



**Joint Standing Committee on the Corruption and Crime
Commission**

Acting Parliamentary Inspector's report on a complaint by the Commissioner of Police against the CCC

Report No. 3
June 2013

Parliament of Western Australia

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on the Corruption and Crime Commission**

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report on a complaint by the
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the CCC**

Report No. 3

Presented by

Hon Mr Nick Goiran, MLC and Mr Paul Papalia CSC, MLA

Laid on the Table of the Legislative Assembly and the Legislative Council
on 27 June 2013

Chairman's Foreword

Acting Parliamentary Inspector Craig Colvin SC has provided to the Committee a report into a complaint made to him by the Commissioner of Police, Dr Karl O'Callaghan APM, in regard to the way in which the Corruption and Crime Commission (CCC) had investigated a complaint about his use of his WA Police credit card. Mr Colvin reported that his investigation:

- a) has not disclosed evidence of misconduct on the part of the CCC or any officer of the CCC; and
- b) establishes that the procedures adopted by the CCC in carrying out its functions under the Act in relation to the investigation of the use by Dr O'Callaghan of his Government purchasing card were appropriate.

This report is the end of a chain of events that began in October 2011 when two complaints were made to the CCC about the conduct of the Police Commissioner. A complaint of misconduct against a serving Police Commissioner is a very unusual event for any Australian jurisdiction. The CCC found that Dr O'Callaghan had not committed any misconduct. The Government gave Dr O'Callaghan a three-year contract extension less than a week after the Premier tabled the CCC report in Parliament in August 2012.

The Acting Parliamentary Inspector reported that he was satisfied that the CCC's investigation of the complaints against the Police Commissioner was comprehensive and "had not disclosed evidence of misconduct on the part of the CCC or any officer of the CCC".

The Committee made an assessment that Mr Colvin's report ought to be reported to Parliament to make it public, and to enable an informed discussion on its findings and recommendations. The Committee has conferred with Mr Colvin SC, Dr O'Callaghan and CCC Commissioner Mr Macknay QC, none of whom objected with the Committee's assessment.

In tabling this report, the Committee endorses the six recommendations about CCC processes made by the Acting Parliamentary Inspector because the CCC has informed the Committee that it "accepts and will pay appropriate regard to the Acting Parliamentary Inspector's recommendations."

The Committee has been able to table the report from the Acting Parliamentary Inspector in a timely fashion due to the assistance provided by Mr Craig Colvin SC, the Police Commissioner, Dr Karl O'Callaghan APM and the CCC Commissioner, Hon Roger Macknay QC. I thank them for their timely assistance.

In particular, I would like to acknowledge the work undertaken by Mr Colvin in what I consider to have been less than ideal circumstances. Mr Colvin is a very well-respected barrister in this State with a busy practice. When he was appointed as an Acting Parliamentary Inspector he would have been unaware that shortly thereafter he would in effect be taking on the role of Parliamentary Inspector. This was brought about by the unexpected retirement of the highly regarded Hon Chris Steytler QC. In my view it is regrettable that much time passed before Hon Michael Murray QC was appointed as Parliamentary Inspector. The intervening period unfairly, in my view, imposed on Mr Colvin, and the State is indebted to him in this respect.

I also would like to acknowledge the work on this report by my new Committee colleagues for the 39th Parliament: the Deputy Chairman, Mr Paul Papalia CSC MLA, the Member for Churchlands, Sean L'Estrange MLA, and the member for the South West, Hon Adele Farina MLC. Finally I wish to thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' with a horizontal line extending to the right.

HON NICK GOIRAN, MLC
CHAIRMAN

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Findings

Finding 1

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The investigation by the Acting Parliamentary Inspector, Craig Colvin SC, did not disclose evidence of misconduct on the part of the Corruption and Crime Commission (CCC) or any officer of the CCC.

Finding 2

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Mr Craig Colvin SC, also found that the procedures adopted by the Corruption and Crime Commission in carrying out its functions under the *Corruption and Crime Commission Act 2003* in relation to the investigation of the use by Dr O'Callaghan of his Government purchasing card were appropriate.

Recommendation 1

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The Corruption and Crime Commission (CCC) undertake a pro-active role in informing the public that the investigation process of the CCC is part of a process of accountability and scrutiny to gather evidence to deal with a complaint, and that no adverse conclusion concerning any individual should be drawn from the fact that an investigation has been commenced.

Recommendation 2

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The Corruption and Crime Commission, when making any public announcement concerning the commencement of an investigation, take appropriate steps to inform the public as to the nature of the investigation process to avoid misconceptions arising that may unfairly damage the reputations of those involved.

Recommendation 3

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The Corruption and Crime Commission add to its education responsibilities the need to explain the nature of its role in undertaking investigations.

Recommendation 4

Page 8

In cases where the Corruption and Crime Commission (CCC) is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed by one work colleague to another, the CCC consider, in appropriate cases, exercising its power under section 99 of the *Corruption and Crime Commission Act 2003* to provide in the notation for those disclosures to be excepted from the non-disclosure obligation that would otherwise apply.

Recommendation 5

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In cases where the Corruption and Crime Commission (CCC) is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed to the public officer who is the subject of the investigation, then the CCC should inform the officer of the fact of the investigation when it is commenced, or as soon as the CCC is satisfied that such disclosure can occur without compromising the operational integrity of the investigation.

Recommendation 6

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The Corruption and Crime Commission (CCC) prepare some standard information for publication on its web site explaining its role in undertaking investigations to avoid misconceptions of the kind the Acting Parliamentary Inspector described in his report of 5 June 2013.

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The Tabling of this Report

“the procedures adopted by the CCC in carrying out its functions under the Act in relation to the investigation of the use by Dr O’Callaghan of his Government purchasing card were appropriate”

Introduction

Acting Parliamentary Inspector Craig Colvin SC provided to the Committee on 5 June 2013 his report into a complaint made to him by the Commissioner of Police, Dr Karl O’Callaghan APM, in regard to the way in which the Corruption and Crime Commission (CCC) had investigated a complaint about his use of his WA Police credit card.

Mr Colvin’s report is attached in Appendix 1.

Summary of Report

The complaint to the Acting Parliamentary Inspector related to the effect upon the reputation of the Police Commissioner because of:

- the way the investigation was undertaken;
- the way the investigation became public;
- the process followed by the CCC, particularly in relation to the preparation of its draft report; and
- the time the CCC took to finalised the report.¹

In summary, Mr Colvin SC said that “I am satisfied that the CCC’s investigation was comprehensive.” He reported that his investigation:

- a) has not disclosed evidence of misconduct on the part of the CCC or any officer of the CCC; and*
- b) establishes that the procedures adopted by the CCC in carrying out its functions under the Act in relation to the investigation*

¹ Acting Parliamentary Inspector Craig Colvin SC, *Report into the Conduct of an Investigation by the Corruption and Crime Commission into Alleged Public Sector Misconduct by the Commissioner of Police Relating to the Use of a Government Purchasing Card*, Perth, 5 June 2013, p1.

of the use by Dr O'Callaghan of his Government purchasing card were appropriate.²

Finally, Mr Colvin SC made six recommendations aimed at improving the CCC processes:

1. *the CCC undertake a pro-active role in informing the public that the investigation process of the CCC is part of a process of accountability and scrutiny to gather evidence to deal with a complaint and that no adverse conclusion concerning any individual should be drawn from the fact that an investigation has been commenced;*
2. *the CCC, when making any public announcement concerning the commencement of an investigation, take appropriate steps to inform the public as to the nature of the investigation process to avoid misconceptions arising that may unfairly damage the reputations of those involved;*
3. *the CCC add to its education responsibilities the need to explain the nature of its role in undertaking investigations;*
4. *in cases where the CCC is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed by one work colleague to another, the CCC give consideration, in appropriate cases, to exercising its power under s99 of the Act to provide in the notation for those disclosures to be excepted from the non-disclosure obligation that would otherwise apply;*
5. *in cases where the CCC is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed to the public officer who is the subject of the investigation, then the CCC should inform the officer of the fact of the investigation when it is commenced or as soon as the CCC is satisfied that such disclosure can occur without compromising the operational integrity of the investigation; and*

² Acting Parliamentary Inspector Craig Colvin SC, *Report into the Conduct of an Investigation by the Corruption and Crime Commission into Alleged Public Sector Misconduct by the Commissioner of Police Relating to the Use of a Government Purchasing Card*, Perth, 5 June 2013, p18.

