



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

Report into emails between staff of the Department of Corrective Services and the Corruption and Crime Commission

Report No. 8
December 2013

Parliament of Western Australia

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**Published by the Legislative Assembly, Parliament of Western Australia, Perth.
December 2013.**

ISBN: 978-1-921865-92-3

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committee on the Corruption and Crime Commission. Report 8)

328.365

Joint Standing Committee on the Corruption and Crime Commission

Report into emails between staff of the Department of Corrective Services and the Corruption and Crime Commission

Report No. 8

Presented by

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

Laid on the Table of the Legislative Council and deemed to be laid on the
Table of the Legislative Assembly on 12 December 2013

Chairman's Foreword

This report provides the Parliament with a report that the Parliamentary Inspector of the Corruption and Crime Commission of WA (PICCC), Hon Michael Murray QC, made to the Joint Standing Committee on the Corruption and Crime Commission (the Committee). The reports contains the outcomes of the PICCC's inquiry into the Corruption and Crime Commission's assessment and the action it took in relation to emails sent between one of its own officers and an officer in the Department of Corrective Services (DCS).

This inquiry was instigated by the PICCC after an article by a journalist had appeared on the front page of *The West Australian* titled 'Dirty Tricks Email Trail' on 2 July 2013, and continued on page 10 under the title 'Secret Messages that Poisoned a Department'.

The PICCC immediately wrote to Acting Commissioner Douglas at the Corruption and Crime Commission (CCC) on 2 July 2013 expressing his serious concerns about the allegations contained in the articles. On 4 July 2013 the PICCC wrote to the Joint Standing Committee alerting it to his self-initiated inquiry.

Following receipt of the PICCC's report on this matter on 7 November 2013, the Committee enquired into four matters in the report, which the PICCC replied to on 19 November 2013. The PICCC also told the Committee that he had not provided the CCC with a copy of his report. In accordance with the Committee's usual practice when handling PICCC reports, the Committee resolved to provide the CCC Commissioner, Mr Roger Macknay QC, with a copy of the PICCC's report on 20 November 2013 and requested, and received, his submission on the report on 29 November 2013.

Commissioner Macknay recommended that the Committee should not at this time table in Parliament the PICCC's report as there may be a matter in the report adverse to the Commission and "[t]here is substantial material which is plainly adverse" to the staff from the DCS and CCC.¹

On 2 December 2013 the Committee sought the PICCC's response to Commissioner Macknay's submission and received his reply on 3 December 2013. The PICCC's reply provides a clear statement on his views of the operation of s200 of the *Corruption and*

¹ Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 29 November 2013, p1.

Crime Commission Act 2003, particularly that its application should only occur when:

an 'adverse' matter which appears in a report by the Parliamentary Inspector tabled under s199 or s201 is the product of the Parliamentary Inspector's own investigation and assessment of the propriety of the conduct of a person or body.²

Additionally, the PICCC's inquiry has led to a new understanding between his office and the CCC Commissioner over the handling of allegations of misconduct against CCC officers under section 196(4) of the CCC Act. The Commissioner and the PICCC have agreed that all but trivial matters will be forwarded to the PICCC for his assessment.

The PICCC makes no findings or recommendations in this report on emails between staff of the CCC and DCS. He concluded, however, that the CCC had correctly proceeded to discipline its staff member and:

to reinforce to its officers generally the care which needed to be taken in the course of email exchanges or other professional communications to speak formally in appropriate terms, to maintain the integrity of the Commission as an important investigative agency of the State, and to take scrupulous care not to accidentally divulge information which it was their duty to keep secret.³

The Committee agrees with the PICCC's conclusion that an occurrence such as these emails between staff of the DCS and the CCC could seriously undermine the effectiveness of the CCC. Western Australia needs to be assured that Commission officers act in a manner commensurate with the trust placed in them. The CCC needs to be vigilant to ensure that the conduct of its staff meets necessarily high standards.

2 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 3 December 2013, p1.

3 Hon Michael Murray QC, Parliamentary Inspector, 'REPORT INTO THE DEPARTMENT OF CORRECTIVE SERVICES AND THE CORRUPTION AND CRIME COMMISSION', Perth, 7 November 2013, p8.

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

A handwritten signature in blue ink, consisting of a stylized 'N' followed by a horizontal line and a vertical line.

HON NICK GOIRAN, MLC
CHAIRMAN

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In 2011 the Corruption and Crime Commission did not notify Parliamentary Inspector Steytler of a complaint from the Director of the Department of Corrective Services' Internal Investigations Unit against a Commission officer.

Finding 2

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The Corruption and Crime Commission's failure to notify the then-Parliamentary Inspector of the complaint from the Director of the Department of Corrective Services' Internal Investigations Unit against a Commission officer prevented him from fulfilling his functions, or to use his powers, under the *Corruption and Crime Commission Act 2003* at the relevant time.

Finding 3

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The Corruption and Crime Commissioner has agreed to notify the Parliamentary Inspector under section 196(4) of the *Corruption and Crime Commission Act 2003* of every allegation that "concerns, or may concern, an officer of the Commission" that is not of a trivial nature.

Finding 4

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Both the CCC Commissioner and the Parliamentary Inspector agree that section 196(4) of the *Corruption and Crime Commission Act 2003* does not need to be amended.

Finding 5

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The Parliamentary Inspector has concluded that the Corruption and Crime Commission proceeded correctly to discipline Mr Pollitt.

