



**Joint Standing Committee on the Corruption and Crime Commission**  
**Parliamentary Inspector's report on the issuing of notices**  
**by the Corruption and Crime Commission under s 42 of the**  
**Corruption, Crime and Misconduct Act**

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

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## **Parliamentary Inspector's report on the issuing of notices by the Corruption and Crime Commission under s 42 of the Corruption, Crime and Misconduct Act**

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Report No. 6

Presented by

**Ms M.M. Quirk, MLA and Hon. J.E. Chown, MLC**

Laid on the Table of the Legislative Assembly and of the Legislative Council  
on 30 November 2017



## Chair's Foreword

**T**his report by the Parliamentary Inspector of the Corruption and Crime Commission deals with the use of so-called section 42 notices by the Corruption and Crime Commission.

A notice served under section 42 of the *Corruption, Crime and Misconduct Act 2003* by the Corruption and Crime Commission compels the recipient of the notice, a public sector agency or police, to desist from an investigation which may be concurrent with one being conducted by the Commission.

The rationale for this section is to prevent unintended interference or the impeding or duplication of investigative activity, which may have the effect of prejudicing the Commission's endeavours.

It appears that the case which is the subject of this report arose out of a misunderstanding about the effect of this notice and in this instance led to the failure for either the Commission or police to provide protection to a victim for a number of weeks.

The Parliamentary Inspector recommends the repeal of section 42 as arrangements can be made informally between agencies as to the manner of conduct of an investigation. However, the Parliamentary Inspector concedes were it considered appropriate to retain the section that the power should only be exercised after consultation, be limited in time, should state the public interest grounds for its issue and be served personally on the individual with the relevant authority.

Having examined the operation of section 42, the Committee is now confident that such incidents are isolated and there is no systemic issue. The Committee was also told during its own inquiries that the use of these notices is now infrequent and that there has been considerable effort for better lines of communication between the Commission and police to ensure greater appreciation of the exact effect of the service of a section 42 notice.

Although the recommended legislative reforms may improve operations, we do not consider these pressing.

The Committee notes the report and thanks the Parliamentary Inspector for his efforts.



MS M.M. QUIRK, MLA  
CHAIR



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# Findings and Recommendations

## **Finding 1**

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The Parliamentary Inspector of the Corruption and Crime Commission's report illustrates the way that the use of section 42 notices has the potential to cause difficulty between the Corruption and Crime Commission and other investigative agencies in the discharge of their respective duties.

## **Finding 2**

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The Corruption and Crime Commission and the Parliamentary Inspector on the Corruption and Crime Commission differ in their views about whether section 42 of the *Corruption, Crime and Misconduct Act 2003* should be repealed or amended.

## **Finding 3**

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The Corruption and Crime Commission's use of its power under section 42 of the *Corruption, Crime and Misconduct Act 2003* has caused tension between it and the Western Australia Police in the past.

## **Finding 4**

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The relationship between the Corruption and Crime Commission and the Western Australia Police has improved in recent years.

## **Finding 5**

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The Corruption and Crime Commission's use of its power under section 42 of the *Corruption, Crime and Misconduct Act 2003* is not currently causing ongoing or systemic issues.

## **Finding 6**

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Section 42 of the *Corruption, Crime and Misconduct Act 2003* need not be repealed at this stage.

## **Finding 7**

**Page 9**

Amendments to section 42 of the *Corruption, Crime and Misconduct Act 2003* would be more appropriately considered as part of a broader review of the Act as a whole.

## **Finding 8**

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The Joint Standing Committee on the Corruption and Crime Commission will continue to monitor the Corruption and Crime Commission's use of its power under section 42 of the *Corruption, Crime and Misconduct Act 2003* and reassess the issue should the current situation change.



# Chapter 1

## The Committee's consideration of the Parliamentary Inspector's report

The Parliamentary Inspector of the Corruption and Crime Commission (PICCC) provided his report on the issuing of section 42 notices by the Commission to the Joint Standing Committee on the Corruption and Crime Commission (Committee) on 22 August 2017. It is attached at Appendix One.

The purpose of the PICCC's report is to illustrate the way in which the use of section 42 notices has the potential to cause difficulty between the Commission and other investigative agencies in the discharge of their respective duties.

### What is a section 42 notice?

A notice issued under section 42(2) of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) allows the Commission to direct authorities, mainly WA Police, not to continue their investigations into a matter that may involve misconduct, in order to allow the Commission to inquire into the matter.

Part 2 of the PICCC's report sets out the terms and operation of section 42 of the CCM Act in detail.

### The complaint made to the PICCC

The catalyst for the PICCC's report was a complaint lodged on 21 August 2014 by the Commissioner of Police with the PICCC, regarding a section 42 notice issued by the Commission on 24 June 2014.

The Commission issued the notice in relation to a police officer who the WA Police was investigating for suspected misconduct. The alleged misconduct related to the criminal investigation of alleged violence committed by one private citizen against another.

The PICCC's report is not concerned with the outcome of either the criminal investigation into alleged violence or the alleged misconduct of the police officer. Both matters have since been resolved. The PICCC notes that there was no finding of misconduct against the police officer.

### The PICCC's investigation

The complaint made by the Commissioner of Police to the PICCC described that the section 42 notice had the effect of requiring the WA Police to discontinue an internal

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investigation of suspected misconduct by the police officer involved. The police officers who were served the section 42 notice maintained that the Commission officer serving the notice simultaneously gave a verbal directive to cease investigation of the suspected crimes allegedly committed by the private citizen involved in the matter.

Such a direction, if made, seeks to extend the operation of the section 42 notice beyond its legal scope. A section 42 notice only applies to the investigation of a misconduct matter; it does not apply to the WA Police investigating a crime allegedly perpetrated by one private citizen against another.

The PICCC notes that while this direction ‘could not be regarded as part of the notice ... in view of the interconnection of the alleged misconduct of the police officer and the alleged offences committed ... it may have been good advice about the effect of the notice.’<sup>1</sup>

The PICCC outlines in his report how the interconnection of facts between alleged misconduct of the police officer and the alleged crimes of the private citizen complicated the effect of the section 42 notice. This led to some confusion, for a time, around the jurisdiction of the two agencies, and particularly, who was responsible for investigating the suspected crimes and protecting the person who was the subject of those acts.