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6. *the CCC consider preparing some standard information for publication on its web-site explaining the role of the CCC in undertaking investigations to avoid misconceptions of the kind I have explained in this report from arising.*³

Timeline leading to this report

This report is the end of a chain of events that began in October 2011 when two complaints were made to the CCC about the conduct of the Police Commissioner. The following timeline outlines the dates and events that led to this report being tabled in the Western Australian Parliament.

October 2011- A complaint is made to the CCC about the Police Commissioner pursuant to s25 of the CCC Act

7 November 2012- CCC Acting Commissioner Herron authorises a preliminary investigation of the complaint

13 March 2012- CCC media release acknowledging misconduct inquiry⁴

14 March 2012- Mr Ron Davies QC complains to the Parliamentary Inspector⁵ about the delays in the CCC investigations, on behalf of the Police Commissioner

5 April 2012- Commissioner Roger Macknay QC authorises the conduct of an investigation pursuant to s33(1)(a) of the CCC Act

23 April to 2 May 2012- CCC undertakes interviews and private examinations

15 June 2012- CCC media release announces no Police Commissioner misconduct over credit card use and another matter⁶

16 July 2012- CCC report on the Police Commissioner's credit card use provided to the Premier, Hon Colin Barnett MLA⁷

3 Ibid.

4 Corruption and Crime Commission, *CCC investigating allegations against Commissioner of Police*, 13 March 2012. Available at: www.ccc.wa.gov.au/Publications/MediaReleases/Pages/MediaRelease%2013March2012.aspx. Accessed on 19 June 2013.

5 Then Hon Christopher Steytler QC, who retired as Parliamentary Inspector in June 2012.

6 Corruption and Crime Commission, *Perth Hills Bushfires: No Opinion of Misconduct Against Commissioner of Police*, 15 June 2012. Available at: www.ccc.wa.gov.au/Publications/MediaReleases/Media%20Releases%202012/Bushfires%20February%202011.pdf. Accessed on 19 June 2013.

7 Corruption and Crime Commission, *Report on the Investigation of Alleged Public Sector Misconduct by the Commissioner of Police in Relation to Use of the Western Australian*

24 July 2012- Premier provides a copy of the report to the Public Sector Commissioner seeking his advice in terms of a new contract for the Police Commissioner⁸

27 July 2012- Police Commissioner complains to the Parliamentary Inspector about the CCC investigation⁹

8 August 2012- Premier makes a statement to the WA Parliament on the CCC report¹⁰ and tabled the CCC report

13 August 2012- Premier reappoints Police Commissioner for a further three years¹¹

5 June 2013- Mr Colvin SC provides his report to JSCCCC

27 June 2013- JSCCCC report tabled in Parliament

Joint Standing Committee process

In accordance with the usual procedures of the Committee, and at its first meeting following receipt of the report from the Acting Parliamentary Inspector, it made a preliminary assessment that it was a matter that ought to be reported to Parliament. Accordingly, it embarked on its usual process of consultation with the author of the report and those impacted by it. In this instance the Committee was especially minded to consult with the Police Commissioner given that:

- it was his complaint that resulted in the investigation that led to the creation of the report;
- the Acting Parliamentary Inspector found no misconduct on the part of the CCC or any of its officers; and

Government Purchasing Card or Any Other Entitlement, 16 July 2012. Available at: www.ccc.wa.gov.au/Publications/Reports/Published%20Reports%202012/Use%20of%20WAPOL%20Corporate%20Credit%20Card%20Report.pdf. Accessed on 19 June 2013.

8 Western Australian Parliament, *Tabled Paper 5100*, 8 August 2012, p1. Available at: [www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/3815100ab989bbbd430c112a48257a55000be669/\\$file/5100.pdf](http://www.parliament.wa.gov.au/publications/taledpapers.nsf/displaypaper/3815100ab989bbbd430c112a48257a55000be669/$file/5100.pdf). Accessed on 19 June 2013.

9 Mr Colvin SC was the only active Acting Parliamentary Inspector at this time due to Mr Steytler's retirement. The Government appointed Hon Michael Murray QC as Parliamentary Inspector on 9 January 2013.

10 Western Australian Parliament, *Commissioner of Police — Corruption and Crime Commission Report*, 8 August 2012, pp4595-4596. Available at: [www.parliament.wa.gov.au/Hansard/hansard.nsf/0/aa78fcf2607d84ff48257afb0028c9da/\\$FILE/A38%20S1%2020120808%20p4595e-4596a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/aa78fcf2607d84ff48257afb0028c9da/$FILE/A38%20S1%2020120808%20p4595e-4596a.pdf). Accessed on 19 June 2013.

11 Government of Western Australia, *Police Commissioner's Contract Renewed*, 13 August 2012, p1. Available at: www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=6267. Accessed on 19 June 2013.

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- the further publicity of this matter could be considered undesirable and unwarranted by the complainant.

The Police Commissioner wrote to the Committee on 17 June 2013 advising that he did not object to the tabling of the report.

In correspondence from the CCC Commissioner of the 17 and 19 June 2013 it was apparent that the CCC did not object to the tabling of the report. The first letter also detailed the CCC's position in respect to matters raised by the Acting Parliamentary Inspector regarding section 99 of the *Corruption and Crime Commission Act 2003*, and is included in Appendix 2.

At its next meeting on 19 June 2013, the Committee resolved to draft this report for tabling in Parliament at the earliest possibility.

Committee Comment

A complaint of misconduct against a serving Police Commissioner is a very unusual event for any Australian jurisdiction. The highest-profile inquiry was the Fitzgerald Royal Commission in Queensland, held between 1987–89.¹²

In this case, the State's main anti-corruption body, the Corruption and Crime Commission, found that:

*evidence available to the Commission does not support a finding, for reasons set out in this report, of misconduct as defined by sections 3 and 4 of the CCC Act by Dr O'Callaghan or any other public officer employed by WAPOL.*¹³

The subsequent inquiry by the Acting Parliamentary Inspector, spurred by a complaint from the Police Commissioner, found that "the procedures adopted by the CCC in

12 In August 2008, the Tasmanian Police Commissioner Johnston stood aside when charged with disclosing official secrets to the Premier (www.abc.net.au/worldtoday/content/2008/s2390849.htm). The Victorian Ombudsman inquired into allegations of corrupt conduct by Police Commissioner Overland in 2011-12 (www.ombudsman.vic.gov.au/resources/documents/allegations_of_improper_conduct_-_victoria_police.pdf).

13 Corruption and Crime Commission, *Report on the Investigation of Alleged Public Sector Misconduct by the Commissioner of Police in Relation to Use of the Western Australian Government Purchasing Card or Any Other Entitlement*, 16 July 2012. Available at: www.ccc.wa.gov.au/Publications/Reports/Published%20Reports%202012/Use%20of%20WAPOL%20Corporate%20Credit%20Card%20Report.pdf, p71. Accessed on 19 June 2013

carrying out its functions under the Act in relation to the investigation of the use by Dr O’Callaghan of his Government purchasing card were appropriate” .¹⁴

Finding 1

The investigation by the Acting Parliamentary Inspector, Craig Colvin SC, did not disclose evidence of misconduct on the part of the Corruption and Crime Commission (CCC) or any officer of the CCC.

Finding 2

Mr Craig Colvin SC, also found that the procedures adopted by the Corruption and Crime Commission in carrying out its functions under the *Corruption and Crime Commission Act 2003* in relation to the investigation of the use by Dr O’Callaghan of his Government purchasing card were appropriate.

In response to a submission by Dr O’Callaghan’s lawyer that the use of formal powers to obtain information was not an appropriate way of launching an investigation into the holder of an important high level statutory office such as the Commissioner of Police, the Acting Parliamentary Inspector said:

*In my view, the importance of the office held by the public officer being investigated was not a reason why the CCC should have made requests for information rather than using its formal powers to require information to be provided. If anything, the seniority of the office makes it more important to ensure that there is a proper and thorough investigation. Senior public officers must observe the highest standards in order to ensure that a proper example is provided to others within Government. The seniority of the officer involved is not a reason for withholding the use of formal powers.*¹⁵

In the 38th Parliament this Committee found in Finding 10 of Report 32 that “with the CCC, Western Australia has implemented a good police oversight model”¹⁶. The Committee’s view is that this episode gives further assurance to the Western Australian

14 Acting Parliamentary Inspector Craig Colvin SC, *Report into the Conduct of an Investigation by the Corruption and Crime Commission into Alleged Public Sector Misconduct by the Commissioner of Police Relating to the Use of a Government Purchasing Card*, Perth, 5 June 2013, p18.