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The Parliamentary Inspector has concluded that the Corruption and Crime Commission's current Code of Conduct, IT Usage and Email Usage policies give appropriate guidance to Commission officers.

Finding 7

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The Parliamentary Inspector's inquiry on this matter demonstrates how investigative bodies such as the Corruption and Crime Commission need to be extremely vigilant to ensure that the conduct of their staff meets the highest standards of probity.

Chapter 1

Overview of actions by the Parliamentary Inspector and Joint Standing Committee

'Secret Messages that Poisoned a Department', *The West Australian*, 2 July 2013.

Introduction

This report provides the Parliament with a report that the Parliamentary Inspector of the Corruption and Crime Commission of WA (PICCC), Hon Michael Murray QC, made to the Joint Standing Committee on the Corruption and Crime Commission (the Committee). The reports contain the outcomes of the PICCC's inquiry into the Corruption and Crime Commission's assessment and the action it took in relation to emails sent between one of its own officers and an officer in the Department of Corrective Services (DCS). The PICCC's report is contained in Appendix One.

The PICCC's inquiry was instigated after an article appeared on the front page of *The West Australian* titled 'Dirty Tricks Email Trail' on 2 July 2013, and continued on page 10 under the title 'Secret Messages that Poisoned a Department'. The journalist's articles expressed his view of the dysfunctional culture of the DCS' Internal Investigations Unit (IIU). This view had been formed by leaked emails he had obtained written by Mr Parker of the IIU in 2011 to a contact within the CCC, Mr Pollitt, who had previously worked at the DCS.

The PICCC immediately wrote to Acting Commissioner Douglas at the CCC on 2 July 2013 expressing his serious concerns about the allegations contained in the articles. He asked Acting Commissioner Douglas for:

- a copy of any email between any Commission officer and any Department officer which related to the subject matter of the article;
- a copy of any report written by a senior lawyer for the DCS;
- details of any misconduct investigation conducted, or overseen, by the Commission in connection with the subject-matter of the article; and

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- information concerning any action taken, or considered, by the Commission against any of its officers, or officers of the Department, concerning the subject-matter of the article.⁴

On 4 July 2013 the PICCC wrote to the Committee alerting it to his self-initiated inquiry and providing a copy of his letter to Acting Commissioner Douglas.

CCC material provided to the PICCC

On 15 July 2013, CCC Commissioner, Mr Roger Macknay QC, provided the materials the PICCC had requested two weeks earlier. These included emails between Mr Parker of the DCS and Mr Pollitt of the CCC, and Mr Parker and another Commission officer, which touched upon the purpose of the PICCC's Inquiry. The CCC's audit of emails was restricted to those addressed to officers' workplace email addresses.

On 24 July 2013, Commissioner Macknay QC wrote to the PICCC informing him that a subsequent audit of the CCC's email database covering emails from Mr Parker to Commission officers which had not originated from Mr Parker's workplace email address had been conducted. An email chain in July 2011 from Mr Parker's non-workplace email address to Mr Pollitt's workplace email address had been uncovered. Copies of these emails were provided to the PICCC.

The emails between Messrs Parker and Pollitt, and between Mr Parker and another Commission officer, were dated from 4 July 2011 to 24 August 2011. The CCC said that the nature of the content of those emails demonstrated that there was a pre-existing friendship between Messrs Parker and Pollitt.

The emails between Mr Parker and a Commission officer, who had been allocated Mr Parker's complaint of misconduct made in respect of the Director of the DCS IIU, were dated between 9 August 2011 and 24 August 2011. The content of these emails provided no evidence of a friendship between the two. The PICCC found that the Commission officer's responses to Mr Parker's enquiries concerning the progress of his complaint were objective and professional. The PICCC's report in Appendix One provides fuller detail of the information contained in the emails between Messrs Parker and Pollitt, and another Commission officer.

The PICCC discussed the progress of his inquiry into this matter with the Committee on 16 October 2013 in a closed hearing during a review on his annual activities. He provided his final report to the Committee on 8 November 2013.

4 Hon Michael Murray QC, Parliamentary Inspector, 'REPORT INTO THE DEPARTMENT OF CORRECTIVE SERVICES AND THE CORRUPTION AND CRIME COMMISSION', Perth, 7 November 2013, p3.

Further Committee requests to the PICCC for information

The Committee pursued four matters with the PICCC in regard to his report and Parliamentary Inspector Murray replied to these queries on 19 November 2013. In his response to the Committee, the PICCC said that an additional search was conducted by the Commission on 12 July 2013 for any email which contained the name 'Parker'. This search produced 1,445 emails but, because of their number and of the time the task would have taken, they were not reviewed by the CCC senior lawyer who had undertaken the initial email audit. The PICCC said:

I decided that, in view of the emails I had already received from the Commission having already provided sufficient context to fulfil the purpose of my Inquiry, I could not justify requesting the Commission to devote further time and resources to examining the 1,445 emails when there was no clear benefit that might be achieved for my Inquiry.⁵

The PICCC also told the Committee that he had not provided the CCC with a copy of his report. In accordance with the Committee's usual practice when handling PICCC reports, it resolved to provide the Commissioner with a copy of the PICCC's report on 20 November 2013 and requested a response to the report by 29 November 2013.

Response to the PICCC report from the CCC Commissioner

The CCC Commissioner responded to the Committee on 29 November 2013 and his letter is included in Appendix Three. Commissioner Macknay said that the Committee should not at this time table in Parliament the PICCC's report as:

In the Commission's respectful submission that should not occur, for the reasons following.