The PICCC found, amongst other things, that it was not necessary for the Commission to have issued a section 42 notice in June 2014 in relation to the matter in question. He made several recommendations to the Commission regarding the use of section 42 notices, which his report sets out.<sup>2</sup>

The PICCC notes that ‘the Commission has sought to modify its operational processes in respect of the use of notices issued under s 42 of the Act, both when directed to the Police and generally.’<sup>3</sup>

### Finding 1

The Parliamentary Inspector of the Corruption and Crime Commission’s report illustrates the way that the use of section 42 notices has the potential to cause difficulty between the Corruption and Crime Commission and other investigative agencies in the discharge of their respective duties.

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1 See PICCC report at p16.

2 See PICCC report at p21.

3 See PICCC report at p22.

## Differing views: the PICCC's recommendations and the Commission's position

The PICCC is of the view that section 42 of the CCM Act is 'an unnecessary and clumsy process' designed to give the Commission primacy where this is not necessary. He states in his report:

*the Commission is always in a position to control the best means by which its misconduct function and that of the [Public Sector Commission] and other responsible agencies are to be discharged. The issue of a blanket stop notice is unnecessary to secure the proper discharge of the misconduct functions of the Commission and other appropriate authorities.*

He emphasises that the Commission and investigative authorities should undertake a consultative and cooperative approach to misconduct investigations, allowing agencies to continue to carry out their statutory functions.

The PICCC recommends that section 42 of the CCM Act be repealed. Alternatively, he recommends that it be amended as set out in Table 1.1 below.

The Commission disagrees that section 42 should be repealed. It also disagrees with the PICCC's recommended amendments. The following table compares the two opposing views, as outlined in the PICCC's report.

**Table 1.1 – PICCC's recommended amendments to section 42 and the Commission's response**

<b>PICCC's recommended amendments</b>	<b>Commission's position</b>
Section 42(6) should be deleted. It should be made clear that a notice may not be issued where arrangements have been made between agencies as to the conduct of an investigation.	Section 42(6) of the Act should be retained. It is designed to enable the Commission to obtain the assistance of an appropriate authority during the period of the operation of a section 42 notice.
A notice is only to be issued after consultation between the Commission and the Public Sector Commission or the appropriate authority.	There should be no requirement for prior consultation because that would defeat the purpose of issuing a section 42 notice.
A notice must be for a defined period, no longer than 21 days, and may be revoked within the period of its operation. A notice may be re-issued for one further period of up to 21 days.	There should be no limitation of time in the provision. The PICCC's recommendation 'fails to appreciate the breadth and nature of Commission investigations'.

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PICCC's recommended amendments	Commission's position
A notice should state the grounds of its issue, in terms of the public interest and the need to preserve the operational integrity of the Commission's investigation. The PICCC's view is that such a requirement would enable the agency bound by the notice to form a judgment as to whether it was open to challenge and would assist the officers of the Commission to focus their attention upon the statutory grounds for the issue of the notice.	No purpose is served by requiring the notice to state on its face the grounds of its issue.
A notice must be personally served upon the person representing the PSC or the appropriate authority.	Personal service should not be required in every case because the circumstances may be such as to require some other mode of service.

### Finding 2

The Corruption and Crime Commission and the Parliamentary Inspector on the Corruption and Crime Commission differ in their views about whether section 42 of the *Corruption, Crime and Misconduct Act 2003* should be repealed or amended.

### The WA Police's view

When offered the opportunity by the PICCC to provide comment on his report, the Police Commissioner advised the PICCC that WA Police did not have any comment to make. The PICCC takes this to mean that WA Police have no issue with the content of his report and recommendations.

At a public hearing in August 2017, the outgoing Police Commissioner told the Committee that WA Police do not want section 42 notices used unless 'absolutely critical'. This is because use of these notices 'interferes with a whole range of things and the outcome is more protracted and often not the best outcome for everybody, particularly in terms of bringing the truth of the investigation into the foreground.'<sup>4</sup>

### The Committee's consideration

#### Historical issues with the use of section 42 notices

Prior to receiving the PICCC's report, the Committee was aware that the use of section 42 notices had previously caused tension between the Commission and the WA Police.

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4 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 14 August 2017, p6.

Between 1 July 2009 and 30 June 2014, the Commission issued 29 section 42 notices in relation to WA Police investigations. There was a sharp increase during the 2013–14 reporting period.<sup>5</sup>

During this period, two well-publicised incidents drew attention to issues that could result from the issuance of a section 42 notice.

The first example illustrates the way in which a section 42 notice can add undue time to an investigation.

In 2013, an incident at the East Perth Watch House took place that resulted in a woman complaining about her treatment at the hands of 12 WA Police staff. The Commission issued a section 42 notice in April 2013. However, it did not table its report until August 2015, some 30 months later.

The time the Commission took to finalise its investigation contributed to the Police Commissioner determining that ‘the officers who remained at WAPOL since the incident would not face criminal or disciplinary action because of the amount of time that had passed since the alleged assault.’<sup>6</sup>

The second incident involved a former police officer using excessive force at the Broome police station in March and April 2013. The Commission served a section 42 notice on the WA Police, instructing them to refrain from further conducting any internal investigation.

The Police Commissioner expressed the view that there was no need for a section 42 notice to be served. He considered that the matter would have been resolved sooner without the intervention of the Commission.<sup>7</sup>

The delay in this example was in part attributable to matters not specifically related to the section 42 notice. Although the Commission did charge the former police officer with alleged assault following its investigation of the incidents, the former police officer

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5 Joint Standing Committee on the Corruption and Crime Commission, Report No. 18, *Improving the working relationship between the Corruption and Crime Commission and Western Australia Police*, Parliament of Western Australia, Perth, March 2015, p21.

6 Joint Standing Committee on the Corruption and Crime Commission, Report No. 26, *Public hearing with the Police Commissioner on the CCC’s report on an incident at the East Perth Watch House*, Parliament of Western Australia, Perth, February 2016, see Chairman’s Foreword.

7 Collins, B. and Bamford, M., ‘Police commissioner frustrated by CCC investigation into Broome police assault’, *ABC News Online*, 20 July 2016. Found at <http://www.abc.net.au/news/2016-07-20/police-commissioner-complained-about-ccc-investigation-broome/7645194>

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successfully challenged the Commission's power to charge and prosecute criminal offences under the Criminal Code.<sup>8</sup>

### Finding 3

The Corruption and Crime Commission's use of its power under section 42 of the *Corruption, Crime and Misconduct Act 2003* has caused tension between it and the Western Australia Police in the past.