15 Acting Parliamentary Inspector Craig Colvin SC, *Report into the Conduct of an Investigation by the Corruption and Crime Commission into Alleged Public Sector Misconduct by the Commissioner of Police Relating to the Use of a Government Purchasing Card*, Perth, 5 June 2013, p9.

16 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct*, Legislative Assembly, Parliament of Western Australia, Perth, 15 November 2012, piv.

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public that our current model of oversight of the WA Police is very good. In this instance, the Police Commissioner himself was robustly investigated by the CCC, and the CCC was in turn robustly investigated by the Parliamentary Inspector. In both instances no misconduct was found.

The Acting Parliamentary Inspector's recommendations

In tabling this report, the Committee endorses the six recommendations made by the Acting Parliamentary Inspector in his report because the CCC informed the Committee that it “accepts and will pay appropriate regard to the Acting Parliamentary Inspector's recommendations.”¹⁷

In these circumstances the Committee considered it to be unnecessary to further analyse and enquire into this matter. As such, the Committee resolved to formally endorse the recommendations made by the Acting Parliamentary Inspector so as to monitor their implementation during the 39th Parliament.

Recommendation 1

The Corruption and Crime Commission (CCC) undertake a pro-active role in informing the public that the investigation process of the CCC is part of a process of accountability and scrutiny to gather evidence to deal with a complaint, and that no adverse conclusion concerning any individual should be drawn from the fact that an investigation has been commenced.

Recommendation 2

The Corruption and Crime Commission, when making any public announcement concerning the commencement of an investigation, take appropriate steps to inform the public as to the nature of the investigation process to avoid misconceptions arising that may unfairly damage the reputations of those involved.

Recommendation 3

The Corruption and Crime Commission add to its education responsibilities the need to explain the nature of its role in undertaking investigations.

¹⁷ Hon Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 19 June 2013.

Recommendation 4

In cases where the Corruption and Crime Commission (CCC) is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed by one work colleague to another, the CCC consider, in appropriate cases, exercising its power under section 99 of the *Corruption and Crime Commission Act 2003* to provide in the notation for those disclosures to be excepted from the non-disclosure obligation that would otherwise apply.

Recommendation 5

In cases where the Corruption and Crime Commission (CCC) is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed to the public officer who is the subject of the investigation, then the CCC should inform the officer of the fact of the investigation when it is commenced, or as soon as the CCC is satisfied that such disclosure can occur without compromising the operational integrity of the investigation.

Recommendation 6

The Corruption and Crime Commission (CCC) prepare some standard information for publication on its web site explaining its role in undertaking investigations to avoid misconceptions of the kind the Acting Parliamentary Inspector described in his report of 5 June 2013.

Appendix One

Acting Parliamentary Inspector's report

REPORT INTO THE CONDUCT OF AN INVESTIGATION BY THE CORRUPTION AND CRIME COMMISSION INTO ALLEGED PUBLIC SECTOR MISCONDUCT BY THE COMMISSIONER OF POLICE RELATING TO THE USE OF A GOVERNMENT PURCHASING CARD

Section 199(1)(a) Corruption and Crime Commission Act 2003 (WA)
5 June 2013

Background

On 16 July 2012, the Corruption and Crime Commission (CCC) completed a confidential report on the investigation of alleged public sector misconduct by the Commissioner of Police, Dr Karl O'Callaghan. The report concerned the use by Dr O'Callaghan of his Government purchasing card. No finding of misconduct was made as a result of the investigation.

Although the investigation by the CCC had not been conducted in public, there had been press reports of the fact of the investigation. On 13 March 2012, after the press reports, the CCC released a media statement to the effect that the CCC was investigating the use by Dr O'Callaghan of his corporate credit card.

The confidential report was provided to the Premier on 16 July 2012, but not released to the public by the CCC. The Premier subsequently released the report to the public.

As a result of complaints raised with the Office of the Parliamentary Inspector, I have undertaken an audit of the operations of the Commission in relation to the investigation in the exercise of functions conferred by s195(1) of the *Corruption and Crime Commission Act 2003(WA)* ("the Act"). This is a report of the outcome of my audit.

Outline of the Report

In this case, concerns were raised with me as to the effect upon the reputation of Dr O'Callaghan of the way the investigation was undertaken, the way the investigation became known to the public, the process followed by the CCC, particularly in relation to the preparation of its draft report and the time taken until the report of the CCC was finalised.

Significantly, these concerns do not extend to the terms of the final report. They relate to the process by which the report was prepared and its effect upon Dr O'Callaghan.

Separate concerns have been raised by another party as to whether the final report dealt in an adequate manner with all matters relating to the use by Dr O'Callaghan of his Government purchasing card.

In the next section, I explain some misconceptions that can arise as to the role of the CCC in investigating and reporting on particular matters. Then, I summarise the main matters that were the subject of the investigation in this case. Next, I list the specific concerns that I have addressed in my audit and in this report. Finally, I report my findings as to each of those concerns.

I do not report on all the matters that have been raised with me by way of complaint. I have carefully considered all those matters. My responsibility is to audit the particular operation about which concerns have been raised, to evaluate those concerns and then to decide whether there are matters upon which I should prepare a report. The power to report is specified in s199 of the Act. Relevantly for present purposes, it is a power to report as to matters affecting the CCC, including any operational effectiveness and requirements of the CCC. This report is confined to those matters about which I think it is appropriate for there to be a report having regard to the public attention received by the investigation in this case and the possible relevance of some of my conclusions to future activities of the CCC.

Corruption, Crime and Misconduct

Having regard to the nature of the complaints raised with me, I begin by noting that the jurisdiction of the CCC is sometimes misunderstood in two ways.

First, the name of the CCC suggests that it is concerned only with corruption and crime. This can lead to the misconception that all investigations by the CCC concern possible corruption or crime, when that is not the case. The CCC also has a jurisdiction to investigate and report upon conduct by public officers that could constitute a disciplinary offence providing reasonable grounds for termination of a person's office or employment as a public service officer. In such cases, there may be no corruption or criminal conduct (described in the Act as serious misconduct). There may be no suggestion at all of corruption or crime, only an issue as to whether there has been misconduct that is serious enough that it could constitute reasonable grounds for termination of a person's office or employment.

Second, in undertaking its investigative role the CCC does not decide whether a public officer is guilty of a crime or corruption (in the case of serious misconduct) or whether disciplinary action should be taken against a public officer (in the case of other misconduct). These are matters for the courts or for the proper authorities. In such cases, the role of the CCC is to form opinions and make recommendations as to whether consideration should be given by the proper authorities to commencing a

prosecution or taking other action. At that stage, the CCC also has power to itself charge a person with an offence.

The CCC has considerable powers to investigate, but it does not have powers to adjudicate. It performs important prevention and education functions. It receives allegations of misconduct, including allegations of corruption or criminal activity. The CCC can monitor the way these allegations are dealt with by Government agencies. It can review the systems and processes used within Government agencies to ensure that public funds, powers and responsibilities are applied to proper purposes. It can undertake its own investigations and furnish reports. However, it does not conduct trials or make binding decisions.

Indeed, s23 of the Act makes clear that the CCC must not publish or report a finding or opinion that a particular person has committed a criminal offence or disciplinary offence. It can form an opinion about whether there has been misconduct, but any decision about whether there has been an offence is a matter for the courts or the appropriate disciplinary tribunal.

A misconception that can arise when the CCC commences an investigation is that the CCC has decided that there has been some impropriety, particularly on the part of those persons whose conduct is being scrutinised. There is a tendency to treat the investigation as if charges had been brought by the CCC against particular individuals only after all the evidence had been considered and a decision made that there was a proper basis to believe that certain individuals may be found to be guilty of corruption, crime or misconduct. The result is that the investigation by the CCC is seen to be a process that is like a trial when this is not the case.

When the CCC undertake an investigation it seeks to find out whether to recommend that some action should be taken, such as a prosecution or a disciplinary hearing or a change to existing practice or procedure. In this way, the CCC acts in a very different way to a criminal court or a disciplinary tribunal. Cases in a court or a tribunal can only be commenced if there has been a consideration of the evidence and a decision has been made by a prosecutor or other proper authority to commence the case. There must be evidence which, if accepted, may provide a proper basis for finding wrongdoing.

