

40TH PARLIAMENT



Joint Standing Committee on the  
Corruption and Crime Commission

## Report 15

### If not the CCC ... then where?

*An examination of the Corruption and Crime Commission's  
oversight of excessive use of force allegations against members of the  
WA Police Force*

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

September 2020

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

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## **If not the CCC ... then where?**

### **An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against members of the WA Police Force**

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Report No. 15

Presented by

**Ms M.M. Quirk, MLA**

**and**

**Hon J.E. Chown, MLC**

Laid on the Table of the Legislative Assembly and the Legislative Council on  
24 September 2020



## **Inquiry Terms of Reference**

An inquiry into the Western Australian Corruption and Crime Commission's oversight of police misconduct investigations, particularly allegations of excessive use of force, with an examination of:

1. The nature and prevalence of allegations of excessive use of force by WA police officers.
2. Circumstances in which allegations of excessive use of force are investigated internally by WA Police.
3. Circumstances in which allegations of excessive use of force are investigated and/or oversighted by the Corruption and Crime Commission.
4. The Corruption and Crime Commission's 'active oversight' policy and its adequacy in dealing with allegations of excessive use of force.
5. The nature of sanctions for excessive use of force allegations which are substantiated.



# Acknowledgement

It is with great sadness that the Committee acknowledges the passing of the former Parliamentary Inspector of the Corruption and Crime Commission, the Hon Michael Murray AM QC.

Mr Murray was appointed to the position of Parliamentary Inspector in 2013 and retired on 31 March 2020. He succumbed to ill health shortly thereafter.

The Committee notes with respect Mr Murray's contribution to the role. The Committee found him to be diligent in his duty in keeping the Parliament informed on matters falling within his responsibility pursuant to the *Corruption, Crime and Misconduct Act 2003*.

Mr Murray was a thoughtful advocate for complainants who found themselves to be dissatisfied by the processes of, and decisions made by, the Corruption and Crime Commission (CCC). This is particularly true of those complainants who found themselves subject to excessive use of force by members of the WA Police Force and who were unhappy with the actions taken by the CCC regarding their complaint. Indeed, his work substantially informs this report.

More generally, Mr Murray tabled numerous reports detailing concerns about the operations of the CCC, helping to shape the organisation for the better. He also consistently and tirelessly drew attention to flaws in the legislative framework.

The Committee dedicates this report to him.





## Chair's Foreword

In recent times the issue of excessive use of force by police has been propelled into international and national focus through the Black Lives Matter movement. This, however, was not the catalyst for this inquiry. The efficacy of oversight on such matters by the Corruption and Crime Commission (CCC) has been of enduring concern for the Committee.

This report deals not with the fundamental issue of why this occurs or how excessive use of force can be prevented. Rather, how in Western Australia, police misconduct is independently and effectively investigated and reviewed?

The Kennedy Royal Commission<sup>1</sup> recommended for police a new external oversight agency. As a consequence, the CCC was created.

In the following pages is an examination of whether the independent oversight contemplated, almost two decades ago, functions well for allegations of excessive use of force by police?

The title of this report *If not the CCC ... then where?* reflects that if the CCC does not adequately embrace its police oversight role, then where are complainants to go? They have no other avenues for independent oversight and review.

It is always conceded that the sheer number of allegations makes a triage process necessary. Moreover, WA Police has refined and improved internal oversight. It is now more robust, including taking a number of investigations away from district level.

The Committee concluded even if there is more robust internal police oversight the CCC cannot abrogate its responsibility. And there are certainly instances cited where this confidence in internal inquiries was misplaced.

What this report highlights is the huge disparity between the number of allegations which the CCC chooses to closely investigate and those, the vast majority, left to police to investigate internally. However thorough and professional police internal investigations may be, this is neither consistent with public expectations nor the statutory intent that the CCC play a central role.

It is trite to observe that the governing legislation is *the Corruption, Crime and Misconduct Act 2003* (emphasis added). The CCC's role is broader than that of simply targeting official corruption.

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1 In December 2001 Mr Geoffrey Kennedy AO QC was appointed as Royal Commissioner to inquire into and report on whether, since 1 January 1985, there had been corrupt conduct or criminal conduct by any Western Australian police officer.

Excessive use of force by police is categorised as serious misconduct and hence within the parameters of the CCC's statutory obligations. This is different from a jurisdiction like New South Wales where there are separate official corruption and police integrity oversight bodies.

The report chronicles a change of strategic direction for the CCC in recent years. It is arguable that the change of focus had the practical effect of reducing further the direct involvement of the CCC through independent investigation in favour of 'higher value' investigations.

Allied to its deliberations on what matters to pursue, the CCC has cited, on numerous occasions, as influential in its decision-making, the resources available for this oversight role. This is perplexing given this change of strategic direction occurred at the same time that the CCC was divested of several of its functions to the Public Sector Commission thereby freeing up resources.

