19 July 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

*Michael*  
Dear Parliamentary Inspector

**MR MATTHEW LYNCH**

Thank you for your letter of 14 June 2016.

I will write to you shortly with my views generally on the matter.

In the meantime, the Commission's file is enclosed.

Yours sincerely

John McKechnie, QC  
**COMMISSIONER**

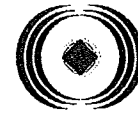
*Habel*  
*Jan*  
*26/7*

Encl.

CORRUPTION AND CRIME COMMISSION

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CORRUPTION  
AND CRIME  
COMMISSION

Your Ref: 622/16  
Our Ref: 00605/2016/TC

26 July 2016

Hon. M J Murray, AM, QC  
Parliamentary Inspector of the  
Corruption and Crime Commission  
Level 3, BGC Centre  
28 The Esplanade  
PERTH WA 6000

Dear <sup>Michael</sup> Parliamentary Inspector

**MR MATTHEW LYNCH**

I refer to my letter to you of 13 July 2016 and to your letter to Ms Endebrock-Brown dated 2 June 2016.

Upon assessing the matter, it is my view that Mr Lynch has not engaged in serious misconduct as defined in the *Corruption, Crime and Misconduct Act 2003*, s 4(a), (b) or (c). Nor do I regard his conduct to amount to a commission of the offences as set out in ss 85 and 424 of the *Criminal Code*. Relevantly, I note that s 424 requires an "intent to defraud". The authorities have established that the character of this intent must be to inflict economic loss or deprive another of his or her property or the opportunity to protect his or her interests in the pecuniary or proprietary sense. That element is not present in this case.

I do, however, consider Mr Lynch's actions to be dishonest and sufficiently serious to undermine the ability of the Commission to place trust and faith in him. Had Mr Lynch not submitted his resignation and the security clearance review process been finalised at an earlier point in time, it is highly likely that his employment with the Commission would have been terminated.

It is a condition of eligibility for employment for an employee to hold and maintain a current and approved security clearance. Clause 7.2 of the Contract of Employment provides that in the event the Commission determines that the Employee is not eligible for employment by the Commission, the employment may be terminated by the Commission without notice.

Mr Lynch had been under management from a welfare perspective as a result of a workplace accident which occurred prior to the receipt of these allegations. Understandably, he was further distraught upon being presented with the

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allegations, immediately recognising the potential that his security clearance was at risk of being cancelled and his employment with the Commission terminated.

As you will have observed from the file, the Commission has endeavoured to provide support wherever possible in the form of professional counselling. In addition, Mr Warren Cattell, Acting Assistant Director Investigation Surveillance Services, maintained regular contact and general wellbeing checks while the Commission conducted enquiries into this matter. Further, upon Mr Lynch's request, the Commission considered it appropriate to grant him access to the Employee Assistance Program for three months post-separation.

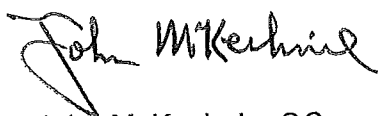
In regards to your query about the life of a security clearance, ordinarily, a Commission officer's clearance would become 'suspended' upon separating from the Commission. Upon request, the status of that clearance is capable of being transferred to another sponsoring agency.

The Commission has a responsibility under the Australian Government Protective Security Policy Framework to undertake 'reviews for cause' of all clearances where concerns about a person's suitability to hold a clearance are identified. There were three possible outcomes in Mr Lynch's case: (1) cancellation; (2) maintenance of clearance with restrictions; and (3) retention of full clearance.

On 10 June 2016, Mr Lynch was given a letter from the Chief Executive advising him that his conduct had given the Commission cause for concern regarding his ongoing trustworthiness and honesty and that, as a consequence, it had been decided to cancel his security clearance. The effective date of cancellation was 9 June 2016.

As only the Parliamentary Inspector has jurisdiction over 'minor misconduct' by a Commission officer, I now leave this matter with you for your further consideration.

Yours sincerely



John McKechnie, QC  
**COMMISSIONER**

# ANNEXURE B



PARLIAMENTARY INSPECTOR  
OF THE CORRUPTION AND CRIME COMMISSION  
OF WESTERN AUSTRALIA

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Our ref: 622/16

6 October 2016

**PRIVATE & CONFIDENTIAL**

Mr Joseph McGrath SC  
Director of Public Prosecutions for Western Australia

DELIVERED BY HAND

Dear <sup>Joe</sup>Director

**CORRUPTION AND CRIME COMMISSION – MR MATTHEW LYNCH**

I enclose an incomplete draft of a report which will ultimately form my report to the Parliament, preferably via the Joint Standing Committee, in relation to this case. The available evidence, including the terms of the explanation for his conduct given by Mr Lynch, are described in Parts 1-3 of the Draft.

The Draft is incomplete because, as at present advised, and without having made a final decision on the matter, it is likely that I will ultimately, formally, remove the matter to me under s 196(5) of the Act and substitute for the Commission's determination that Mr Lynch was not guilty of serious misconduct, my determination that he did commit an act of serious misconduct within the meaning of s 4(a) of the Act.