However, it is the nature of investigations by the CCC that they begin before all the evidence is available. Of course, sometimes, the CCC is provided with compelling evidence, or it collects that evidence in the course of its investigation. But in many cases, the investigation begins with a general allegation and subsequent inquiries by the CCC establish that there is no wrongdoing and therefore no reason to recommend that action be taken against those who have been investigated.

Therefore, it is very important to understand that the fact that an investigation has been commenced means no more than that information or a complaint has been received by the CCC that needs to be carefully considered. The investigation is undertaken so that relevant evidence can be obtained using the powers of the CCC. There needs to be a proper basis to commence the investigation, but the investigation is undertaken in order to gather the evidence. At the end of the investigation the CCC prepare a report as to whether further action should be taken. In many cases it is found that the available evidence does not support the concerns that gave rise to the complaint. A formal report may not be prepared or published.

The Importance of an Open Mind during the Investigation

It follows that the commencement by the CCC of an investigation of the conduct of a particular person provides no basis for concluding that there has been some wrongdoing on the part of those involved. It is important that everyone keeps an open mind. If this is not done then there is a risk of great injustice to the individuals involved. If an adverse conclusion is to be drawn from the fact that the CCC is investigating a particular matter, then reputations will be damaged without any proper basis. It is important that members of the public are made aware that the commencement of an investigation is to find out the facts. Until the facts are known, it would be unfair to jump to conclusions about the outcome of the investigation. Many innocent people are investigated. This is all part of a proper process of scrutiny and accountability for public officers.

The CCC has extensive powers to gather the necessary evidence. By using those powers and finding out what has happened it can do two things. First, it can expose crime, corruption and misconduct by public officers. Second, and just as importantly, when it finds that the evidence does not support the allegations made, it provides an independent assurance to the public that there has been no impropriety. Both aspects support the confidence that can be placed in those who serve the public interest through various Government roles.

Further, it is to be expected that the CCC will investigate matters before reaching any conclusion. Where the CCC receives a complaint or information that suggests there may be wrongdoing it has a responsibility to investigate. This is all the more so where a senior public officer is involved. This is because of the importance of ensuring that there is no abuse of the power and authority entrusted to our highest public officers. The result is that it is to be expected that the conduct of our senior public officers will come under the scrutiny of the CCC and be investigated from time to time. If we are to continue to attract persons of the highest ability to serve in public roles we must ensure that the process of investigation, of itself, does not lead to adverse inferences being drawn. It must be seen as public accountability in action.

I emphasise that it is to be expected that innocent people will be investigated by the CCC and that the CCC may produce reports concluding that there has been no wrongdoing. This is simply the process of scrutiny at work.

Accordingly, when the CCC commences an investigation it is essential that everyone keeps an open mind until all relevant evidence has been obtained and properly assembled. Whilst the investigation process is being undertaken, it is wrong to view any person who may be the subject of the investigation as having been charged or being on trial.

Public or Private Investigations

As a result of the risk of the above misconceptions there is the potential for serious harm to be done to the reputation of an individual simply from the report of the fact that an investigation is being conducted by the CCC into a particular matter. For these reasons, the CCC must and does consider carefully whether to conduct its investigation through public hearings. It also considers whether to make public any report of its findings. Further, the Act has provisions that are designed to impose strict obligations of confidentiality.

To ensure fairness, it will often be appropriate for the investigation phase of the activities of the CCC to be undertaken in private.

In relation to the investigation of Dr O'Callaghan, the CCC chose to conduct a private investigation. Ordinarily this would have resulted in protection of the reputation of Dr O'Callaghan during the course of the investigation. However, the fact of the investigation became known to the public. This meant that for a considerable period, speculation and misconception was likely to arise. One of the matters considered in this report is the manner in which the CCC responded when the fact of the investigation became known.

The Matters Investigated by the CCC in this Case

The investigation carried out by the CCC concerned the use by Dr O'Callaghan of his Government purchasing card (or corporate credit card). The principal matter investigated was whether there had been expenditure claimed by Dr O'Callaghan on the card that related to personal expenses, particularly whether there had been expenditure on travel that was personal in nature. In the course of the investigation, issues emerged as to the extent to which it was a matter for the judgement of the officer making the claim as to whether a particular expense was a private expense or a government business expense.

Statements relating to the expenditure incurred by Dr O'Callaghan on his corporate credit card were obtained. Receipts were also sought by the CCC, but were not

available in relation to 92 out of a total of 315 transactions (or 29% of cases). Those investigations revealed a practice of incurring personal expenditure on the card in some circumstances with Dr O'Callaghan reimbursing the expenditure at a later date. The practice was followed generally within WA Police.

For some time, the claims made on the card by Dr O'Callaghan were approved by Mr Italiano, the Executive Director of WA Police. However, in October 2010 Mr Italiano ceased to provide such approvals and thereafter Dr O'Callaghan approved his own expenditure.

Issues arose in the investigation as to why Mr Italiano ceased to provide the approval and whether the procedures followed by Dr O'Callaghan amounted to misconduct.

Specific Concerns Considered in this Report

The following concerns are addressed in this report.

First, was there a proper basis for the CCC to commence and continue an investigation?

Second, should the CCC have used informal processes to obtain information rather than exercise its statutory powers to require information to be provided?

Third, did the CCC respond appropriately when the fact of the investigation became known to the media?

Fourth, did the CCC provide adequate notice to Dr O'Callaghan of the matters that were to be addressed when he was required to attend and give oral evidence?

Fifth, did the CCC act appropriately in preparing a formal report as to the outcome of its investigation?

Sixth, did the CCC act unfairly or unreasonably in the process that it followed in preparing a draft report and seeking comment from Dr O'Callaghan on the draft report?

Seventh, should the CCC have sought information from the Public Sector Management Commissioner before publishing its report?

Eighth, did the report deal adequately with all matters relating to the use by Dr O'Callaghan of his Government purchasing card?

First, was there a Proper Basis for the CCC to commence and continue its Investigation?

I have reviewed the information provided to the CCC that provided the basis for the commencement and continuation of the investigation.

The source of the information that led to the commencement of the investigation is confidential and should remain so. I am satisfied that there was a proper basis for the commencement of the investigation. The CCC received information from a credible source to the effect that Dr O'Callaghan may be using his Government credit card for personal expenses. The CCC evaluated the nature of the source and proceeded initially to undertake a preliminary investigation before forming an opinion as to whether to conduct a full investigation. This was the proper course. It is provided for in s32 and s33 of the Act.

The CCC took steps to obtain relevant financial records. It undertook a detailed financial analysis of those records. It identified many cases of expenditure where there were no receipts and identified travel expenditure where both business and private components were involved where there were matters that, at least, required explanation as to why they were considered to be business related.

Early in its preliminary investigation, the CCC interviewed Mr Italiano. It obtained a formal statement from him. Later, as part of its investigation under s33 of the Act, it required Mr Italiano to be orally examined. It has been suggested to me that, by reason of the matters that occurred in the course of the oral examination, the CCC should have concluded its investigation at that point. The final report by the CCC was critical, in some respects, of the evidence given by Mr Italiano.

Because the evidence of Mr Italiano is central to a number of the concerns that have been raised with me, I have carefully considered his written statement, his oral examination and the way his evidence was addressed by the CCC in its final report. In doing so, my concern has been to consider whether the CCC should have brought its investigation to an end at any stage given that it was ultimately critical of parts of his evidence.

I am firmly of the view that the CCC acted properly in proceeding with its investigation and the publication of its report despite the nature of the evidence given by Mr Italiano. There are three principal reasons for that view.

First, the evidence from other sources of the circumstances relating to a number of the travel claims made by Dr O'Callaghan properly called for an explanation irrespective of any view expressed by Mr Italiano.

Second, the documents obtained by the CCC as to the procedures that had been followed by Dr O'Callaghan in relation to his purchase claims gave rise to concerns, namely the lack of receipts and the change to self-approval by Dr O'Callaghan.

Third, there were differing views that might have been reached concerning the evidence of Mr Italiano and it was proper for a final view as to that evidence to be

reached after a consideration of all the evidence, including any explanation from Dr O'Callaghan.

