

**AN INADEQUATE INVESTIGATION OF  
ALLEGED CORRUPTION**

**REPORT ON THE OPERATION OF THE  
*CORRUPTION, CRIME AND MISCONDUCT ACT 2003***

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

29 May 2025

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## EXECUTIVE SUMMARY

1. This report is made pursuant to my functions in sections 195(1)(aa) and 195(1)(c) of the *Corruption, Crime and Misconduct Act 2003* (WA) (CCM Act) to audit the operation of the Act and to assess the effectiveness and appropriateness of the procedures of the Corruption and Crime Commission (Commission).
2. The report's purpose is to inform the Parliament once again of an issue that can arise in the operation of Part 3 of the CCM Act, which contains the Commission's serious misconduct function.
3. It is often not well understood that the Commission is not the only entity that deals with corruption or serious misconduct in the public sector. The provisions in Part 3 provide that, after it has assessed an allegation<sup>1</sup> and formed an opinion as to its merits,<sup>2</sup> the Commission may decide to take no further action, investigate the allegation (alone or in cooperation with another agency or authority) or refer it to an agency or authority for action.<sup>3</sup>
4. In particular, this report focuses on the operation of section 33(1)(c) of the CCM Act, which enables the Commission to refer an allegation to an external body. In these circumstances the allegation will ordinarily be sent to the government department which employs the relevant public officer/s.
5. The CCM Act provides that the department must prepare a detailed report of the actions it has taken,<sup>4</sup> and the Commission takes on a monitoring role and can review the department's handling of the matter.<sup>5</sup> These mechanisms only work if government departments take these referrals, and their obligations under the CCM Act, seriously. Unfortunately, this is not always the case.
6. In my time as Parliamentary Inspector, I have been called upon to review the Commission's procedures in respect of numerous allegations which have been referred to a department for action, and the operation of these CCM Act provisions have been a longstanding concern for me.
7. In my first Annual Report, I outlined a case in which a department had given the Commission a 'report' consisting of four bullet points.<sup>6</sup> Obviously, that was entirely unacceptable insofar as the document purported to be a report on actions taken in response to an allegation of corruption. In successive Annual Reports, I referred to the extraordinary delay of some departments in resolving allegations referred to them,<sup>7</sup> the reaching of conclusions which did not appear open on the

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<sup>1</sup> Section 32(1), CCM Act.

<sup>2</sup> Section 22(1), CCM Act.

<sup>3</sup> Section 33(1)(d), (a), (b) and (c), CCM Act.

<sup>4</sup> Section 40(1), CCM Act.

<sup>5</sup> Section 41(1), CCM Act.

<sup>6</sup> Parliamentary Inspector of the Corruption and Crime Commission, 2020-21 Annual Report, pp. 7-8.

<sup>7</sup> Parliamentary Inspector of the Corruption and Crime Commission, 2021-22 Annual Report, pp. 7-9.

evidence,<sup>8</sup> and departments' lack of communication with complainants as to the outcome of an investigation.<sup>9</sup>

8. I am also sometimes at odds with the Commission as to whether the actions taken by a department could reasonably be considered sufficient. On those occasions, I have pushed back on what appears to me to be the acceptance of flawed and inconclusive investigations.
9. The present report relates to an allegation that a public officer had acted corruptly to benefit another person. The Commission referred this allegation back to the relevant department for action. However, this serious allegation was simply never investigated.
10. Part of my remit under the CCM Act is to oversee and scrutinise the Commission, and I am only empowered to form an opinion of misconduct in relation to its officers. The present report is not, and should not be taken as, a finding of serious misconduct on the part of any public officer. As neither of the public officers referred to in this report have been the subject of any findings of serious misconduct, their anonymity has been preserved in the interests of fairness.
11. However, I have decided to use this example as a case study to demonstrate the way in which the operation of the CCM Act is frustrated when the Commission refers an allegation to a department which fails to investigate it.
12. Naturally, all individuals and organisations mentioned were provided with a draft copy of this report and given the opportunity to make representations to me on its contents.<sup>10</sup> I have had regard to the submissions I received and, where appropriate, these are reflected here.