...Section 200 of the Act then reads as follows:

"Before reporting any matters adverse to a person or body in a report under section 199, the Parliamentary Inspector must give the person or body a reasonable opportunity to make representations to the Parliamentary Inspector concerning those matters".

There may be a matter in the report adverse to the Commission.

There is substantial material which is plainly adverse to Mr Pollitt and Mr Parker.⁶

5 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 21 November 2013, p2.

6 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 29 November 2013, p1.

Chapter 1

Final response from the PICCC to the matters raised by the CCC Commissioner

On 2 December 2013 the Committee sought the PICCC's comments to the matters raised by Commissioner Macknay. Parliamentary Inspector Murray's response is contained in Appendix Four. In regard to the applicability of section 200 of the CCC Act to this report, the PICCC said:

It is my view that s200 of the Act has application only when an 'adverse' matter which appears in a report by the Parliamentary Inspector tabled under s199 or s201 is the product of the Parliamentary Inspector's own investigation and assessment of the propriety of the conduct of a person or body.⁷

In developing his argument further, the PICCC said:

If s200 of the Act was interpreted and applied more broadly than my view of it, it would give a person or a body, the propriety of whose conduct had previously been adjudicated upon by a separate disciplinary authority (the outcome of which was adverse to the person or body), the right to make representations to me about that matter, regardless of the purpose of my report and regardless of my inability to take any action in respect of that adjudication. Applying s200 in such circumstances would be a meaningless process.

I would only add that my report was made under ss199(1)(a) and 201 of the Act. In performing that function I am, and remain thereafter, bound by the secrecy provisions of the Act: ss202(2), 151 and 207.

Unless I am authorised to do so under s200 of the Act I may not disclose any material part of the report to anyone. S200, therefore, needs to be seen as an exception to the general rule and interpreted strictly in accordance with ordinary principles of statutory interpretation.⁸

Committee findings based on the PICCC's report

The Committee makes the following findings in regard to the PICCC report.

⁷ Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 3 December 2013, p1.

⁸ Ibid, pp1-2.

Notifications to the PICCC of misconduct allegations

Finding 1

In 2011 the Corruption and Crime Commission did not notify Parliamentary Inspector Steytler of a complaint from the Director of the Department of Corrective Services' Internal Investigations Unit against a Commission officer.

Finding 2

The Corruption and Crime Commission's failure to notify the then-Parliamentary Inspector of the complaint from the Director of the Department of Corrective Services' Internal Investigations Unit against a Commission officer prevented him from fulfilling his functions, or to use his powers, under the *Corruption and Crime Commission Act 2003* at the relevant time.

Interpretation of section 196(4) of the CCC Act

The Committee was concerned to note a difference of interpretation between the PICCC and the CCC Commissioner regarding the referral of complaints about the CCC to the PICCC.

Parliamentary Inspector Murray told the Committee that, as a result of this matter, the Commissioner has agreed to notify him of every allegation against a CCC staff member. Accordingly, the PICCC did not think it was necessary to amend section 196(4) of the *Corruption and Crime Commission Act 2003*. He said its purpose is understood by the Commission and is now abided by in the Commission's practice and "the section is already simply worded and its intent is clear."⁹

In regard to the proper interpretation of section 196(4) of the Act, Commissioner Macknay told the Joint Standing Committee:

...the Commission's view is that if a complaint about a Commission Officer is not an allegation, it is not required to inform the Parliamentary Inspector of it.

The Parliamentary Inspector holds a different view.

It was not suggested by Parliamentary Inspector Steytler, who was in office at the time of the complaint here, that he had a similar view.

Notwithstanding the Commission's view, as the Parliamentary Inspector has almost plenary powers in the interest of openness, it has been agreed that all but trivial matters will be forwarded to him to look at.

9 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 19 November 2013, p2.

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*No change to the legislation is necessary, in the Commission's view.*¹⁰

In his reply to the Committee on 2 December 2013, the PICCC said:

The triviality in this sense is not an allegation of misconduct which, if proved, might itself be of a trivial nature. Rather, the triviality is that of the nature of a (nonmisconduct) issue about which the allegation is made. An example of this would be of a complainant who is disappointed by the Commission's assessment of his or her complaint, and who responds by alleging that the officer responsible for the assessment is, for example, 'incompetent'.

...then for the purpose of s 196(4) it is, in my view, essential that the Parliamentary Inspector is the person to decide if a non-trivial allegation is capable of constituting misconduct if substantiated. The Parliamentary Inspector can properly perform this important function only if he or she is notified of it.

*I have continuously stressed to Commission Macknay QC that it is inappropriate and contrary to the principles of transparency and accountability for the Commission to determine if an allegation which is not trivial may or may not be misconduct if substantiated. In such a situation the Parliamentary Inspector has no means of knowing whether the Commission's assessment of the allegation has been an accurate one.*¹¹

Finding 3

The Corruption and Crime Commissioner has agreed to notify the Parliamentary Inspector under section 196(4) of the *Corruption and Crime Commission Act 2003* of every allegation that “concerns, or may concern, an officer of the Commission” that is not of a trivial nature.

Finding 4

Both the CCC Commissioner and the Parliamentary Inspector agree that section 196(4) of the *Corruption and Crime Commission Act 2003* does not need to be amended.