In forming these views, I have had particular regard to the terms of s25 of the Act.

Second, should the CCC have used Informal Processes to Investigate?

The powers that the CCC has at its disposal are very broad and can be extremely intrusive when exercised. Relevantly for present purposes, the CCC can require work colleagues to provide documents, statements and oral evidence whilst also preventing them from discussing the fact that these things have occurred with others in the workplace. This may be expected to result in personal difficulties for public officers in working together to complete their ongoing work during the currency of the investigation. In short, there is the potential for the exercise of powers by the CCC to interrupt the proper workings of Government. This is especially the case when public officers at the highest level are the subject of investigation.

On the other hand, the exercise of compulsory powers ensures that information that is provided to the CCC is comprehensive and provided in a timely way. It ensures that there is a proper authority to provide the information. It also provides a protection for those who are asked to provide information where there may otherwise be a reluctance to provide information that may be thought to place a colleague in an adverse light.

In this case, the CCC exercised its compulsory powers to require the provision of the financial records relating to the Government purchasing card of Dr O'Callaghan. Those records were held by WA Police. There was no information provided to the CCC that suggested that there was any risk that such records may be destroyed or tampered with if they were requested.

When Dr O'Callaghan first became aware of the investigation and the fact that it related to his Government purchasing card, he immediately went through every account for the previous four years. He wrote to the CCC on 24 January 2012 and explained the process that he followed in relation to expenditure on his card. He provided a breakdown of all his expenditure relating to travel. In the course of the review he identified one reimbursement that had not been reconciled. In his letter he provided full details in that regard. The CCC ultimately accepted that a reconciliation process in relation to the particular reimbursement had been undertaken at the time and that had been done genuinely and there was no evidence to support an opinion of misconduct in that regard.

By letter dated 27 January 2012 to the Commissioner of the CCC, Mr Davies QC acting for Dr O'Callaghan pointed out how the process of investigation had caused the Commissioner of Police to become effectively estranged from two of his most senior

personnel and was in danger of compromising his ability to carry out the important duties of his office. These are powerful concerns.

The CCC has stated that the issuing of notices to produce information and documents and the service of summonses together with non-disclosure orders are part of the usual investigative steps that are followed by the CCC. Non-disclosure orders impose very onerous obligations upon those who receive them. They prohibit any disclosure to any person of any "official matter" which includes the fact of the investigation itself. The notice itself may permit disclosure in specified circumstances. Otherwise, there are only very limited exceptions, such as disclosure for the purposes of obtaining legal advice; see s167(4) of the Act. Breach of a non-disclosure order is a criminal offence that may lead to a penalty of up to three years imprisonment.

When it comes to confidentiality it is important to distinguish between the need for confidentiality for operational reasons and the need for confidentiality in order to ensure fairness to the person being investigated. In this case, it is my view that the principal reason why confidentiality was required was to ensure the protection of the reputation of Dr O'Callaghan while all the evidence was gathered. In my assessment, it was not necessary to prevent discussion between senior officers in WA Police of the fact that notices requiring the production of documents had been served and that the investigation was being undertaken. To do so created unnecessary tensions and no doubt fuelled unwarranted suspicion.

The above considerations were reasons why the CCC could have had more open communications with senior police officers about its investigation whilst maintaining restrictions on public statements about its investigation. However, there is a difficulty where the CCC seeks to proceed with its investigation on a confidential basis. Non-disclosure orders can only be made in association with the exercise of formal powers; see s99(2). If the CCC proceeds informally then it may request that the investigation be kept confidential, but there is no mechanism in the Act to enforce such confidentiality. The result is that if the CCC does not use its formal powers then the fact of the investigation is likely to become public. This may be quite unfair to the person being investigated for reasons that I have described at the beginning of this report. In addition, those being requested to provide information may be unable to do so without a formal requirement under the Act.

In those circumstances, it is understandable and appropriate that the formal powers of the CCC would be adopted as a matter of usual course in conducting a private investigation. However, there are compelling reasons why, in a case such as the present, procedures might be adopted that are consistent with and discouraging the misconception that an adverse conclusion has already been reached by the CCC. I say a case such as the present because I am mindful of the fact that there may well be cases

that require firm adherence to nondisclosure orders for operational reasons associated with the nature of the investigation.

As I have noted above, the requirement for secrecy as between work colleagues about the very fact of the investigation has a tendency to lead to conjecture and misconception. It may also interfere with important workings of Government. These are good reasons why the CCC should seek to educate those who are required to participate in an investigation as to the role of the CCC and the true character of an investigation. They are also good reasons why the CCC should, where it can do so consistently with its operational requirements, allow some general information about the investigation to be shared between colleagues subject to the over-riding obligation under the non-disclosure order to prevent public disclosure and to prevent discussion of evidence between those involved. The CCC should give consideration in each case as to the way in which its procedures can be moulded to prevent injustice and minimise interference with day to day workings of Government.

The practices that might have been adopted in this case include the following:

- a) the investigation might have been conducted after Dr O'Callaghan had been informed of the fact of the investigation and the fact that officers within WA Police would be asked to provide information;
- b) the CCC could have explained to individual officers who were asked to provide information that the investigation was being undertaken and that the commencement of the investigation should not be taken to be any indication of wrongdoing;
- c) the CCC could have provided some standard information explaining the role of the CCC in an attempt to avoid misconceptions of the kind I have explained at the outset of this report from arising;
- d) individual officers who were asked to provide information could be provided with non-disclosure orders that allowed them to speak to other nominated officers within WA Police about the fact of the investigation and the fact that they had been requested to provide documents (but otherwise the order would prevent public disclosure); and
- e) Dr O'Callaghan and each officer involved could have been reminded of the importance of not discussing with each other any matters relating to Dr O'Callaghan's past credit card use.

Mr Davies QC also suggested in his January letter that the use of formal powers to obtain information was not an appropriate way of launching an investigation into the holder of an important high level statutory office such as the Commissioner of Police. In

my view, the importance of the office held by the public officer being investigated was not a reason why the CCC should have made requests for information rather than using its formal powers to require information to be provided. If anything, the seniority of the office makes it more important to ensure that there is a proper and thorough investigation. Senior public officers must observe the highest standards in order to ensure that a proper example is provided to others within Government. The seniority of the officer involved is not a reason for withholding the use of formal powers.

A complaint has also been made that the CCC did not first raise the issue concerning the use of the Government purchasing card with Dr O'Callaghan so as to obtain his explanation. It was suggested that this approach may have avoided the need for a full investigation. Although there may be circumstances where the CCC may consider it appropriate to proceed in this way they are likely to be rare for the following reasons. It will usually be appropriate to gather available information concerning the allegations that have been made before asking detailed questions of the person concerned. As I have already stated, the allegations in this case were of a kind that warranted proper investigation. The CCC would be rightly criticised if its usual course when serious matters were raised was to simply seek an explanation from the person concerned. The CCC could not complete an investigation without making proper inquiries of others and obtaining relevant documents. For reasons I have already canvassed that will usually require the use of the compulsory powers of the CCC. Operationally, it is usual to first gather the available facts from third parties to the extent possible. Only once the CCC had obtained the necessary information would it then be able to decide whether there was a basis for concern and, if so, to then seek any explanation from the person whose conduct was being investigated.

Third, did the CCC respond appropriately when the fact of the investigation became known to the media?

On 13 March 2012, the media reported that the CCC was investigating an issue concerning the use by Dr O'Callaghan of his corporate credit card in relation to a visit to the Kimberley in 2011. Mr Davies QC raised concerns that the CCC may have been responsible for the leak and sought the publication of a media release by the CCC to ameliorate the effect of the report.

On 13 March 2012, the CCC issued a media statement in the following terms:

The Corruption and Crime Commission is investigating allegations it has received against the Commissioner of Police, Karl O'Callaghan.

Until the Commission's investigations are completed, the allegations are unsubstantiated and unproven.

One allegation relates to the Police Commissioner's responses to various inquiries about his knowledge of the bushfire in the Perth Hills on 6 February 2011.

The other concerns use of his corporate credit card.

A spokesman said it is the Commission's role to investigate such allegations concerning senior public officers to determine whether they can be substantiated or proven.

He said more details cannot be provided at this stage.

In view of the public importance of this case, the Commission will finalise its investigation as soon as possible. No time frame for completion of the investigations can be given at the moment.