## **ALLEGATION OF SERIOUS MISCONDUCT**

13. On 3 July 2023, the Department of Justice (department) received an anonymous report and notified the Commission.<sup>11</sup> The report related to a very senior public servant on a regional placement, whom I shall refer to as A. It was alleged that A had appointed a seventeen-year-old family member and recent high school graduate, whom I will refer to as B, to an administrative position without declaring a conflict of interest.
14. The Commission formed a reasonable suspicion of serious misconduct by A, in that she appeared to have (in its words) 'acted corruptly to benefit [B]'. The Commission referred this allegation to the department for action based on the department's advice that it had already commenced an investigation of its own.
15. The department's investigation then uncovered an additional allegation of corruption. This was that A had allocated B a Government Regional Officer

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<sup>8</sup> Parliamentary Inspector of the Corruption and Crime Commission, 2022-23 Annual Report, pp. 9-10.

<sup>9</sup> Parliamentary Inspector of the Corruption and Crime Commission, 2022-23 Annual Report, p. 14.

<sup>10</sup> Section 200, CCM Act.

<sup>11</sup> Section 28, CCM Act.

Housing (GROH) property of a kind that was ordinarily reserved for families, as it had three bedrooms. There was a waiting list for such housing, which B appeared to have ‘skipped’.

16. Despite discovering behaviour that could constitute serious misconduct, namely the use of a public officer’s position to confer a benefit on another person,<sup>12</sup> the department elected to treat this merely as a disciplinary matter.<sup>13</sup> Moreover, it concluded its disciplinary action prematurely without making any finding of a breach on A’s part.
17. Instead of dealing with and resolving the situation, the department issued A with an improvement notice for having failed to declare a conflict of interest. Astonishingly, the improvement notice made no reference at all to the allegation of corruption that the Commission had referred to the department.
18. The Commission reviewed the actions taken by the department<sup>14</sup> and prepared a closure report, which it provided to the department, the Public Sector Commission, and me. The closure report observed that the department’s ‘investigative actions were limited and the scope narrow’, and it had failed to provide a detailed report of the actions it had taken, as required by the CCM Act.<sup>15</sup>
19. The Commission also observed that the circumstances in which B had been allocated the GROH property did ‘not seem to have been fully considered’. In truth, as discussed later in this report, the allocation of the property was not considered by the department at all.
20. The housing issue was of particular concern to me, as it was not clear whether any action had been taken to return the house back to the waiting list or whether B still occupied it. Although this might be seen by some as a minor affair in the context of overall government spending, bias in the allocation of resources is apt to greatly reduce confidence in the public sector, as well as employee morale within it.
21. Importantly, the department (and the Commission) had become aware of A’s actions from an anonymous report by another public officer. It seemed to me that if, nearly two years after making their report, this individual saw that B continued to reside in a three-bedroom house ordinarily reserved for families, he or she may well wonder why they had bothered to report it. I requested access to the Commission’s file in order to assess the effectiveness and appropriateness of its procedures.<sup>16</sup>

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<sup>12</sup> Sections 3 and 4(b), CCM Act provide that a public officer engages in serious misconduct if they corruptly take advantage of their office or employment as a public officer to obtain a benefit for themselves or for another person or to cause a detriment to any person.

<sup>13</sup> See section 81(1)(a) of the *Public Sector Management Act 1994* (WA).

<sup>14</sup> Section 41(1), CCM Act.

<sup>15</sup> Section 40(1), CCM Act.

<sup>16</sup> Section 195(1)(c), CCM Act.