Disciplinary action against the CCC officer

The Committee also sought advice from the PICCC on whether the disciplinary action taken by the CCC's then-Acting Director of Operations in June 2012 against Mr Pollitt

10 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 29 November 2013, p2.

11 Hon Michael Murray QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 3 December 2013, p2.

was sufficient. The disciplinary action had been reviewed and approved by Commissioner Macknay and included:

- a castigation of Mr Pollitt;
- a strong warning that even when asked general queries he should be careful when responding so as not leave his answer open to inference, particularly when using the Commission's email;
- a warning to Mr Pollitt that it was not appropriate for him to correspond with Mr Parker when the latter had made complaints to the Commission; and
- Mr Pollitt was told not to have any further contact with Mr Parker.¹²

The PICCC replied that it was difficult for him to assess this issue given the length of time since the disciplinary action had been taken. He also had doubts as to whether he could review the sufficiency of disciplinary action taken against Mr Pollitt or any other Commission officer as:

*s196(9) of the Act prohibits the Parliamentary Inspector from reviewing a matter that arises from, or can be dealt with under, a jurisdiction created by, or that is subject to, the Industrial Relations Act 1979.*¹³

Regardless of the scope of section 196(9) of the CCC Act, the PICCC was of the view that "if the disciplinary action taken against Mr Pollitt was insufficient, it was not materially so."¹⁴

Finding 5

The Parliamentary Inspector has concluded that the Corruption and Crime Commission proceeded correctly to discipline Mr Pollitt.

Finding 6

The Parliamentary Inspector has concluded that the Corruption and Crime Commission's current Code of Conduct, IT Usage and Email Usage policies give appropriate guidance to Commission officers.

12 Hon Michael Murray QC, Parliamentary Inspector, 'REPORT INTO THE DEPARTMENT OF CORRECTIVE SERVICES AND THE CORRUPTION AND CRIME COMMISSION', Perth, 7 November 2013, p7.

13 Ibid.

14 Ibid.

Chapter 1

Need for vigilance by the CCC

The Committee agrees with the Parliamentary Inspector's conclusion that an occurrence such as these emails between staff of the DCS and the CCC "can seriously undermine the effectiveness of the investigative bodies concerned."¹⁵ Western Australia needs to be assured that officers in organisations such as the CCC act in a manner commensurate with the trust placed in them, and that these organisations need to be vigilant to ensure that the conduct of their staff meets necessarily high standards.

Finding 7

The Parliamentary Inspector's inquiry on this matter demonstrates how investigative bodies such as the Corruption and Crime Commission need to be extremely vigilant to ensure that the conduct of their staff meets the highest standards of probity.

¹⁵ Ibid, p8.

Appendix One

Parliamentary Inspector's Report

REPORT INTO THE DEPARTMENT OF CORRECTIVE SERVICES AND THE CORRUPTION AND CRIME COMMISSION

S201 of the *Corruption and Crime Commission Act 2003 (WA)*

7 November 2013

PURPOSE

The purpose of this Report is to inform the Joint Standing Committee of the Corruption and Crime Commission (Committee) of the outcome of my Inquiry into the Corruption and Crime Commission's (Commission) assessment of, and action taken in relation to, emails sent between an officer in the Department of Corrective Services (Department) and an officer in the Commission.

BACKGROUND

On 2 July 2013, an article by Gary Adshead appeared on the front page of the *West Australian* titled 'Dirty Tricks Email Trail' and continued on page 10 under the title 'Secret messages that poisoned a department'.

Mr Adshead's article expressed his view of the culture of the Internal Investigations Unit (IIU) of the Department which was formed, at least in part, by leaked emails written by Mr Parker of the IIU in 2011.

The gravamen of Mr Adshead's article was to ask how agencies with investigative functions can efficiently and ethically operate when some of their officers spend time undermining their management, and to warn of the dangers posed to the integrity of the State's misconduct investigative framework when their officers engage in the kind of undermining behaviour exhibited in those emails.

Some emails were to and from Mr Pollitt, an officer of the Commission.

Mr Adshead expressed a view that the Director of the IIU and her senior colleagues were being undermined by Mr Parker and other staff within the IIU. Mr Adshead reported the concerns expressed about the culture of the IIU by a senior lawyer, Ms Anna Liscia, who was tasked by the Department to examine its emails.

Mr Adshead published edited extracts of some of the emails he received.

Subsequent articles which arose from the subject-matter of Mr Adshead's article appeared in the *West Australian* on 3 July 2013.

MY RESPONSE

I read Mr Adshead's article and immediately wrote to Acting Commissioner Douglas of the Commission on 2 July 2013 expressing my serious concerns.

I asked Acting Commissioner Douglas for a copy of any email between any Commission officer and any Department officer which related to the subject-matter of Mr Ashead's article, for a copy of any report written by Ms Liscia, for details of any misconduct investigation conducted, or overseen, by the Commission in connection with the subject-matter of the article, and for information concerning any action taken, or considered, by the Commission against any of its officers, or officers of the Department, concerning the subject-matter of the article.

On 4 July 2013, I wrote to the Committee providing a copy of my letter to Acting Commissioner Douglas. On 11 July 2013, I again wrote to Acting Commissioner Douglas requesting the information sought on 2 July 2013.

On 12 July 2013, Acting Commissioner Douglas replied and said that the emails between Messrs Parker and Pollitt had been assessed by the Commission in April 2012 and it was determined that misconduct was not suspected by either officer. He said that Mr Pollitt was questioned about his relationship with Mr Parker and counselled to discontinue it. Subsequent to that disciplinary action, an audit of the Commission's email database showed that the two officers did not use their workplace emails to email each other again.