### Report of the 39<sup>th</sup> JSCCCC

The Joint Standing Committee of the Corruption and Crime Commission of the 39<sup>th</sup> Parliament (39<sup>th</sup> JSCCCC) previously reported on the tension arising between the Commission and the WA Police as a result of the use of section 42 notices.<sup>9</sup>

In its Report 18, the 39<sup>th</sup> JSCCCC outlined four main concerns that the WA Police had with the Commission's use of section 42 notices, as at the tabling of the report in March 2015. These were:

- The Commission has often taken longer than 12 months to finalise investigations into a matter.
- WA Police are unable to immediately employ risk-mitigation strategies for staff accused of serious misconduct while the Commission is undertaking its investigations.
- The CCM Act does not specify criteria for when a section 42 notice is appropriate.
- The Commission does not provide WA Police with all the evidence collected on a matter if they do not proceed with a prosecution.<sup>10</sup>

### An improved relationship between the Commission and WA Police since 2015

The Committee observes that the relationship between the Commission and WA Police has improved since 2015.

Since 2014, the Commission has taken various steps to modify the use of section 42 notices. After becoming aware of police concerns about the scope and non-revocation

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8 A -v- Maughan [2016] WASCA 128. For more detail see the 39<sup>th</sup> JSCCCC's Report No. 33, *The ability of the Corruption and Crime Commission to charge and prosecute*, Parliament of Western Australia, Perth, November 2016, in particular, Chapter 4.

9 Joint Standing Committee on the Corruption and Crime Commission, Report No. 18, *Improving the working relationship between the Corruption and Crime Commission and Western Australia Police*, Parliament of Western Australia, Perth, March 2015, p21.

10 Joint Standing Committee on the Corruption and Crime Commission, Report No. 18, *Improving the working relationship between the Corruption and Crime Commission and Western Australia Police*, Parliament of Western Australia, Perth, March 2015, p21.



of some notices, Acting Commissioner Shanahan SC conducted an audit of the use of section 42 notices. This resulted in the revocation of some notices at the end of 2014.

Further, the Commission and the WA Police revised their Memorandum of Understanding (MoU) in July 2015. The revision predominantly was aimed at alleviating some of the tensions around the use of section 42 notices. The MoU as a whole appears to be working well.

In November 2015, the WA Police Commissioner briefed the 39<sup>th</sup> JSCCCC on the issue of section 42 notices as part of the Committee's investigation of the incident at the East Perth Watch House. He said that he believed that in future the Commission would be more discerning about when they issued these notices and that they would aim to work more cooperatively with WA Police.<sup>11</sup>

The WA Police Commissioner also expressed the view that there would be more timely responses on behalf of the Commission in terms of investigations. As at the end of 2015, he had no problem with the way things were.<sup>12</sup>

In August 2017, the outgoing WA Police Commissioner made comments to this Committee indicating that this is still the case. The WA Police said that the relationship between the two agencies has 'matured quite significantly' with a more collaborative approach taken to investigations.<sup>13</sup>

The Commission has also enacted a policy about issuing section 42 notices, which was provided to the PICCC in March 2016. This policy dictates that the notices are to be used sparingly, that due regard is had to the role of the agency and its capacity to deal effectively with misconduct, and that notices are not in effect over a protracted period.

### Finding 4

The relationship between the Corruption and Crime Commission and the Western Australia Police has improved in recent years.

### A systemic issue?

Given the Commission's recent change in approach to issuing section 42 notices, the Committee wanted to ascertain whether there were ongoing or systemic issues.

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11 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 25 November 2015, p10.

12 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 25 November 2015, p11.

13 Dr Karl O'Callaghan, Commissioner of Police, Western Australia Police, *Transcript of Evidence*, 14 August 2017, p2, p4 and p5; and Mr Nicholas Anticich, Assistant Commissioner, Professional Standards, Western Australia Police, *Transcript of Evidence*, 14 August 2017, p3 and p6.

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The Committee wrote to the PICCC on 14 September 2017 to ask whether there had been any other instances of section 42 notices being interpreted (by either party) to extend beyond the scope provided under the CCM Act.

The PICCC replied that there had not been any other complaints about section 42 notices made to him, nor had the Commission informed him of any such complaint made to it. He stated that the principal purpose of his report was to raise with the Committee the sorts of difficulties that can arise between the Commission and public sector agencies during misconduct investigations due to the inherent nature of section 42.<sup>14</sup>

The PICCC aimed to provide the Committee with the information ‘to be able to consider the necessity to have the section in the Act, or whether its repeal in favour of an adoption of a cooperative approach between the Commission and agencies may provide a more appropriate and flexible basis for achieving the legislative purpose underpinning the section.’

The PICCC also noted the possibility that the conclusion may be that the section remain in the CCM Act, and his aim was then to ‘place before the Committee some suggestions for its amendment and to provide [it] with the views of the Commission about them.’<sup>15</sup>

The Committee appreciates the advice of the PICCC on this matter.

### Finding 5

The Corruption and Crime Commission’s use of its power under section 42 of the *Corruption, Crime and Misconduct Act 2003* is not currently causing ongoing or systemic issues.

### The Committee’s position

Despite the various issues that have arisen in relation to the use of section 42 notices, the Committee is of the view that section 42 should not be repealed.

The Committee considers that future situations may justify the use of such powers by the Commission. It agrees with the Commission’s view that ‘its capacity to maintain the effectiveness and integrity of its investigations requires the retention of s 42.’<sup>16</sup>

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14 Hon. Michael Murray AM QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 14 September 2017.

15 Hon. Michael Murray AM QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 14 September 2017.

16 See the PICCC’s report at p27.

However, the Committee is cognisant that issues faced by the WA Police in the past may arise again in the future. As such, the Committee will maintain a watching brief on the Commission's use of section 42 notices.

The Committee sees the maturation of the relationship between the Commission and WA Police as evidence that issues regarding the use of section 42 notices can be mitigated by effective communication and cooperation.

Further, the Committee agrees with Commissioner McKechnie that the CCM Act should be subject to a comprehensive review and flow-on amendments 'rather than taking a piecemeal approach.'<sup>17</sup> A comprehensive review would enable consideration of section 42 in the context of the CCM Act in its entirety, taking into account the concerns expressed by the PICCC regarding the operation of section 42.

#### **Finding 6**

Section 42 of the *Corruption, Crime and Misconduct Act 2003* need not be repealed at this stage.

#### **Finding 7**

Amendments to section 42 of the *Corruption, Crime and Misconduct Act 2003* would be more appropriately considered as part of a broader review of the Act as a whole.