Concerns were then expressed by Mr Davies QC that the media statement did not make it plain that information about the investigation had been improperly (and possibly unlawfully) leaked to the media. He also complained that the wording used implied that the complaint would be substantiated once the CCC had completed its investigations. Finally, he expressed concern that the statement referred to a general investigation of credit card use when the leak was only in relation to use for a visit to the Kimberley.

The circumstances of the leak were considered by the then Parliamentary Inspector, Mr Steytler QC in March and April 2012. The matter was investigated at the time and there was no evidence to suggest that any officer of the CCC was responsible. The CCC reviewed the way its investigation had been conducted and the review showed that appropriate steps had been taken throughout to maintain confidentiality. The fact that media inquiries had been made of the CCC at the time for confirmation of the fact of the investigation suggested that the leak was from a source outside the CCC. (The CCC, quite properly, made no comment in response to those inquiries at the time).

Since the investigations in March and April 2012 there has been no further evidence obtained as to the source of the leak. Inquiries were made at the time. Those inquiries did not reveal the source of the information.

On 2 November 2009, Mr Steytler QC prepared a report into the investigation of a leak of draft reports prepared by the CCC in an unrelated matter. The report has been published. For similar reasons to those expressed in that report, in circumstances where there was no evidence that suggested any lack of integrity on the part of officers of the CCC that led to the leak, I do not consider it appropriate to exercise my compulsory powers to require those in the media to reveal the source of their reports.

As to the content of the media statement by the CCC, it must be remembered that the CCC was conducting its investigation on a confidential basis. It had not exercised its power to conduct a public investigation. In those circumstances, the provisions of the Act relating to disclosure of official information applied. Under those provisions there could be disclosure by the CCC of the fact that an allegation had been received; see s152(6). There could be further disclosure if the Commission certified that it was in the public interest to do so; see s152(4)(c).

The media statement published by the CCC reflected the nature of the allegations that had been received. In my view it was proper for the CCC to refer to the allegation as relating generally to the use by Mr O'Callaghan of his corporate credit card. If a statement was to be made, it would have been misleading to suggest that the allegation was narrower than it was in fact.

There was, perhaps, some infelicity in the language used to describe the fact that the allegations were not proven. The sentence "Until the Commission's investigations are completed, the allegations are unsubstantiated and unproven" did not fully describe the position. It was not until April 2012 that the CCC decided to conduct a full investigation. Until then it was conducting a preliminary investigation to ascertain whether there should be a full investigation. Further, the CCC could have gone further in describing the nature of the investigation process. In particular, it could have made clear that:

- a) the fact that the CCC was conducting an investigation did not indicate that it had formed the view that there had been any misconduct and it would be wrong for any person to suggest or infer to the contrary;
- b) the CCC maintained an open mind when conducting any investigation any media reports should do the same because it would be unfair and unreasonable not to do so;
- c) the investigation was being conducted on a confidential basis in order to ensure, as a matter of fairness, that public statements were not made until the allegations had been investigated;
- d) it is only at the end of the process, when all available evidence is to hand, that any opinion can be formed by the CCC.

However, these are matters of emphasis. In my view the CCC acted properly in promptly publishing the media statement when there were press reports of the investigation. I am satisfied that it maintained an open mind throughout its investigation.

Speaking more generally, when the fact that an investigation is being undertaken by the CCC becomes known (either through a leak or through formal announcement by the CCC) then there are good reasons why the CCC should take an active role in seeking to educate the public as to the nature of the investigation process. The CCC should act so as to discourage the misconceptions I have described at the outset of this report from arising. It should make clear that investigations are undertaken to gather the relevant evidence and only after all the evidence is available will the CCC form any opinion as to whether there has been any wrongdoing.

Fourth, did the CCC provide adequate notice to Dr O’Callaghan of the matters that were to be addressed when he was required to attend and give oral evidence?

On 21 April 2012, Dr O’Callaghan was served with a notice to attend the Commission for a private examination to be held on 1 May 2012. The notice stated that Dr O’Callaghan would be required to give evidence about matters relevant to the investigation, the general scope and purpose of which was set out in the schedule to the notice.

A complaint is made that the description in the schedule was such that Dr O’Callaghan had no idea of the time frame to which the inquiry referred, to what aspects of credit card expenditure the inquiry referred or whether he was the person being investigated. It is also said that it was only during the examination that it became clear that the major part of the inquiry was about overseas and intrastate travel.

The service of the notice occurred in the following context.

Before Christmas 2011, Dr O’Callaghan engaged Mr Davies QC to represent him in relation to the investigations by the Commission.

On 24 January 2012, Dr O’Callaghan wrote to the CCC after becoming aware that members of his staff were providing his credit card expenditure records for the past 4 years to the CCC. In the letter, Dr O’Callaghan stated that he had taken the liberty of checking the records to ensure that they were correct. He provided a detailed explanation. The letter concluded by stating that as the bulk of the expenditure referred to travel, more detail of every incident of travel between January 2008 and January 2012 was provided on an enclosed spreadsheet. In doing so, Dr O’Callaghan stated “My understanding is that the Commission, in any event, is seeking justification on all my travel and I trust this assists”. The spreadsheet provided a statement as to the purpose of each trip.

In late January and early February, Mr Davies QC raised matters in correspondence with the Commission.

On 14 March 2012, Dr O'Callaghan took steps to obtain a statement from a member of his staff concerning his travel to the Kimberley. He also arranged for a statement from another senior police officer.

On 18 March 2012, Mr Davies QC provided a mix of evidence and submissions to the Commission concerning the use by Dr O'Callaghan of his corporate credit card. In that letter separate reference was made to overseas travel and the CCC was directed to the approval process for such travel. The letter referred to every instance in which Dr O'Callaghan had travelled to the United Kingdom and stated that it had either been in response to imminent change in Government policy or a major issue facing the community.

In the course of his examination, when asked by counsel assisting about the relevant approval policies for expenses, Dr O'Callaghan responded "As you can imagine I've paid quite a bit of attention to this over the last few months"; see T48. Material was presented to support the purpose for the travel. In respect of travel to Marseilles in July 2010, Dr O'Callaghan provided a very detailed narrative concerning relevant events without any prompting from counsel assisting; see T53-55.

Further, Mr Davies QC took Dr O'Callaghan, in quite some detail, through matters relating to his travel.

In a submission in response to the draft report of the Commission, Dr O'Callaghan stated that he had come to the private examination hearing prepared to respond to all questions with detailed information.

No objection was raised by Mr Davies QC as to the scope of the notice provided concerning the matters to be dealt with in the course of your examination.

Following the examination, counsel assisting the CCC provided to Mr Davies QC detailed written submissions. The submissions identified certain material that had not been put to Dr O'Callaghan in the examination. On 21 May 2012, a detailed further written statement in response together with submissions from Mr Davies QC was provided to the CCC.

In the above circumstances it is my view that there is no substance to the complaint that the procedures of the CCC gave insufficient notice or that Dr O'Callaghan was unable to properly respond to matters raised.

Nevertheless, I note that the schedule to the summons to Dr O'Callaghan was expressed in the most general of terms as follows:

To determine whether any public officer employed by the Western Australia Police may have engaged in misconduct or serious

misconduct with respect to matters including, but not limited to, evidence given, material provided or statements made about the use of WA Government Purchasing Cards issued by the Western Australia Police and the use of annual leave credits or other forms of leave.

As a matter of fairness, a person who is required to attend and be compulsorily examined as part of a process that may result in the publication of a public report is entitled to reasonable notice of the nature of the matters to be the subject of the examination. The CCC is not required to provide full particulars or some form of statement of allegations. That would be inconsistent with the investigative process. However, the notice must not be so broad as to deprive the recipient of any real ability to prepare or obtain legal advice. In my view, the notation in the schedule was not sufficient for this purpose. It should have referred to the issue as to whether there had been private expenditure claimed, particularly in relation to overseas travel. In context, Dr O'Callaghan was given adequate notice of the matters to be addressed in the examination. However, that would not have been the case if the matters stated in the schedule were the only notice given.

Fifth, should there have been a formal report prepared by the CCC as to the outcome of its investigation?

Under the Act, the CCC has the power to prepare a report on any matter that has been the subject of an investigation; see s84(1). It is a matter for the CCC to determine whether the purposes of the Act would be served by the preparation of a report. It is a separate matter as to whether the report is laid before each House of Parliament; see s84(4). The CCC may also make a report to a Minister or the Parliamentary Standing Committee required by the Act to be established; see s89. In some circumstances, it may be that the CCC could certify that disclosure of the report to a particular person was necessary in the public interest (in which case there could not be further disclosure with certification by the CCC because the report would contain official information); see s152(4)(c).