Acting Commission Douglas said that Commissioner Macknay QC had agreed in June 2012 with the outcome of the Commission's assessment. He concluded his letter by saying that the materials I had requested in my letter dated 2 July 2013 would be provided shortly by Commissioner Macknay QC, who at that time had taken leave.

On 15 July 2013, Commissioner Macknay QC provided the materials I previously requested. These materials included emails between Messrs Parker and Pollitt, and Mr Parker and another Commission officer, which touched upon the purpose of my Inquiry. These emails were discovered by the Commission after an initial audit of its email database was conducted in response to my letter dated 2 July 2013. This audit was restricted to workplace email addresses.

The Commissioner informed me that the audit discovered a far larger number of other emails between Mr Parker and Commission officers whose nature varied from social interaction, based on pre-existing friendships, to legitimate work-related

communications. Those emails were not provided to me, nor did I request to examine them.

On 24 July 2013, Commissioner Macknay QC wrote to me again informing me that a subsequent audit of the Commission's email database covering emails from Mr Parker to Commission officers which had not originated from Mr Parker's workplace email address had been conducted. An email chain in July 2011 from Mr Parker's non-workplace email address to Mr Pollitt's workplace email address was discovered, and a copy of it was provided to me.

RELEVANT FACTUAL MATERIAL

The emails

The emails between Messrs Parker and Pollitt, and between Mr Parker and another Commission officer were dated from 4 July 2011 to 24 August 2011.

The emails between Messrs Parker and Pollitt were dated 4-5 July 2011. The nature of the content of those emails demonstrates the pre-existing friendship that existed between Messrs Parker and Pollitt at that time. The contents of their emails included:

1. the forwarding by Mr Parker of an email from the Director of the IIU of the Department informing the staff of the IIU that a woman had been chosen to temporarily act in the position of Manager of the IIU. Mr Parker's forwarding email included an accompanying remark by him which can readily be interpreted as being of a sexist nature. An exchange between the two men followed in which each made similarly-natured remarks;
2. a remark from Mr Pollitt which is readily capable of being interpreted as encouragement to Mr Parker to continue undermining the management of the IIU, and a suggestion that the two men meet for coffee;
3. a description by Mr Parker of a meeting he had with the Director of the IIU in which Mr Parker was accused by her of making improper comments, and Mr Parker's acceptance of the offer for coffee previously made by Mr Pollitt;
4. Mr Pollitt's encouragement to Mr Parker to take stress leave in respect of the meeting described in point 3, and his encouragement to Mr Parker to take the matter to the union, suggesting that if he did this it 'could be another rusty nail in her coffin'. Mr Pollitt's last comment, given the nature of the content of the exchange, can readily be interpreted as being directed against the Director of the IIU;

5. Mr Parker saying that he is preparing a letter of complaint to the Commission about the Director of the IIU concerning suspected misconduct during the past 12 months, his concern that such a letter would be reviewed by Commission officers who had previously been employed as police officers, and asking which part of the Act protects a person who reports misconduct, and
6. Mr Pollitt's encouragement to Mr Parker to lodge the letter of complaint described in point 5.

The additional email chain between Messrs Parker and Pollitt which Commissioner Macknay QC sent to me on 24 July 2013 was dated 13 July 2011. The content of this email chain included:

1. Mr Parker saying that he had received a doctor's certificate for a period of two weeks, asking for Mr Pollitt's mobile telephone number, asking about the length of time it takes for the Commission to assess complaints of misconduct, and saying that the Commissioner of the Department had received his email (in which he made complaint about the Director of the IIU);
2. Mr Pollitt expressing support for Mr Parker's sick leave, support for having made a complaint of misconduct against the Director of the IIU, and asking Mr Parker to inform him of any feedback he received from the Commissioner of the Department;
3. Mr Parker describing to Mr Pollitt some aspects of his complaint made to the Commissioner of the Department, that the Director of IIU, at that point in time, was likely to be confirmed in her position, but that she will have to disclose the fact of Mr Parker's complaints made against her, that he had spoken to a Commission complaint assessment officer about how long his complaint would take to assess, that he believed that the complaint had 'legs', and a reference, which is readily capable of being interpreted as sexist, to a female officer of the Department who was acting in his position during his sick leave;
4. Mr Pollitt's reply to Mr Parker's comments made in point 3 (which is characterised by an obvious change in tone) in which he informs Mr Parker that he cannot assist him with the Commission's assessment process in relation to his complaint, and that he has raised with the Commission his possible conflict of interest created by their relationship and his professional responsibilities, and

5. Mr Parker's reply that he was not intending to ask Mr Pollitt for any information about his complaint, and asking a question whether he (Mr Parker) was under any obligation not to tell anybody about his complaint. Mr Pollitt replied that he could not be disadvantaged by having made his complaint, and that he was not obliged to tell anybody anything.

The emails between Mr Parker and a Commission officer who was allocated his complaint of misconduct made in respect of the Director of the IIU were dated between 9 August 2011 and 24 August 2011. The content of these emails provides no evidence of a friendship between the two. The Commission officer's responses to Mr Parker's regular enquiries concerning the progress of his complaint are objective and professional.

On 23 August 2011, the Commission informed Mr Parker in writing that, after consultation with the Public Sector Commission (to which Mr Parker had also complained), his complaint of misconduct made against the Director of the IIU should be dealt with internally within the Department.