## INVESTIGATION BY THE DEPARTMENT

22. The file demonstrated that the department's actions were limited, for the most part, to consideration of its internal records and databases, which established that B had initially been appointed for a three-month period.<sup>17</sup> This temporary employment was extended on two occasions via additional fixed-term contracts before B was subsequently employed on a permanent basis.
23. Beyond these basic facts, little seems to have come to light about the circumstances of B's employment at the department. No formal interview was conducted with either A or B. From the materials available, it appeared that the first time A was informed of the disciplinary action was after the department's investigation had been discontinued.
24. Most damningly, whether through inexperience, incompetence or obtuseness, the department never addressed the allegation that A had acted corruptly. Instead, it focused on her alleged failure to make conflict of interest declarations on three separate occasions.
25. The first two of these involved A's actions in signing internal memoranda requesting fixed term contracts for B without declaring a conflict. The department did not ask whether A had deliberately sought to conceal her relationship with B or whether her failure to declare it had been merely an oversight, so that point is unclear. For my part, however, it seems unlikely that A, as an officer with managerial responsibilities, could have been unaware of her obligation to declare and manage conflicts of interest.
26. The third allegation, and arguably the most serious, was that on two separate dates A contacted the department's GROH Officer, identified herself by her senior position within the department and requested the transfer of a 3-bedroom property to B without acknowledging their relationship or her conflict of interest.
27. The department sustained all of these allegations regarding A's failure to declare a conflict of interest. However, it was difficult to understand why the department's conclusion was confined to that sole issue. This was particularly the case as regards the matter of the housing allocation.
28. The department's own documentation acknowledged that three-bedroom houses are usually designated for families, with single individuals typically being allocated apartments or small units; that B had bypassed the waiting list for GROH properties; and that she was now also receiving an ongoing financial benefit, as the house is subsidised by the department at \$3630 per month. In other words, without actually saying so, the department found that A had thereby conferred a material benefit on B.

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<sup>17</sup> As this appointment was on a short-term basis to fill a vacant position, a full merit-based selection process was not required.

29. As noted earlier, I am unable to form an opinion of serious misconduct about any person other than an officer of the Commission and this report should not be taken as an expression of such an opinion. Nevertheless, given the nature of the above findings, I am surprised that the allegation that A had acted corruptly to benefit B was never investigated or even formally put to her. For my part, it is not at all clear why that central allegation was never addressed.

## **ASSESSMENT OF THE COMMISSION'S PROCEDURES**

30. I was satisfied that overall, the Commission's procedures had been appropriate. Its officers drew the department's attention to flaws in its investigation on multiple occasions and conducted a detailed review of the actions taken, and the closure report provided specific and critical feedback. In response, the department assured the Commission that it was improving its policies and procedures.<sup>18</sup>
31. Although that is a positive step, the department's persistent failure to address the problems to which the Commission alerted it suggested an insufficient regard for its obligations under the CCM Act and for the Commission's role. In the circumstances, the Commission's decision to simply close its file seemed an inappropriate way of dealing with the matter.
32. I wrote to the Commission and noted that although it is not within the Commission's power to substitute its own finding for a department's, it has the power to make a recommendation regarding the taking of disciplinary or other action.<sup>19</sup> I suggested that in this instance, such 'other action' could include the return of the house to the waiting list for GROH properties.
33. In addition, the CCM Act enables the Commission to make a fresh decision regarding an allegation, even where it has already acted upon a previous decision.<sup>20</sup> Accordingly, it was still open to the Commission to carry out its own investigation, and I recommended that it do so.
34. Unfortunately, the Commission did not take up these suggestions. The Commissioner advised that, having weighed current investigative workloads, resourcing constraints and the strategic prioritisation of serious misconduct allegations, he had decided not to investigate this allegation. The Commissioner also noted that the principal responsibility for serious misconduct is with the Director General of the department, and that this included any decision about undertaking a more thorough investigation.
35. I accept that the Commission's resources are not limitless, and it is generally entitled to determine its own priorities. It is also important to remember that the Commission's statutory remit is not to punish individuals, but to reduce serious misconduct within the public sector. As such, it works with agencies to increase

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<sup>18</sup> The closure report indicated that the department was undertaking a review of its investigation procedures, and the department advised that management engagement and information sessions would be conducted in the regions regarding recruitment practices and the allocation of GROH properties.