#### **Finding 8**

The Joint Standing Committee on the Corruption and Crime Commission will continue to monitor the Corruption and Crime Commission's use of its power under section 42 of the *Corruption, Crime and Misconduct Act 2003* and reassess the issue should the current situation change.

A handwritten signature in black ink, appearing to read 'M.M. Quirk', is positioned above the printed name.

MS M.M. QUIRK, MLA  
CHAIR

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17 See the PICCC's report at p27.



# **Appendix One**

Parliamentary Inspector's Report

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## **THE ISSUING OF NOTICES BY THE CORRUPTION AND CRIME COMMISSION UNDER S 42 OF THE CORRUPTION, CRIME AND MISCONDUCT ACT**

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

22 August 2017

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## 1. INTRODUCTION

This Report results from my investigation of a complaint made to me by the Commissioner of Police on 21 August 2014. His complaint described the confusion caused in the W.A. Police after the Corruption and Crime Commission (the Commission) issued a notice to them under s 42(2) of the *Corruption and Crime Commission Act 2003 (WA)* (the Act). The notice was addressed to the Superintendent who was the officer in charge of the Police Internal Affairs Unit and was dated 23 June 2014.

It directed the Police to cease their investigation of suspected misconduct by a police officer (the police officer). However, the Commissioner of Police complained to me that a verbal direction given by the Commission officer who served the notice on the Police was understood by the Police to mean that they were also to cease their investigation of suspected crimes inextricably related to the suspected misconduct, which, simultaneously, were being investigated by the Police.<sup>1</sup>

The Police believed that the Commission had assumed responsibility for the investigation of the suspected crimes. However, due to the confusion between the two agencies, the Commission had not done so. The confusion placed the victim, AB, in a situation for a period of about six weeks during which protective personal measures which otherwise would normally have been offered by the Police to a suspected victim of violence were not put in place by either agency.

Criminal proceedings for serious crimes committed against the victim, AB, were eventually commenced by the Police against the alleged offender, CD, and that person was convicted and imprisoned. I delayed finally dealing with the matter and took care that nothing eventuated in that regard while the criminal process was on foot, but I am satisfied that the particular matter of complaint raised by the Commissioner of Police has been resolved and this Report is not concerned to report the outcome of that process to the Parliament.

No purpose would be served in now doing so and, indeed, some of the people involved would no doubt be harmed unnecessarily by such a Report. All that need be said about the misconduct investigation ultimately conducted by the Commission concerning the police officer involved in the allegations is that the Commission formed no opinion that misconduct had occurred.

Not only is there now no purpose to be served in identifying AB and CD or the police officer who was the subject of the misconduct allegation, but the issues concerning the Commission which I address in my Report are not dependent on the disclosure of the identities of non-executive Commission officers or the Police officers who were involved in the events to which I will briefly advert.

The purpose of that account is to illustrate the manner in which the use of s 42 of the Act has the potential to cause difficulty in the relationship between the Commission and other investigative agencies in the discharge of the duty to investigate and deal

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<sup>1</sup> The alleged misconduct of the police officer was linked to the criminal investigation of alleged violence committed against a private citizen, AB, by another private citizen, CD.

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with matters of mutual interest and concern, so that I may explore and make recommendations in respect of the relevant terms of the Act.

Those recommendations will advocate the repeal of s 42 of the Act or, failing that, its reformulation in terms which may achieve a better balance between the capacities of all the integrity agencies involved to perform their respective functions.

### 2. SECTION 42 – ITS TERMS AND OPERATION

I commence by setting out the relevant terms of s 42 of the Act, which, by s 42(1), is concerned with misconduct matters – any allegation, complaint, information, or matter involving misconduct, whether serious or not, as defined by the Act, ss 3(1) and 4 (noting that any police misconduct is included in the definition of serious misconduct, and is therefore the business of the Commission).

The section was amended by the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* with effect from 1 July 2015. The amendment was substantially concerned to add the Public Sector Commissioner (PSC) as a person to whom a direction under the section may be given by the Commission. Although the material facts involved in the complaint by the Commissioner of Police commenced to occur before that date, they remain relevant to illustrate the sort of difficulties which may arise in the use of the section, to which I will refer in its present terms.

The substantive provisions of s 42 of the Act are as follows:

- (2) The Commission may, by written notice, direct the Public Sector Commissioner or an appropriate authority –
  - (a) not to commence investigation of a misconduct matter or, if an investigation of the matter has already commenced, to discontinue the investigation; and
  - (b) to take all reasonable steps to ensure that an investigation of a misconduct matter is not conducted by an officer of the Public Sector Commissioner or an officer of the appropriate authority.
- (4) The notice absolves the Public Sector Commissioner and his or her officers or the appropriate authority and its officers from any duty with respect to the misconduct matter so far as it relates to investigation of the matter or to the bringing of an offender concerned before the courts to be dealt with according to law.
- (6) Subsection (2) does not prevent an investigation of the misconduct matter that is conducted in accordance with arrangements made between the Commission and the Public Sector Commissioner or appropriate authority.
- (7) Despite subsection (2), an investigation of the misconduct matter by the Public Sector Commissioner or appropriate authority may be



commenced or resumed if the Commission notifies the Public Sector Commissioner or appropriate authority that the Commission has revoked the direction.

Apart from the PSC, the notice under the section may be directed to an ‘appropriate authority’, a term defined in s 3(1) of the Act to mean ‘a person, body or organisation who or which is empowered by a law of the State to take investigatory or other action, or both, in relation to misconduct,’ not including the PSC, an independent agency as defined (to which I need not refer for present purposes) and the Parliament.

I need not here undertake a review of such authorities, which are numerous and have statutory responsibilities and functions to deal with, or recommend that action be taken to deal with, misconduct in its various forms, whether serious or minor within the terminology of the Act. The Commission may, of course, become involved in allegations of misconduct and the need to ensure that such matters are duly and properly investigated and dealt with, in a variety of ways, not the least of which is the performance of the duty of a public agency to notify the Commission of something which may amount to serious misconduct under s 28 of the Act.

It is convenient to note at this point that when the Commission becomes seized of a matter, by any means, it controls the course of the investigation and how the matter is to be dealt with. It may investigate and assess the matter itself, refer it to the appropriate authority to be dealt with in a process which is monitored by the Commission, or undertake a joint investigation in cooperation with the other agency. In addition, it may change course in deciding how the matter is to be best dealt with, from time to time: see ss 33, 34, 37, 39, 40 and 41 of the Act.

In my view s 42 of the Act is not an essential power in allowing the Commission to exercise its misconduct function by making appropriate decisions as to how a matter is to be handled.