It is also incomplete because, for the reason that Mr Lynch has not been convicted of an offence of the kind described in s 4(c) of the Act, it cannot presently be said that he has committed an act of serious misconduct within the meaning of that provision.

Hence this letter, which is written to you pursuant to s 196(3)(f) and (g), to ask that you consider the prosecution of Mr Lynch upon the available evidence for the offence described in s 85(c), or alternatively that described in s 424(c), of the *Criminal Code*. Mr Murray Alder, my assistant and legal officer, will be available as the instructor for your authorised officer and to assist with information in respect of the service of the prosecution notice and otherwise as required.

I should add that I have deliberately not informed Mr Lynch of this process in case any further investigation which may involve him may be thought to be necessary. He has, of course had an opportunity to say what he wished to advance by way of justification for his conduct.

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I understand, of course, that you will need to make a decision upon the public interest test particularly set out in [23] – [32] of your Statement of Prosecution Policy and Guidelines. I do not wish to make a submission to you about that, except to refer (with my apology for doing so) to [32(b)]. If you needed further information as to Mr Lynch's personal circumstances in connection with this question, Mr Alder could assist.

If you do decide that, in the public interest, Mr Lynch should not be prosecuted despite the existence of a prima facie case, or if you decide that no case exists, for legal or other reasons, I would be obliged if you would set out your reasons in writing so that I may refer to them in my final report, and again, I apologise for quite unnecessarily raising the need for this with you.

Yours sincerely,

*Michael Murray*  
HON MICHAEL MURRAY AM QC  
PARLIAMENTARY INSPECTOR



DIRECTOR OF PUBLIC PROSECUTIONS  
for WESTERN AUSTRALIA

Level 1, 26 St Georges Terrace, PERTH WA 6000

**Office of the Director**

Your Ref: 622/16  
Our Ref: JMG:RR:mf  
DPP Related file: ADM2016/184  
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Parliamentary Inspector  
Corruption and Crime Commission of Western Australia  
PO Box 5817  
PERTH WA 6831

Dear Mr Murray

**Corruption & Crime Commission – Mr Matthew Lynch**

I refer to your letter dated 6 October 2016.

I have been provided with a draft report comprising eleven pages with annexures being your review of the Corruption and Crime Commission's investigation of the conduct of Mr Matthew Lynch. I am asked to review the draft report and consider the commencement of a prosecution against Mr Matthew Lynch for an offence pursuant to either section 85(c) or 424(c) of the *Criminal Code*.

Based upon the available information, I have concluded that I am not able to consider the commencement of a prosecution against Mr Lynch. I consider myself obliged to provide you with explanation why I have formed this conclusion. Two factors have been, in particular, most important.

The first factor is the unavailability of evidentiary or confessional material for assessment. Although I have the benefit of your opinion about the existence of a case, based upon information gathered during the course of an investigation by Mr Lynch's employing authority, I trust that you will appreciate that the exercise of the function of my Office, pursuant to section 11 of the *Director of Public Prosecutions Act 1991*, is an altogether separate function to that of your Office, under section 195 of the *Corruption, Crime and Misconduct Act 2003*.

My view is that it would not be appropriate for me to consider the commencement of a prosecution of an offence without the opportunity to assess the confessional and evidentiary material obtained by an appropriately placed investigative organisation.

The second factor is the absence of an identified investigative organisation. I consider that it is essential that the organisation responsible for the



investigation of this matter is identified so that it is clear who will perform the task of providing the ODPP with the available confessional and evidentiary material which is necessary to determine whether a prosecution can and should be commenced and, who will perform the responsibility for attending to any investigative requisitions which might be necessary for either the assessment or preparation of a prosecution.

Further, in the event it was considered appropriate to commence a prosecution, the identity of the investigative organisation will be important so it is clear who will be responsible for commencing that prosecution, by the signing and then the lodgement of a prosecution notice in the Magistrates Court, and attending to the disclosure obligations which follow in accordance with Part 3 of the *Criminal Procedure Act 2004*.

Given the operation of the *Criminal Procedure Act 2004* I do not consider that it is appropriate for my Office to commence this proposed prosecution in Magistrates Court. To do so would involve my Office assuming responsibility for compliance with disclosure obligations in Part 3 of that Act. That obligation must properly remain with the organisation or person who investigates the offence. The only other course available for me to commence a prosecution would be pursuant to section 95(8) of the *Criminal Procedure Act 2004*. That procedure would not be appropriate in this case.

In the absence of any confessional or evidentiary material and without knowing the identity of the investigative organisation which is responsible for providing the confessional and evidentiary material, attending to any additional investigative requisitions, commencing a prosecution in the Magistrates Court jurisdiction and then complying with the disclosure obligations in accordance with Part 3 of the *Criminal Procedure Act 2004*, I am not in a position to consider whether a prosecution can and should be commenced in this case

Yours sincerely



Joseph McGrath SC  
DIRECTOR OF PUBLIC PROSECUTIONS

7 November 2016