<sup>19</sup> Section 43(1), CCM Act.

<sup>20</sup> Section 39(2), CCM Act.

their capacity to prevent and detect serious misconduct and carry out their own investigations.<sup>21</sup>

36. Nevertheless, the department's abject failure to investigate the allegation referred to it still troubled me. Although the matter remained closed from the Commission's perspective, I elected to continue pursuing it as part of my function of auditing the operation of the CCM Act.<sup>22</sup>

## **CORRESPONDENCE WITH THE DEPARTMENT**

37. I wrote to the department's Director General and recommended<sup>23</sup> that the department properly investigate the allegation that A had corruptly used her position to benefit B. I also recommended that appropriate remedial action be taken including, if necessary, the return of the house to the pool available for departmental employees.

38. The Director General conceded that 'the investigation wasn't conducted as well as it might have been', but advised that the department was unable to reopen its investigation or conduct further disciplinary proceedings as a result of the Public Sector Commissioner's Instruction 3, Discipline – General (Instruction), which provides:

An employing authority may not recommence a discontinued discipline process unless substantial and material fresh evidence or information becomes available that in the employing authority's view warrants fresh proceedings being commenced.

39. Procedural fairness is important in workplace investigations, and public officers ought not be subjected to multiple disciplinary processes without proper justification. Notwithstanding this, it seems unlikely to me that the Public Sector Commissioner intended this Instruction to apply in circumstances where an allegation of serious misconduct referred to an agency had not been investigated *at all*.

40. I wrote back to the Director General and explained that from my perspective the department's investigation had not simply been substandard or poorly conducted, but was wholly inadequate because the specific allegation referred by the Commission had not been addressed. I put forward my view that the department possessed substantial and material evidence or information that was never acted on during the course of its investigation and, as such, must be regarded as fresh evidence.

41. The Director General advised that although the issues raised by me had been carefully considered the department remained of the view that it did not have substantial and material fresh evidence or information that was not available at the time of investigation and so it was not possible to recommence a disciplinary

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<sup>21</sup> See sections 7B(6) and 18(4), CCM Act.

<sup>22</sup> Section 195(1)(aa), CCM Act.

<sup>23</sup> Section 195(1)(d), CCM Act.



process. As we could not agree on the correct interpretation of the Instruction, we were at an impasse.

42. The Director General also advised that owing to the work being carried out to improve the department's disciplinary processes, she was 'confident that if a similar situation were to arise in the future, the investigation would be handled in a much more satisfactory manner'. That is reassuring, of course, but it does not address the current problem of A's behaviour not being properly investigated and B remaining in accommodation subsidised by the taxpayer which was intended for families on the housing waiting list.

## **CONCLUSION**

43. Having assessed the Commission's procedures, and having unsuccessfully requested that it take back control of this allegation from the department, and having made a recommendation to the department that it initiate a proper investigation, I have reached the limit of my role under the CCM Act. All that remains for me to do is to make this report to the Parliament.
44. In short, the intent of the CCM Act was that when the Commission receives a report of serious misconduct and determines that it has some evidentiary basis, it may refer the allegation to an appropriate agency in the expectation that it will be fully and competently addressed. The case discussed here is just one example of the ease with which this statutory scheme can be undermined.
45. In the circumstances, the Parliament may wish to consider amendments to Part 3 of the CCM Act to strengthen the provisions relating to the referral and monitoring of allegations of serious misconduct.
46. Alternatively, as there is a limit to what can be achieved by legislative means alone, it may be considered appropriate to circulate a memorandum to all heads of departments reminding them of their obligations under the CCM Act and the importance of ensuring that allegations of serious misconduct are competently and transparently dealt with.
47. These matters are, of course, for the Parliament to determine.



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