Mr Parker was also informed by the Commission that if he believed the process with the Public Sector Commission did not meet the required statutory standard he could lodge a claim with the Commission.

Mr Parker was also informed by the Commission that his understanding of what constituted 'misconduct' expressed to the Commission was misconceived.

The report of the senior lawyer

The report of Ms Liscia, who examined the IIU emails to which Mr Adshead referred in his article on 2 July 2013, was a one page letter to the Department dated 21 August 2012. The letter is stated to be in furtherance to her email of the same date. I am unaware of the contents of her email.

Mr Adshead's reference to the content of this letter was accurate. The content was restricted to the senior lawyer's observations about the evidence she had perused, as follows:

Firstly, there is no doubt that, whatever the outcome of this investigation, Mr Parker was not acting alone or without support and that his views were also the views of a number of others within the Internal Investigations Unit (IIU). The IIU requires an element of cooperation, teamwork and support. However, it appears to me that there is a clear "us and them" mentality within the IIU, which can be detrimental to the operations of the IIU.

I have collected evidence that demonstrates a “pack” mentality and which is not limited to Mr Parker. I point out that I was not engaged to investigate any person other than Mr Parker and have not done so. However in my investigations, I have come across materials that have caused me some concern and which I have an obligation to bring to your attention.

Details of any misconduct investigation conducted or overseen by the Commission in connection with the subject-matter of Mr Adshead’s article

Commissioner Macknay QC informed me in his letter dated 15 July 2013 that Mr Pollitt had been employed in the Department before being employed by the Commission. He described investigations which have been, or continue to be, overseen or conducted by the Commission concerning the Department. The nature, object and number of investigations are not relevant to this report. I am satisfied, upon reading the Commissioner’s description of them and of the action which has been taken by the Commission in respect of them, that those matters appear to be proceeding appropriately.

In respect of Mr Pollitt, Commissioner Macknay QC informed me that the Commission, upon receiving a complaint from the Director of the IIU of the Department concerning the email from Mr Pollitt to Mr Parker in which Mr Pollitt made reference to placing ‘another rusty nail in her coffin’, concluded that the matter should not be referred under s 196(4) of the Act to the then Parliamentary Inspector, the Hon Christopher Steytler QC. This was because the Commission concluded that the matter alleged concerning Mr Pollitt did not amount to ‘misconduct’ under the Act.¹⁶

The Director’s complaint was raised with the Executive Director of the Commission and with the former Acting Director of Operations. When the latter was asked for his recollection of his response to Mr Pollitt’s email, he said he recalled that the Director of the IIU had alleged that Mr Pollitt potentially had improperly disclosed Commission information by making his remark described above.

The former Acting Director asked Mr Pollitt what he had meant by his remark ‘another rusty nail in her coffin’, and Mr Pollitt answered that it was a reference to the ongoing issues within the IIU about which he had been aware since his employment in the IIU and which he had been informed were continuing issues.

¹⁶ Since my appointment as Parliamentary Inspector I have suggested to Commissioner Macknay QC that the Commission’s statutory obligation under s196(4) of the Act to notify me of any ‘allegation that concerns, or may concern, an officer of the Commissioner’ need not reach the threshold of ‘misconduct’ as defined by s4 of the Act. Commissioner Macknay QC has agreed to adopt my understanding of s196(4) and has subsequently notified me of every such allegation received by the Commission.

The former Acting Director said that he had castigated Mr Pollitt and had given him a strong warning that even when asked general queries he should be careful when responding so as not leave his answer open to inference, particularly when using the Commission's email. He also warned Mr Pollitt that it was not appropriate for him to correspond with Mr Parker when the latter had made complaints to the Commission.

The former Acting Director told Mr Pollitt not to have any further contact with Mr Parker, to which Mr Pollitt agreed.

The former Acting Director concluded that Mr Pollitt need not be disciplined beyond this counselling, but reinforced that he had been silly to leave himself open in private correspondence, as such matters could be misconstrued. This decision was reviewed and approved by Commissioner Macknay QC.

Finally, Commissioner Macknay QC provided me with a copy of an email sent on 3 July 2013 by the Executive Director of the Commission to all staff in which he reinforced the Commission's Code of Conduct, IT Usage Policy and Email Usage policy. The salient elements of that policy are as follows:

- Commission officers occupy positions of great trust and responsibility;
- Commission officers must use Commission resources responsibly;
- Appropriate behaviour by Commission officers is described in the Commission's Code of Conduct, It Usage Policy and Email Usage Supporting Procedure;
- Emails should be written so that there is no doubt for the context to be misunderstood, and
- The improper use of emails may result in disciplinary action.

The policy appears to me to give appropriate guidance in this regard to Commission officers.

MY ASSESSMENT

My jurisdiction in assessing the information obtained from the Commission pursuant to my Inquiry relevantly extends to dealing under s 195(1)(b) of the Act with the conduct of any Commission officer, and to assess under s 195(1)(c) the effectiveness and appropriateness of the Commission's procedures used to deal with the issues which presented themselves during this matter.

My predecessor, the Hon Christopher Steytler QC, due to an absence of notification by the Commission when the Director of the IIU of the Department made her complaint to

the Commission about Mr Pollitt's email to Mr Parker, was not given the opportunity to fulfil his functions, or to use his powers, at the relevant time.