An allegation of misconduct in public office may be of conduct which involves the officer in the commission of one or more criminal offences which, subject to ordinary processes of evaluation, may need to be dealt with by undertaking, or participating in the undertaking of, a criminal prosecution. Further, as in this case, another, or others, may be involved in criminal activity which is uncovered in the investigation or, again as in this case, is inextricably linked to the misconduct investigation.

The possibility of such interconnected investigations and the need for an alleged offender to be subjected to criminal process and brought before the courts is recognised in s 42(4) of the Act, but, consistently with the thrust of the section, operational primacy, or control of the process of investigation, is given to the Commission and the effect of a notice under s 42(2) is absolute, unless, as I interpret the rather oddly worded s 42(6), the Commission and the appropriate authority also involved in the matter undertake a joint investigation of a kind which will enable both agencies to discharge their statutory functions in the matter.

This subsection and the way in which s 42 of the Act is worded generally, shows that the instigation of, and involvement of an integrity agency in, the prosecution process

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is not to be divorced from the process of investigation. It is all part of a process which in the end will see the miscreant dealt with according to law.

Finally, although I originally thought otherwise, I now think that the better view is that the provisions of s 42(7) seem to have the effect that a notice under the section is to be open-ended. It may not be time limited, but may only be ended by subsequent advice from the Commission. While it is in operation its effect is total. The appropriate authority is not only absolved from its duty to act; it can do nothing.

### 3. THE COMPLAINTS MADE

The complaint made to me by the Commissioner of Police on 21 August 2014 was that a Senior Investigator in the Operations Directorate of the Commission (the Senior Investigator) who had served a notice under s 42 of the Act on 24 June 2014 on the Superintendent and a Detective Inspector (the Inspector) of the Police to immediately cease an internal investigation of suspected misconduct by the police officer, simultaneously gave the Superintendent and the Inspector a verbal direction to cease their investigation of suspected crimes allegedly committed by CD earlier that month.

That could not be regarded as part of the notice, of course, but, in view of the inter-connection of the alleged misconduct of the police officer and the alleged offences committed by CD against AB, it may have been good advice about the effect of the notice.

To the extent that the facts concerning the police officer and AB and CD could not be disentangled it would be hard to argue that the Police were not investigating a misconduct matter, but were entirely concerned merely to establish whether any of the persons concerned were implicated in the commission of one or more criminal offences.

The Commission's notice was signed by the then Acting Deputy Director of the Commission's Operations Directorate (the Acting Deputy Director) by virtue of a delegated authority from the Commissioner.

The Commissioner of Police also complained that the Acting Deputy Director, by letter dated 7 August 2014, a Thursday, wrote to the Superintendent seeking to clarify what the Commission's notice was intended to mean. The letter was hand delivered on 11 August 2014. It said:

For the avoidance of doubt, it should be made clear that the section 42 direction set out in that letter does not preclude WA Police from investigating any alleged criminal conduct on the part of [CD].

The Commissioner of Police said that the Acting Deputy Director's letter appeared to him to be an attempt to abrogate the Commission's responsibility to endeavour to protect AB between 24 June 2014 and 11 August 2014, the understanding being that the Commission had assumed responsibility for the criminal investigation of CD as an inevitable consequence of the pursuit of its investigation of the alleged misconduct of the police officer.

The Commissioner of Police said that during the weekend of 9 & 10 August 2014 CD was alleged to have committed further serious crimes against AB, and complained to me that the Commission's inaction in protecting AB may have contributed to the commission of those crimes.<sup>2</sup>

The Commissioner of Police also complained to me that the Acting Deputy Director attached to his letter dated 7 August 2014 a full copy of the transcript of the Commission's private examination of AB, and that the justification given by the Acting Deputy Director in the letter for doing so was to assist the Police with its criminal investigation of CD. However, the transcript also contained details of the misconduct complaint made against the police officer.

The Commissioner of Police complained that the disclosure of the transcript had the potential of damaging the reputation and standing of the police officer who was being investigated for misconduct, and that the information which related to the Police officer should have been redacted by the Commission before the transcript was disclosed to the Police. The transcript was returned to the Commission, and this information was redacted from it. I mention that here solely for completeness.

#### 4. MY INVESTIGATION

In response to the Commissioner of Police's complaint to me, I obtained statements from the Superintendent and Inspector of Police concerning their meeting on 24 June 2014 with the Commission's Senior Investigator, and generally in respect of the matter. I obtained copies of contemporaneous notes that had been made. These documents were detailed and supported the Commissioner of Police's complaint to me.

A Police statement of material facts concerning the charges brought by the Police against CD was also obtained. It confirmed that the crimes committed against AB, of which CD was subsequently convicted and for which he was sentenced in February 2016, were as follows:

1. Deprivation of liberty: *Criminal Code* s 333 – from the afternoon of Sunday 10 August 2014 to 8am on Tuesday 12 August 2014, CD having gone to AB's unit on the night of Friday 8 August 2014;
2. Assault occasioning bodily harm: *Criminal Code* s 317(1) – sporadically by strangling and punching, between about 12pm on Sunday 10 August to midnight on that day;
3. Aggravated assault: *Criminal Code* s 313(1)(a) – in the afternoon on Monday 11 August, when CD slammed AB's face into the steering wheel of her car;

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<sup>2</sup> Afterwards I ascertained that although the events which led to the commission of further serious crimes by CD against AB commenced over the weekend of 9 & 10 August 2014, the crimes themselves were not committed until 11 August 2014, the day upon which the second letter was served.

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4. Indecent assault: *Criminal Code* s 324 – at about 7pm on 11 August CD removed AB’s pants and underpants – then, at the same time;
5. Aggravated assault: *Criminal Code* s 313(1)(a) – by strangling and other violent acts – then, at the same time;
6. Threats to kill: *Criminal Code* s 338B – by words and with scissors, and
7. Threats to kill with intent to prevent a lawful act: *Criminal Code* s 338A(c) – about 8am on Tuesday 12 August – if AB called the police. CD then left and AB immediately called 000 from the house of a neighbour.

The Superintendent’s contemporaneous notes of his meetings reflected the content of his statement. The statement of the Inspector corroborated the principal issues raised by the Superintendent and by the Commissioner of Police.

An investigation was undertaken by the Commission and private hearings were held in July 2014. I obtained the transcripts of the hearings and the evidence given by the Superintendent, the Inspector, AB, CD, and the police officer who, it was said, may have been involved in the offences committed.