In this case, the CCC decided to provide the report to the Premier. A consequence of doing so was that the Premier could thereafter decide to make the report publicly available.

It has been suggested to me that, having regard to the conclusions reached in the report, the CCC should simply have announced that it had concluded the investigation and it had formed the opinion that there had been no misconduct on the part of Dr O'Callaghan.

In my opinion, the CCC was entitled to form the view that it was appropriate to provide the report to the Premier, for the following reasons.

First, the report concerned allegations about a very senior public officer;

Second, the investigation coincided with the consideration by the Government as to whether to re-appoint Dr O'Callaghan as Commissioner of Police. The Act has a specific provision that empowers the CCC to prepare a report on information available to the CCC about a person proposed to be appointed as Commissioner of Police; see s90(1)(a). This indicates a statutory purpose of informing the Government about matters known to the CCC concerning candidates for appointment to the office of Commissioner of Police;

Third, the fact of the investigation was in the public domain and for purposes of accountability it was important that the report be prepared and provided to a party who was independent of the CCC. Whilst it must be recognised that this occurred despite the view of the CCC that the investigation should have been conducted in private, it was a factor that had to be taken into account; and

Fourth, there were matters that arose from the investigation and which were properly included in the report, which indicated the need for changes to the practices and procedures followed within WA Police concerning Government purchasing cards.

Sixth, did the CCC act unfairly or unreasonably in the process that it followed in preparing a draft report and seeking comment from Dr O'Callaghan on the draft report?

After the examination of Dr O'Callaghan, counsel assisting the CCC prepared detailed written submissions as to the opinions that might be formed by the CCC based on the evidence. Those submissions noted that documentary evidence was missing in relation to approximately one third of expenses claimed by Dr O'Callaghan. The submissions expressed reasons for the view that the evidence did not support an opinion of misconduct on the part of any officer. However, it was submitted that it was open to the Commission to conclude that the judgements made by Dr O'Callaghan as to the business nature of certain portions of overseas travel were not fair and reasonable, though there had been a genuine attempt to apply that judgement. In one instance, it was noted that there was inadequate documentation as to why part of the travel was justified as being business related. Those submissions were provided to Mr Davies QC by letter dated 14 May 2012.

There were some matters in the submissions that were identified as being matters that Dr O'Callaghan had not had the opportunity to address. Those were matters which had arisen principally from inquiries made by the CCC after the examination.

Mr Davies QC responded by letter dated 21 May 2012. He enclosed a statement from Dr O'Callaghan. He also enclosed submissions.

On 15 June 2012, the CCC issued a media statement to the effect that the investigation by the CCC had found that the evidence did not support an opinion of misconduct on the part of Dr O'Callaghan in relation to the use of his corporate credit card.

On 22 June 2012, the CCC provided to Dr O'Callaghan a draft report. It stated that it proposed to provide the final report to the Premier. It noted that the Premier could make the report public in whole or in part. It invited submissions by 29 June 2012. In response to a request from Mr Davies QC, the date was extended to 6 July 2012.

Very long and detailed submissions were made by Mr Davies QC and Dr O'Callaghan. After receipt of those submissions, the draft report was substantially revised. It has been suggested to me that the extent of the revisions indicates that there had been improper practice in the preparation of the draft report, which is evident from the extent of the changes made.

I have caused to be prepared and have reviewed a marked up version of the final report comparing its terms to the draft report. I have considered in detail the changes made from the draft to the final report. It is my assessment that the process followed by the CCC was proper and involved a fair and reasonable exercise of its powers. There are a number of matters that I have taken into account in forming that view.

First, prior to the preparation of the draft report, counsel assisting prepared detailed written submissions. Counsel assisting made detailed submissions concerning overseas travel. He also referred to matters that arose from inquiries made after 1 May 2012. Submissions were invited as to whether any witness should be recalled for cross-examination by reason of this material. Those submissions were provided to Mr Davies QC under cover of the letter dated 14 May 2012. It was made plain that there were matters in the submissions that had not been previously raised. On 21 May 2012, Mr Davies QC provided both a further detailed written statement and his own written submissions. The CCC then prepared its draft report. The fact that the submissions made by Mr Davies QC were not reflected in the draft report does not mean that the draft report was flawed or wrong.

Second, some matters raised in the submissions of counsel assisting were not the subject of any response. For example, there was no response to the material concerning the extent to which supporting documentation was not available for many credit card claims. It was only when these matters were recorded in greater detail in the draft report that further responsive material was provided by Dr O'Callaghan. In those circumstances, it is to be expected that there may then be changes to the draft report to reflect the further material provided.

Third, by the time that the draft report was to be finalised, the Commission had announced that it had not formed an opinion that there was evidence of misconduct.

No doubt this informed its approach to the process of settling the final report. It appears that judgments were made that it was not necessary to deal with contentious material (with consequent delay) in circumstances where the CCC was satisfied that there had been no misconduct. This explains the removal of some material from the draft report. In such a context, the fact that material was removed does not, of itself, support the conclusion that the draft report was not properly prepared.

Fourth, the process of preparing a draft report is part of a procedure by which interested parties are afforded an opportunity to comment on matters that may require correction or clarification. The process, which is required by the Act, recognises the prospect that correction or clarification may be required. The CCC undertakes an investigative process in which views and conclusions which may be considered to be adverse to a particular party are revised having regard to submissions made by the parties. The fact that there are changes from the draft report to the final report may be seen as the proper performance by the CCC of its obligations, not evidence of incompetence.

Fifth, it is usual in an investigation of the kind conducted by the Commission for there to be some iterative aspects of the process. Materials are collected. Questions are asked. This leads to other material being obtained. Then, further questions may be asked of the same and other witnesses. This may lead to formal examinations as occurred in this case. Then the CCC considers all the evidence and forms views as to matters that may be included in a final report. In doing so, it may identify some new matters. Before completing that report, it prepares a draft and provides to any party about whom the Commission is proposing to make an adverse finding, an opportunity to make submissions or present further material. This is usually done by providing a copy of those parts of the draft report that may be considered to contain adverse matters to the party concerned. In this case, earlier notice had been given of many of those matters in the form of the submissions of counsel assisting. There was an opportunity given to respond. It can be seen that in the course of such a process, matters adverse to a particular party may be put at various stages. It is not necessary for all matters to be put to a person in the course of an oral examination, provided a fair and proper opportunity is given to deal with all adverse matters before the report is finalised.

Sixth, as I have noted at the beginning of this report, the CCC does not undertake a trial process. When it conducts an investigation its task is to form an opinion on all the evidence. It would be productive of considerable expense and delay if, at the end of the process, it was necessary to conduct a hearing at which all adverse matters were put orally to each person involved. To the extent that the concerns raised with me relate to a failure to put certain matters to Dr O'Callaghan in the course of his examination, it is my view that it is not necessary for the CCC to afford that opportunity as part of its investigative process.

The contents of the draft report were based substantially on the submissions made by counsel assisting. Dr O'Callaghan was given a fair and reasonable opportunity to respond to all matters before their inclusion in the final report. To the extent that matters in the draft report required correction, the nature and extent of the corrections do not suggest impropriety or incompetence in the preparation of the draft report.

Seventh, should the CCC have sought information from the Public Sector Management Commissioner before publishing its report?

After the report of the CCC was received by the Premier, he sought advice from the Public Sector Commissioner concerning matters raised in the report. He provided advice to the Premier by letter dated 31 July 2012. The advice made clear that the Commissioner of Police, while a deemed chief executive officer under the Public Sector Management Act 1994 (WA) ("the PSM Act"), was not subject to the disciplinary provisions in the PSM Act. Therefore, the Public Sector Commissioner was not the employing authority for Dr O'Callaghan and had no power to take disciplinary action against him in the event that there was misconduct.

The Public Sector Commissioner expressed the opinion that if the PSM Act did apply then the report did not contain any evidence which would reasonably support a suspicion of a breach of discipline by Dr O'Callaghan.

It has been suggested to me that the opinion of the Public Sector Commissioner shows that the CCC should not have undertaken its investigation, or acted improperly in continuing its investigation. If the CCC had sought the opinion of the Public Sector Commissioner at an early stage then the whole investigation would have been shown to be unjustified. I do not agree.