As I noted earlier in this Report, a repetition of such a lapse is unlikely to occur now that Commissioner Macknay QC has agreed that the Commission will proceed upon the basis of my view of the effect of s 196(4) of the Act and, therefore, the Commission's obligations under it.

In the absence of an opportunity on the part of my predecessor to assess the Director's allegation, or to review, at the appropriate time, the disciplinary action taken by the former Acting Director of Operations against Mr Pollitt, and considering the apparent effectiveness of that disciplinary action in causing any subsequent workplace email contact between Messrs Parker and Pollitt to cease, it may be argued that there is no constructive purpose, some two years after the emails and over one year after the disciplinary action, to reconsider the appropriateness of that action.

That may be so despite the apparent acceptance by the former Acting Director of Operations of Mr Pollitt's explanation of the meaning behind his comment of placing 'another rusty nail in her coffin'. To my mind the explanation provided by Mr Pollitt might appear to be directed to deflecting any view that he was part of a dysfunctional circle of investigative officers. It seems to me to lack credibility.

However, I consider that the appropriate conclusion is that the Commission proceeded correctly to discipline Mr Pollitt and to reinforce to its officers generally the care which needed to be taken in the course of email exchanges or other professional communications to speak formally in appropriate terms, to maintain the integrity of the Commission as an important investigative agency of the State, and to take scrupulous care not to accidentally divulge information which it was their duty to keep secret.

As the Commission is continuing to assess matters within the Department, it is not necessary, or appropriate, for me to make any recommendations to the Department in order to encourage its IIU to function properly and professionally.

The emails sent between Messrs Parker and Pollitt and, if Mr Adshead's published edited texts of emails between Mr Parker and other officers of investigative bodies in Western Australia are accurate, those emails, manifest the unprofessionalism and immaturity of the officers concerned. Disciplinary action has been taken in respect of Mr Pollitt, but such an occurrence can seriously undermine the effectiveness of the investigative bodies concerned.

The State needs to be sure that officers in investigative bodies act in a manner commensurate with the trust placed in them, and that they employ their time at work seriously and constructively.

My Inquiry demonstrates how vigilant such bodies need to be to ensure that the conduct of their officers meets these necessarily high standards.

HON MICHAEL MURRAY QC
PARLIAMENTARY INSPECTOR

Appendix Two

CCC Commissioner's letter - 29 November 2013



Your Ref: -
Our Ref: 00582/RM

29 November 2013

Hon. Nick Goiran, MLC
Chairman
Joint Standing Committee on the
Corruption and Crime Commission ("the Committee")
Floor 1, 11 Harvest Terrace
WEST PERTH WA 6000

Dear Chairman

REQUEST TO PROVIDE A RESPONSE ON A REPORT TO THE JOINT STANDING COMMITTEE BY THE PARLIAMENTARY INSPECTOR

Thank you for your letter of 20 November 2013 and the enclosed report of the Parliamentary Inspector of 7 November 2013 being *Report Into the Department of Corrective Services and the Corruption and Crime Commission*.

I note your advice that it is the Committee's desire to table the report in the Parliament in the near future.

In the Commission's respectful submission that should not occur, for the reasons following.

Section 199 of the *Corruption and Crime Commission Act 2003* ("the Act") relevantly provides that the Parliamentary Inspector may at any time prepare a report about any of the matters set out. Section 200 of the Act then reads as follows:

"Before reporting any matters adverse to a person or body in a report under section 199, the Parliamentary Inspector must give the person or body a reasonable opportunity to make representations to the Parliamentary Inspector concerning those matters".

There may be a matter in the report adverse to the Commission.

There is substantial material which is plainly adverse to Mr Pollitt and Mr Parker.

CORRUPTION AND CRIME COMMISSION

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The Commission and Mr Pollitt and Mr Parker were not given notice of the Report before it was tabled with the Committee, and the Parliamentary Inspector did not contemplate any further publication of it and did not turn his mind to any need to give notice, as he considered no criticism was made of the Commission in it.

The report was in the first place to the Committee, but given the provision is one intended to secure procedural fairness, the need for which exists independently of the Act in any event, and as Section 201 provides for a report to be made to the Committee as an alternative to tabling in the Parliament, nothing turns on that.

In regard to the first of the discreet matters in your letter, the Commission's initial audit of emails which passed between Mr Pollitt and Mr Parker was undertaken with the use of Mr Parker's work email address, that being the address known to the Commission.

On completion a further, more generalised search which utilised the name "Parker" was carried out, and produced the additional emails.

In each case the form of the search was decided by Commission legal officers.

The second discreet matter raised by the Committee concerns the proper interpretation of Section 196(4) of the Act.

"The Commission is to notify the Parliamentary Inspector whenever it receives an allegation that concerns, or may concern, an officer of the Commission and at any time the Parliamentary Inspector may review the Commission's acts and proceedings with respect to its consideration of such an allegation".

The term "allegation" appears in a number of places in the Act, and is defined in Section 3 by reference to them.

In each case the allegation is one which concerns or may concern misconduct.

That being the case, the Commission's view is that if a complaint about a Commission Officer is not an allegation, it is not required to inform the Parliamentary Inspector of it.

The Parliamentary Inspector holds a different view.

It was not suggested by Parliamentary Inspector Steytler, who was in office at the time of the complaint here, that he had a similar view.

Notwithstanding the Commission's view, as the Parliamentary Inspector has almost plenary powers in the interest of openness, it has been agreed that all but trivial matters will be forwarded to him to look at.