On 9 September 2014 I wrote to the Commission and raised my concerns about the issues complained to me by the Commissioner of Police. In particular, I enquired into the Commission’s use of the notice issued under s 42 of the Act in this instance, and in respect of the Commission’s procedures used generally in respect of such notices to determine:

1. when a notice should be issued and why;
2. its duration;
3. the consultations the Commission undertakes with the appropriate authority before it is served, and
4. how it should be conditioned having regard to s 42(6) of the Act.<sup>3</sup>

On 16 October 2014 Acting Commissioner Douglas replied to the effect that:

1. the investigations conducted respectively by the Commission and by the Police into the misconduct allegation and the alleged crimes committed by CD began cooperatively;
2. the Commission was aware that AB was vulnerable from the outset of the investigations;
3. the Commission’s executive officers overseeing its investigation determined that the disclosure of the Commission’s misconduct investigation into the

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<sup>3</sup> Section 42(6) of the Act is an odd provision to which I have referred above. It seems to provide that although a notice has stopped an investigation, it may be continued in accordance with arrangements made with the Commission.

conduct of the police officer compromised that investigation, and the Commission unilaterally determined that cooperation between the two organisations on the matter was no longer appropriate. The Commission decided to end cooperation by issuing the notice under s 42 of the Act on 24 June 2014;

4. the Senior Investigator's understanding at the conclusion of the meeting with the Superintendent and the Inspector was that cooperation was to cease; the Commission was to assume all responsibility for the misconduct investigation of the police officer; the Police were not restricted in any criminal investigation of CD, and the Commission and the Police would no longer seek to jointly interview AB;
5. at no time did the Superintendent and Inspector indicate that the criminal investigation of the crimes allegedly committed by CD against AB during the long weekend in June was urgent, and at no time did the Senior Investigator verbally inform them to cease any criminal investigation being undertaken by the Police of CD;
6. any verbal representation given by the Senior Investigator when serving a notice under s 42 of the Act could not constitute a 'direction' for the purposes of that section;<sup>4</sup>
7. the notice served by the Senior Investigator was limited in scope and had no meaning other than its express terms;
8. the notice served by the Senior Investigator did not exceed the authority created under s 42 of the Act;
9. the Commission did not have the power to direct, and never purported to direct, the Police to refrain from investigating the crimes allegedly committed by CD;
10. private examinations conducted by the Commission in respect of the matter were in relation to two issues: alleged misconduct by the police officer, and the disclosure by Police to the police officer of the existence of the Commission's misconduct investigation;
11. the Acting Deputy Director's letter which sought to clarify the meaning of the Commission's notice was dated 7 August 2014, but was probably signed by the Acting Deputy Director either on Friday 8 August 2014 or on Monday 11 August 2014, and was served on the Superintendent in the afternoon of 11 August 2014;
12. the Acting Deputy Director's letter was written and served because the Commission, upon reviewing the police officer's evidence given during the

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<sup>4</sup> 'Direction' meaning that the verbal representation cannot be taken to have any statutory authority to compel its recipient to act, or not act, in any particular way.

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Commission's private examinations, thought that the meaning of its notice required clarification;

13. the un-redacted copy of the transcript of AB's evidence during the Commission's private examination was attached to the Acting Deputy Director's letter dated 7 August 2014 in order to assist the Police in its investigation of the alleged crimes committed by CD. It was addressed to the Superintendent and was not intended by the Commission for wider distribution throughout the Police;
14. the Commission's disclosure of the copy of the transcript was appropriate, and the subsequent redaction of information from it which pertained only to the misconduct allegation made against the police officer was, in hindsight, perhaps an over-reaction;
15. attempts were made by the Senior Investigator to contact AB between 13 June 2014 and 30 June 2014, and on the latter date contact was made by way of mobile telephone text. Contact with her remained intermittent between then and when she attended the Commission's private examination on 22 July 2014;
16. the Commission's general procedure for the issuing of a notice under s 42 of the Act was governed by operational needs on a case-by-case basis; a cooperative approach is preferred to investigations with appropriate authorities unless for operational reasons that approach is not desirable; a notice protects an appropriate authority from adverse comment about failing to complete its own internal investigation if the Commission believes the investigation is best undertaken by it alone, and that s 42(6) allows the Commission flexibility to conduct aspects of the investigation in conjunction with the agency should that be thought desirable.

The Commission did not form any opinion of misconduct on the part of any Police officer involved in the matter.

On 31 March 2015 I wrote to Acting Commissioner Douglas and said that, as a result of my investigation into the complaint made to me, I had made the following findings of fact:<sup>5</sup>

1. It was not operationally necessary, for a variety of reasons, for the Commission to cease its cooperative investigation with the Police by issuing a notice under s 42 of the Act on 24 June 2014;
2. There was an abundance of evidence to establish that the Superintendent and Inspector had a basis for interpreting, and did so interpret, their meeting with the Senior Investigator on 24 June 2014 to mean that the Commission required the Police to cease their criminal investigation into the alleged crimes committed by CD;

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<sup>5</sup> The facts necessary only for the purposes of my Report are given.

3. I was not convinced by the Commission's explanation that the Acting Deputy Director's letter dated 7 August 2014, which sought to clarify the purpose of the notice issued under s 42 of the Act on 24 June 2014, was prompted by evidence given by the police officer during a private examination conducted by the Commission, because in my opinion the police officer's evidence had nothing to do with the notice or its effect;
4. The power provided under s 42 of the Act is capable of having a profound effect upon the processes of law enforcement, and on this occasion the Commission issued its notice without adequate cause;
5. The copy of the transcript of the evidence of AB which was attached to the letter from the Acting Deputy Director to the Police dated 7 August 2014 was not lawfully disclosed, nor was it necessary to disclose insofar as it revealed the evidence which alleged misconduct by the police officer; and
6. I made the following recommendations, having regard to the wording of s 42 of the Act:
  - (a) a notice issued under s 42 should continue to closely define the misconduct matter to which it related;
  - (b) the notice should be issued to have effect for a specified period, although that is not required by the Act. If at the end of that period it is deemed necessary to continue the operation of the notice, it can be renewed. If, before the expiration of the period it is seen that the notice is no longer required, the notice may be revoked;
  - (c) the notice and any renewal should always be personally served upon the agency concerned, and the serving Commission officer should take reasonable steps to ensure that its effect is understood;
  - (d) if s 42 was retained, the decision to issue a notice should be based on considerations similar to those set out in the different context of s 99(5)(a) of the Act. That is, it could be issued when required:
    - to protect the safety or reputation of a person;
    - to avoid prejudice to the fair trial of a person who has been, or may be, charged with an offence, and/or
    - to protect the operational effectiveness of an investigation.