The opinion of the Public Sector Commissioner is based upon a consideration of the whole of the evidence collected by the CCC and presented in its report. The opinion accords with that of the CCC. Both concluded that there was no misconduct that would justify disciplinary action that could result in dismissal.

However, it does not follow from the fact that such a conclusion was reached at the end of the process, that the investigation should not have been conducted. Earlier in the investigation there were matters that had been raised that merited investigation. Further, the CCC has a specific statutory duty to discharge. Although, in an appropriate case, it may seek advice from other parties as to the standards that are to be expected of public officers breach of which may lead to dismissal, the CCC must form its own view as to such matters, I have already stated my reasons for concluding that the CCC acted properly in commencing and continuing with the investigation.

Eighth, did the report deal adequately with all matters relating to the use by Dr O'Callaghan of his Government purchasing card?

Concerns have been raised with me as to whether all matters relating to the use by Dr O'Callaghan of his Government purchasing card were properly investigated. In particular, an issue has been raised concerning the 29% of transactions for which there were no receipts. In its report, the CCC stated "This has resulted in the Commission being unable, in some instances, to identify personal expenditure and to accurately apportion official and personal expenditure". It has also been drawn to my attention that the Western Australian Police Financial and Asset Management Manual requires there to be certification by the cardholder that all expenditure relates to official police business in cases where a tax invoice is not provided and to provide an explanation for there being no tax invoice.

I have investigated these matters.

The CCC received hearsay information concerning the credit card claims made by Dr O'Callaghan. The officers of the CCC involved were rightly sceptical of that information. Nevertheless, all documentary records for a period of 37 months were obtained and thoroughly checked. Inquiries were made of Dr O'Callaghan in relation to many items.

The 29% of items where there are no receipts relate to about \$15,000 worth of expenditure in total with the largest of those related to car hire charges. There is some information in relation to charges for which there are no receipts that enabled comparison with other types of charges. Most were for relatively small amounts. Having considered all of the claims made, officers of the CCC were completely satisfied that there was no basis for believing that the failure to produce receipts was because the items involved related to private expenses. I am satisfied that the proper analysis was undertaken to support these conclusions.

Certification that claimed expenses were business related was provided by Dr O'Callaghan in all cases.

The matters of concern that arose from the investigation related to the allocation between business and private components of overseas travel and the delay in processing claims. Those matters are addressed in detail in the report. The qualification in the report to the effect that the CCC was unable, in some instances, to identify personal expenditure and to accurately apportion official and personal expenditure relates principally to two car hire expense claims for overseas travel. The CCC examined those journeys in detail and concluded that there was no misconduct in relation to the claims because a genuine judgement had been made by Dr O'Callaghan to identify the extent to which they were business related.

I am satisfied that the CCC's investigation was comprehensive.

Summary of Report

In respect of my functions under s195(1)(b), (c) and (e) of the Act, I hereby report that my investigation:

- a) has not disclosed evidence of misconduct on the part of the CCC or any officer of the CCC; and
- b) establishes that the procedures adopted by the CCC in carrying out its functions under the Act in relation to the investigation of the use by Dr O'Callaghan of his Government purchasing card were appropriate.

In respect of my functions under s195(1)(d) of the Act, I hereby recommend that

- a) the CCC undertake a pro-active role in informing the public that the investigation process of the CCC is part of a process of accountability and scrutiny to gather evidence to deal with a complaint and that no adverse conclusion concerning any individual should be drawn from the fact that an investigation has been commenced;
- b) the CCC, when making any public announcement concerning the commencement of an investigation, take appropriate steps to inform the public as to the nature of the investigation process to avoid misconceptions arising that may unfairly damage the reputations of those involved;
- c) the CCC add to its education responsibilities the need to explain the nature of its role in undertaking investigations;
- d) in cases where the CCC is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed by one work colleague to another, the CCC give consideration, in appropriate cases, to exercising its power under s99 of the Act to provide in the notation for those disclosures to be excepted from the non-disclosure obligation that would otherwise apply;
- e) in cases where the CCC is conducting a private investigation and there is no operational reason why the fact of the investigation and its general subject matter should not be disclosed to the public officer who is the subject of the investigation, then the CCC should inform the officer of the fact of the investigation when it is commenced or as soon as the CCC is satisfied that such disclosure can occur without compromising the operational integrity of the investigation; and

- f) the CCC consider preparing some standard information for publication on its web-site explaining the role of the CCC in undertaking investigations to avoid misconceptions of the kind I have explained in this report from arising.

CRAIG COLVIN SC

ACTING PARLIAMENTARY INSPECTOR OF THE CORRUPTION AND CRIME COMMISSION

Appendix Two

Letter from CCC Commissioner



Your Ref:
Our Ref: 00825/2012

17 June 2013

Hon. Nick Goiran, MLC
Chairman
Joint Standing Committee on the
Corruption and Crime Commission
Floor 1, 11 Harvest Terrace
WEST PERTH WA 6005

Dear Chairman

COMMISSION RESPONSE TO THE ACTING PARLIAMENTARY INSPECTOR'S REPORT

I refer to your letter dated 12 June 2013, attaching a copy of the report entitled '*Report into the Conduct of an Investigation by The Corruption and Crime Commission into Alleged Public Sector Misconduct by the Commissioner of Police Relating to the use of a Government Purchasing Card*', prepared by Acting Parliamentary Inspector Colvin SC.

The Commission does, with all due respect to Acting Parliamentary Inspector Colvin's assessment, maintain its position in respect to the need for, and application of, section 99 of the *Corruption and Crime Commission Act 2003*.

Primary points of consideration for the Commission in respect to non-disclosure notations, and certainly in respect to this particular investigation, are matters of information control, the protection of informants and other sources of information.

Generally speaking a non-disclosure notation on a Commission notice to produce or attend the Commission does not prevent discussions by individuals about matters the subject of the notice in general, it prevents discussion about the existence of a Commission investigation and the specific issue of a notice to produce or summons to appear.

It would be unworkable for the Commission to allow 'limited' disclosures, as suggested by the Acting Parliamentary Inspector where an investigation was not at risk.

The statutory purpose of non-disclosure notations is outlined in section 99. A notation must be included if failure to do so could be reasonably be expected to

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prejudice the safety or reputation of the person, the fair trial of a person who may be charged with an offence or the effectiveness of an investigation. It might be included if the same factors might be prejudiced.

Clearly it is at the Commissioner's discretion as to whether to include a non-disclosure notation however it is difficult to envisage a time that a non-disclosure notation would not be included when an investigation is still in its covert stages. To suggest a 'limited' disclosure as suggested by the Acting Parliamentary Inspector is, with respect, difficult to both issue and enforce.

The protection of a non-disclosure notation is important, emphasised by the accompanying offence for the breach of a non-disclosure notation pursuant to section 167(3) of the CCC Act.

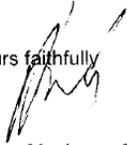
The fundamental need for confidentiality in respect to the Commission's work is, without doubt, primarily to ensure operational integrity, as highlighted in the then Attorney-General's Second Reading Speech of the Corruption and Crime Commission Bill on 15 May 2003: at pg. 7861 '*..The secrecy and disclosure provisions are an essential component of this legislation because they will enable the CCC to effectively and successfully conduct investigations.*'

At page 8 of the report the Acting Parliamentary Inspector says in his view the principal reason that confidentiality was required was to ensure the protection of the reputation of Commissioner O'Callaghan and that it was not necessary to prevent discussion between senior officers of the WA Police.

With all due respect the Commission, which conducted the investigation, is better placed to assess the primary reason for the non-disclosure notations, and it was believed necessary to protect the success of the covert investigation in the light of available information, while considering the reputation of Commissioner O'Callaghan at the time. Had a notation not have been included, or a 'limited' direction issued a leak of information similar to that which eventuated may have occurred much earlier, seriously impacting on the effectiveness of the investigation.

The occurrence of a leak, and the damaging effect this had on Commissioner O'Callaghan as explained by his Counsel in correspondence to the Parliamentary Inspector's office, demonstrates that the Commission's concerns were warranted.

Yours faithfully



Roger Macknay, QC
COMMISSIONER

Appendix Three

Committee's functions and powers

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

It is the function of the Joint Standing Committee to:

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

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