Evidence given indicates criteria which may influence the CCC to fully investigate tend to be those where CCTV or mobile phone footage exists, there has been media coverage and/ or the case is high profile.

It may be open to conclude from this that these are the very matters where resolution can be assured in any event. It also begs the question central to this inquiry why are the more complex and difficult matters not afforded the same level of attention and given the benefit of the expertise of the CCC?

Reference has been made by the CCC, both in written submissions and evidence, that the availability and estimated expenditure of resources is influential in the assessment of allegations. Whilst this should be part of any sound management decision-making process, it would be unfortunate if that consideration acted to as a barrier to oversight of all but the highest profile allegations.

The CCC's role in undertaking system wide reviews where a pattern of conduct emerges is welcome. This could relate to a series of events over a period occurring at one location, a particular officer coming to notice consistently in relation to a number of separate incidents or the way in which a category of complainants is dealt with. However, these trends may only come to light through routinely auditing and interrogating police data.

The Committee heard troubling evidence from the Aboriginal Legal Service of WA (ALSWA) about a series of cases, over an extended period, in a range of locations involving the alleged improper use of police dogs. In bringing the complaints to the attention of the CCC it presented evidence of injuries sustained as a result. The CCC formed the view that none of the individual cases amounted to a serious misconduct.

The ALSWA gave evidence that it now was disinclined to contact the CCC about alleged incidents of excessive use of force. It has no confidence the allegations will be acted upon. In fact, evidence was given that in recent times senior WA Police personnel were more receptive to investigating such allegations than the CCC and worked cooperatively to address them.

The report recommends a greater level of engagement by the CCC to improve handling of cases involving Aboriginal Western Australians. The CCC does have regular meetings with ALSWA but there may be some more fundamental questions to address. The principles of substantive equality demand not that all persons be treated equally but are treated in such a way so that there is equality of outcomes.

The scenario was canvassed where some level of force is used, possibly not excessive. But where it is alleged that use of force was accompanied by racist comments or epithets by police. In those circumstances maybe the seriousness of that conduct should be elevated, warranting greater oversight or sanction?

The former Parliamentary Inspector of the Corruption and Crime Commission reported both to the Committee and Parliament on cases involving allegations of excessive force. Of concern to him were cases where he considered the CCC should have exercised greater oversight and been more actively involved. The role played by that Office is vital. The Committee appreciates those contributions.

Given the COVID-19 disruption to ordinary parliamentary business this year, the Committee was unable to consult or inquire of corresponding agencies to the Corruption and Crime Commission in other jurisdictions.

However, it did conduct a number of hearings and received submissions. We are grateful for the substantial and comprehensive material provided by the WA Police Force and the CCC.

The central issues were able to be canvassed with key stakeholders at hearings. They included the CCC, WA Police Force, complainants, the ALSWA and the WA Police Union. The Committee also relied on material which had come before it over the past three years.

Included at Appendix Seven is a brief summary of some overseas examples of aspects of external oversight of police conduct.

The *Corruption, Crime and Misconduct Act 2003* was last reviewed in 2008<sup>2</sup> and has only been subject to piecemeal changes since then. It is generally conceded that a complete overhaul of the Act is needed.

The deliberations of the Kennedy Royal Commission are fading with time. Consideration needs to be given afresh to delineating how the CCC will oversight allegations of misconduct by police.

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2 Gail Archer SC, *Review of the Corruption & Crime Commission Act 2003*, Western Australia, February 2008.

In reading this report it is important to be mindful that members of the WA Police Force have around 2.2 million interactions with members of the public each year. This compares with, on average, around 400 allegations of excessive use of force each year.<sup>3</sup>

Deservedly, police in this State are generally held in high regard, facing challenging and confronting situations on a daily basis. All the more reason that any system that thoroughly overlooks the unacceptable behaviour of some enjoys the support, confidence and endorsement of the public.

Finally, on an encouraging note. The recent, progressive roll out of body worn cameras for police is already proving to be invaluable. Fewer vexatious allegations are made which police officers have to defend, investigations can be expedited, and the public can be confident that they provide technological oversight of conduct which may be lacking otherwise.



MS M.M. QUIRK, MLA  
CHAIR

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3 WA Police Force advise that there were 13.2 million interactions between police and members of the public from 2013 to 2019. This resulted in 2,445 excessive use of force allegations with 119 of those being sustained. See Submission 9, WA Police Force, p. 17.

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## Executive Summary

Since its formation at the beginning of the 40<sup>th</sup> Parliament, the Joint Standing Committee on the Corruption and Crime Commission (the Committee) has been concerned about the way incidents involving excessive use of force by police officers in Western Australia are either independently investigated, or police internal investigations oversights, by the Corruption and Crime Commission (CCC).

A review of historical cases suggested that the approach of the CCC had changed significantly over time. In some cases, allegations of excessive use of force by police were mismanaged by the CCC, while other cases were subject to rigorous oversight. In addition, the overall approach taken by the CCC to oversight has changed since 2015, when the CCC began to take a more targeted and strategic approach to carrying out its oversight functions across the public sector, including the WA Police Force.