Acting Commissioner Shanahan SC conducted an audit of the use of notices issued under s 42 of the Act after becoming aware of Police concerns about the scope and non-revocation of some notices issued to the Police as part of previous investigations, such as the Perth Watch House investigation (which was later the subject of Report No. 26, dated February 2016, by the Joint Standing Committee).



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As a result of his audit, on 13 November 2014 he revoked five notices previously issued under the section. Two further notices were subsequently revoked later that month – one by him and another by Acting Commissioner Douglas.

On 14 November 2014 Acting Commissioner Shanahan SC said that he had suspended a number of delegated power authorisations for the issuing of notices under s 42 of the Act which he had signed in July 2014. The four purposes of his suspensions were:

1. to ensure that no notice was issued without reference to an Acting Commissioner;<sup>6</sup>
2. to ensure that any aged notices were revoked to ensure that Police investigations were not hampered;
3. to conduct a review to identify the operational need for delegations of this type, and
4. to ensure that any delegations ultimately made (following his review) were consistent with the Commission's proposed restructure being considered at the time.<sup>7</sup>

The Commission has sought to modify its operational processes in respect of the use of notices issued under s 42 of the Act, both when directed to the Police and generally.

## 5. SUBSEQUENT MATTERS

### *Memorandum of Understanding between the Commission and the Police*

On 8 July 2015 Commissioner McKechnie QC and the Commissioner of Police signed a Memorandum of Understanding designed to regulate a variety of mutual operational and administrative interests of the organisations. The dominant theme of the Memorandum was that the two organisations agreed to work cooperatively, to provide mutual operational support where appropriate, and to communicate with and consult each other upon the wide operational and administrative areas to which the Memorandum extended.<sup>8</sup>

The two Commissioners agreed to meet on a quarterly basis, and they agreed to form the Senior Officers Coordinating Group, a group whose primary functions were to maintain an effective working relationship between the two organisations, and to

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<sup>6</sup> At that time no substantive Commissioner had been appointed to the position. The two Acting Commissioners were sharing the responsibilities of the office.

<sup>7</sup> Acting Commissioner Shanahan SC noted that, from the start of his review to the date of his letter no Commission officer had applied to effect a delegation of power for the purpose of issuing notices under s 42 of the Act, which to his mind indicated that such a delegation of power was not necessary.

<sup>8</sup> However the Memorandum says at clause 6.5 that the interactions between the two organisations are not restricted to the operational and administrative areas expressly stated in it.



facilitate the early identification, discussion and resolution of strategic and operational issues.

The memorandum importantly extends expressly to cooperation in respect of misconduct investigations, and to notices issued under s 42 of the Act. The most relevant clause states:

A section 42 direction does not affect the ability of the WA Police to discharge its statutory and common law functions in that it does not prohibit WA Police from conducting criminal investigations, mitigating risks of misconduct and corruption or taking any measures necessary to ensure the safety of members of the public.

Where WA Police has concerns that the section 42 direction may impede its ability to do so the Commissioner of Police will communicate those concerns to the Commission and the Parties will discuss and endeavour to resolve the concerns.

The memorandum adds that the Commission may, on a case-by-case basis, issue notices under s 42 of the Act with a clause which stipulates the date upon which the notice expires (unless the notice is revoked earlier).

### *Commission Policy – s 42 Directions*

On 9 March 2016 Commissioner McKechnie QC provided me with a Commission Policy giving directions in respect of notices issued under s 42 of the Act. I need not set it out in full. Most relevant to my Report are its provisions to the effect that:

1. the purpose of a notice is ‘to enable the Commission to investigate serious misconduct unhampered by the actions of others’, but, nonetheless, it must be used sparingly by the Commission;
2. there must be proper regard for the role of a CEO of an appropriate authority in preventing and dealing quickly with serious misconduct;
3. a notice should not be in force for any longer than is necessary for the Commission to exercise its functions;
4. a notice should only be issued when:
  - (a) there is a need to assess an allegation of serious misconduct and there is reason to suspect that the actions of the Public Sector Commission or an appropriate authority might ‘impede subsequent action by the Commission’;
  - (b) the Commission is satisfied that its serious misconduct function is triggered and it intends to conduct a preliminary investigation, or to investigate to take other action ‘without the involvement of any other independent agency or appropriate authority’, or

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- (c) there is a need to investigate or take other action in cooperation with any independent agency or appropriate authority;
- 5. a notice may be issued for a period of no longer than 21 days by a Commission officer who is exercising delegated powers, and only the Commissioner can issue a notice for a period of more than 21 days;
- 6. a notice must be revoked when the investigation phase has ended, or the notice is no longer required, and
- 7. a notice can only be revoked by the Commissioner.<sup>9</sup>

## 6. CONCLUSION

It is not necessary for the purpose of my Report to repeat or re-examine my assessment provided to the Commission in respect of the substantive complaint made to me by the Commissioner of Police on 21 August 2014.

It has been necessary, however, while preserving the anonymity of the individuals involved, to outline the factual circumstances in connection with that complaint to enable the Joint Standing Committee and the Parliament to understand the kind of difficulties which have been encountered in connection with the operation of s 42 of the Act and the recommendations I make in response to those difficulties.

I stress, however, that in my view that account should be entirely confined as above.

### *Some material facts*

On 13 June 2014 AB complained to the Police about the conduct of CD and a police officer said to be involved. A burglary was allegedly committed upon her unit on about 3 June 2014 by CD. Access was gained, she said, by breaking a window, and CD stole her lap top computer which, she said, the police officer later arranged to be returned to her while at the same time failing to properly investigate her complaints, including one of an earlier sexual assault alleged to have been committed upon her by CD.

Officers of the Commission commenced a joint investigation with the Police, under the control of the senior investigator of the Commission and the Superintendent and Inspector of the Police. AB was to be jointly interviewed, but she was difficult to contact. It was thought to be likely that she continued to be in danger from CD. In the meantime, in the course of the investigation, the police officer who was involved in the case was told by another officer of AB's allegations against him.