No change to the legislation is necessary, in the Commission's view.

In the present case, the complaint was of one expression used in a single, private email.

The apparent reason for it being drawn to the attention of the Commission was a concern on the part of the subject of the comment that it might indicate the Commission was investigating matters concerning her.

No question of misconduct could conceivably have arisen from that single email, and the Commission is not of the view that it ought to have informed Parliamentary Inspector Steytler of the matter, or that he was deprived of any opportunity to exercise his function.

Finally, it ought be noted that the Parliamentary Inspector did not conduct any investigation into all the goings on at the Internal Investigations Unit at the Department of Corrective Services and no inference ought be drawn as to them.

If there is any further information that is required please advise.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Macknay', written over a light blue horizontal line.

Roger Macknay, QC
COMMISSIONER

Appendix Three

Parliamentary Inspector's letter - 3 December 2013



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

Our ref: 405/13

3 December 2013

The Hon Nick Goiran MLC
Chairman
Joint Standing Committee of the
Corruption and Crime Commission

Dear Chairman

**RE: REQUEST FOR RESPONSE TO CCC SUBMISSION ON YOUR REPORT
ON DCS-CCC EMAILS**

Thank you for your letter dated 2 December 2013 and for the copy of Commissioner Macknay QC's letter to you dated 29 November 2013. I will address his concerns as they appear in his letter.

Commissioner Macknay QC in his objection to the Committee's intention to include my report in its own report to Parliament suggests that s 200 of the Act required me to provide Messrs Pollitt and Parker a reasonable opportunity to make representations to me before I tabled my report to the Committee on 7 November 2013.

It is my view that s 200 of the Act has application only when an 'adverse' matter which appears in a report by the Parliamentary Inspector tabled under s 199 or s 201 is the product of the Parliamentary Inspector's own investigation and assessment of the propriety of the conduct of a person or body.

In relation to the propriety of the conduct of Messrs Pollitt and Parker, it was the Commission itself which had previously investigated and subjectively assessed it. The subject of my report was the Commission and I found that the Commission's procedures used in this case were, in all the circumstances, effective and appropriate.

Further, the identity and conduct of Messrs Pollitt and Parker and the relevant parts of their email exchanges were already in the public domain by virtue of the articles published by the *West Australian* on 2 & 3 July 2013 when I tabled my report to the Committee on 7 November 2013.

If s 200 of the Act was interpreted and applied more broadly than my view of it, it would give a person or a body, the propriety of whose conduct had previously been adjudicated upon by a separate disciplinary authority (the outcome of which was

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adverse to the person or body), the right to make representations to me about that matter, regardless of the purpose of my report and regardless of my inability to take any action in respect of that adjudication. Applying s 200 in such circumstances would be a meaningless process.

I would only add that my report was made under ss 199(1)(a) and 201 of the Act. In performing that function I am, and remain thereafter, bound by the secrecy provisions of the Act: ss 202(2), 151 and 207.

Unless I am authorised to do so under s 200 of the Act I may not disclose any material part of the report to anyone. S 200, therefore, needs to be seen as an exception to the general rule and interpreted strictly in accordance with ordinary principles of statutory interpretation.

Commissioner Macknay QC suggests that 'there may be a matter in the report adverse to the Commission.' As I have said, I assessed the Commission's procedures to be effective and appropriate in the circumstances. I can only say that I respectfully disagree with him on this point.

In respect of the operation of s 196(4) of the Act, Commissioner Macknay QC and I have indeed agreed that all allegations that concern, or might concern, an officer of the Commission, other than trivial allegations, are to be notified to me.

The triviality in this sense is not an allegation of misconduct which, if proved, might itself be of a trivial nature. Rather, the triviality is that of the nature of a (non-misconduct) issue about which the allegation is made. An example of this would be of a complainant who is disappointed by the Commission's assessment of his or her complaint, and who responds by alleging that the officer responsible for the assessment is, for example, 'incompetent'.

As it is the Parliamentary Inspector's function under s 195(1)(b) of the Act to deal with matters of misconduct on the part of the Commission and its officers, then for the purpose of s 196(4) it is, in my view, essential that the Parliamentary Inspector is the person to decide if a non-trivial allegation is capable of constituting misconduct if substantiated. The Parliamentary Inspector can properly perform this important function only if he or she is notified of it.

I have continuously stressed to Commission Macknay QC that it is inappropriate and contrary to the principles of transparency and accountability for the Commission to determine if an allegation which is not trivial may or may not be misconduct if substantiated. In such a situation the Parliamentary Inspector has no means of knowing whether the Commission's assessment of the allegation has been an accurate one.

The absence of a notification by the Commission to my predecessor under s 196(4) of the Act in respect of the email exchange between Messrs Pollitt and Parker demonstrates the danger if s 196(4) was interpreted and applied less stringently. As we have seen, the conduct revealed was sufficiently serious for Mr Pollitt to be disciplined by the Commission.

Finally, Commissioner Macknay QC makes the observation that no adverse inference should be drawn having regard to the fact that I did not conduct an investigation 'into all the goings on at the Internal Investigations Unit at the Department of Corrective Services'. I agree and note that I do not have the jurisdiction to conduct such an investigation.

I remain pleased to assist you with any further information you may require.

Yours sincerely,


HON MICHAEL MURRAY QC
PARLIAMENTARY INSPECTOR

Appendix Four

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

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

It is the function of the Joint Standing Committee to -

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

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