The Commission decided that their investigation of the conduct of the police officer had been compromised and the joint investigation must be terminated. The notice

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<sup>9</sup> The Commission's policy on the issue of notices under s 42 of the Act, and its past practices, were canvassed by the Joint Standing Committee for the Corruption and Crime Commission with Commissioner McKechnie QC and the Commissioner of Police during the East Perth Watch House inquiry: see the Committee's Report No. 26, February 2016, p 11 and Appendix 3.

issued under s 42 of the Act was signed on 23 June 2014 and personal service was made by the Senior Investigator on the Superintendent and the Inspector on 24 June. At that time the Senior Investigator told the Police officers that the Police were to take no further action in relation to the investigation until further notice.

The Superintendent was concerned that the Commission lacked the forensic capacity of the Police which might be particularly necessary if AB (who had not then been contacted) pursued allegations of sexual offences against CD. He offered to make those facilities available to the Commission investigators, if required.

The two Police officers were clearly under the impression that the Police investigation could not continue and they assumed that the Commission would ensure that AB had a ready avenue to obtain protection from any further threat posed by CD, but, of course, that was not the case.

It was not the intention of the Commission officers involved in the matter that the Police should cease their criminal investigation, but at a meeting on 1 August 2014 it became clear to them that that was what had occurred. Hence the signing of the 'avoidance of doubt' letter dated 7 August 2014 and its service on the Superintendent on Monday 11 August 2014, unfortunately too late for the Police to attempt to take any action to prevent the commission of the offences described above, during the period from Sunday 10 August 2014 until the morning of Tuesday 12 August 2014.

### *My recommendations*

I need not repeat the discussion in Part 2 of this Report. Suffice it to say that, in my view, s 42 of the Act is an unnecessary and clumsy process which appears to be designed to give primacy to the decisions of the Commission about the manner in which the misconduct functions of the PSC and other appropriate authorities are to be exercised in circumstances where the Commission is also involved in the exercise of its statutory responsibilities in that regard.

By reason of the other provisions to which I briefly refer in Part 2, the Commission is always in a position to control the best means by which its misconduct function and that of the PSC and other responsible agencies are to be discharged. The issue of a blanket stop notice is unnecessary to secure the proper discharge of the misconduct functions of the Commission and other appropriate authorities.

Many such agencies have misconduct functions which involve the commission of criminal offences or regulatory offences which are criminal in character. That is a situation which may affect the Commission itself when investigating serious misconduct as defined in the Act, and it should not be overlooked that any 'police misconduct', as defined, is included in the definition of serious misconduct.

Further, as the facts of this case show, the misconduct alleged may involve parties who are not public officers, and, as in this case, there may be evidence of the commission of other criminal offences which may require investigation and the decision of an authorised prosecutor as to whether it is in the public interest to conduct a criminal prosecution.

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The aim of the Act in this area should be to govern relations between the various agencies concerned, including the Commission, in such a way that the capacity of each agency involved to perform its statutory functions is preserved effectively by a process of consultation and co-operation.

Section 42 of the Act, on the other hand, appears to be directed solely to ensuring that the Commission has the power, where it thinks it is desirable to exercise it, to stifle entirely the capacity of the PSC and an appropriate authority to exercise its statutory responsibilities while the Commission discharges its misconduct function.

At the same time the other agency is prevented from conducting an investigation which, again as in this case, if a complete picture of the matter is to be obtained, may involve alleged misconduct by one or more public officers and misconduct and/or the commission of other offences by the public officer and associates who may not be public officers.

**I recommend** the repeal of s 42 of the Act.

The provisions of the Act to which I have referred otherwise, together establish a suitable framework in which to deal with such cases. There is an emphasis on consultation and, where appropriate, joint investigation or a monitoring role for the Commission. The Memorandum entered into by Commissioner McKechnie QC and the Commissioner of Police reflects the recognition of the importance of consultation between the two agencies in respect of matters of mutual interest.

Alternatively, **I recommend** that if, on the other hand, s 42 of the Act is to be retained, for the reasons already given, s 42(6) should be deleted and it should be made clear that a notice may not be issued where arrangements have been made between agencies as to the conduct of an investigation. Otherwise, I recommend the amendment of the section to provide that a notice:

- is only to be issued after consultation between the Commission and the PSC or the appropriate authority;
- must be for a defined period, no longer than 21 days, and may be revoked within the period of its operation;
- should state the grounds of its issue, in terms of the public interest and the need to preserve the operational integrity of the Commission's investigation;
- must be personally served upon the person representing the PSC or the appropriate authority, and
- may be re-issued for one further period of up to 21 days.

As part of the process of giving a person or body in respect of whom my report may comment adversely, an opportunity to make representations to me before the report is finalised, I provided a copy of the draft to the Commission and, probably unnecessarily, to the complainant, the Commissioner of Police.

By letter dated 10 August 2017 the Commissioner of Police advised me that the Police would not make any representations in relation to the Report, a statement which I interpret as advice that the Police take no issue with its content.

That was not, however, the position of the Commission. It took up the invitation to make representations and presented arguments, generally referred to above, which I will now endeavour to summarise, without, I hope, presenting them inaccurately.

The view of the Commission is that the facts of this case do not provide an adequate foundation for the consideration of s 42 of the Act which I have undertaken. If amendments to the Act are contemplated, Commissioner McKechnie QC argues that the Joint Standing Committee 'should conduct a comprehensive review of [the Act] rather than taking a piecemeal approach'. In my view there is no impediment to forming a view as to the merit of the recommendations made above.

The Commission submits that s 42 of the Act should not be repealed. It is, the Commission argues, an operational provision designed to 'assist the Commission in conducting independent investigations and investigating serious misconduct unhampered by the actions of others.' Of course, the others are the PSC and other 'appropriate authorities' acting in the discharge of their statutory functions. The Commission argues that its capacity to maintain the effectiveness and integrity of its investigations requires the retention of s 42.

Finally, the Commission addresses each of the suggested amendments set out above. It submits:

- Section 42(6) of the Act should be retained. It is designed to enable the Commission to obtain the assistance of an appropriate authority during the period of the operation of a s 42 notice;
- There should be no requirement for prior consultation because that would 'defeat the purpose of issuing a s 42 notice';
- There should be no limitation of time in the provision. My recommendation 'fails to appreciate the breadth and nature of Commission investigations';
- No purpose is served by requiring the notice to state on its face the grounds of its issue. Of course, in my view such a requirement would enable the agency bound by the notice to form a judgment as to whether it was open to challenge and would assist the officers of the Commission to focus their attention upon the statutory grounds for the issue of the notice; and
- Personal service should not be required in every case because the circumstances may be such as to require some other mode of service.

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

## Appendix Two

### Committee's functions and powers

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By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 15 June 2017.

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, Crime and Misconduct Act 2003*.

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