As a result, the Committee was interested to examine whether the CCC was providing consistent, accountable and effective oversight of the WA Police Force, as envisioned by the Kennedy Royal Commission. Key questions for the Committee included how many allegations were closely looked at by the CCC, and which allegations were deemed worthy of independent investigation.

Essentially, in commencing the inquiry the Committee posed the following questions:

‘How is the CCC overseeing WA Police Force investigations into allegations of excessive use of force, and is this oversight adequate?’

‘Is the CCC fulfilling the mandate in relation to police oversight as conferred upon it at its establishment?’

Allegations of excessive use of force are treated as allegations of serious misconduct. As such they fall within the remit of the CCC. Most investigations into allegations of excessive use of force are carried out internally by the WA Police Force. The CCC closely oversights a small number of WA Police Force investigations. An even smaller percentage of allegations are either independently investigated by the CCC, or subject to a cooperative investigation between the CCC and the WA Police Force.

Whilst fewer than 5 per cent of allegations were ultimately sustained between 2013-2019, that does not necessarily justify a relaxed attitude by the CCC.

Oversight of misconduct and corruption within the WA Police Force is the responsibility of the CCC and should be seen as a core function in line with its genesis in the Kennedy Royal Commission.

Police oversight has been carried out with varying levels of rigour over time by the CCC. Over this time, various criticisms about police oversight have been expressed by key stakeholders – some of these are detailed in Chapter 3 of this report.

In 2012, concerns prompted the then Joint Standing Committee on the Corruption and Crime Commission to recommend a legislative amendment that would mandate a particular focus on police oversight by the CCC. This amendment was not enacted.

From 2015, there was a significant change to the way the CCC operated. The responsibility for minor misconduct was removed from the remit of the CCC and assigned to the Public Sector Commission. However, all misconduct allegations against members of the WA Police Force remained the responsibility of the CCC.

The CCC repositioned itself to take a more 'strategic approach' which had two practical outcomes. Firstly, that fewer investigations would be carried out or monitored by the CCC and instead the investigations that were undertaken would be done with an emphasis on active oversight. Secondly, rather than allocating resourcing to increased oversight of the WA Police Force, police oversight would be undertaken as part of a wider strategy and assessment process.

Six strategic themes inform the CCC's decision-making in relation to allegations:

- people at risk
- procurement and financial management
- data and information
- policy, regulation and licensing
- use of force
- WA Police Force.

The WA Police Force is given a strategic focus by the CCC, along with other identified high risk areas/agencies in the public sector, but does not appear to attract additional focus outside this assessment process.

Police oversight should be prioritised over and above other strategic themes. Significant powers are entrusted to members of the WA Police Force, allowing officers to legitimately use force in order to carry out their duties. The abuse of such powers through the use of excessive force can erode public confidence in the WA Police Force. Robust police oversight by the CCC is needed in order to maintain public confidence.

Through this inquiry the Committee came to the view that robust oversight of police extends beyond individual cases to systemic problems. The CCC is uniquely vested with capabilities to exercise oversight of the WA Police Force in a way that can incorporate the interrogation of police data for trends and the auditing of police data for actions taken by officers.

The CCC can undertake varying degrees of oversight at its own discretion. For example, the CCC can determine whether it will undertake its own investigation of a matter or whether it undertakes 'active oversight' of a matter that is referred back to the home agency to deal with. It also is able to determine the allocation of resources to WA Police Force matters, as opposed to resources allocated to matters in the wider public sector.

The CCC advised the Committee that two considerations influencing the level of oversight afforded to a matter are the level of confidence that the CCC has in the WA Police Force to adequately investigate a matter; and, whether the use of CCC resources on the matter is in the public interest.

The Committee has observed that a number of other factors appear to influence the level of oversight and resources allocated to an allegation of excessive use of force. These include media coverage of an incident, adverse findings as part of judicial proceedings, and the availability of video footage of an incident. These particular factors have the tendency to transform matters into high profile cases and the Committee remains concerned that less prominent cases, where evidence is not readily available, might not receive the same level of scrutiny by the CCC.

Through the course of the inquiry, the Committee heard from complainants about their experiences in making a complaint about police excessive use of force to the CCC. In some circumstances, complainants hesitated to make a complaint to the CCC because of a lack of confidence in the complaint process. In other instances, complainants found the process circular, confusing, costly and time consuming.

Equally concerning to the Committee are those instances where people who may have been subject to police excessive use of force do not make a complaint at all.

The Committee was particularly troubled to learn that over the past two years, the Aboriginal Legal Service of Western Australia (ALSWA) has only referred a handful of matters to the CCC because the CCC 'very rarely conducts its own investigation into complaints about police.'<sup>4</sup> The ALSWA raised a number of key concerns about the CCC's lack of responsiveness to the needs of Aboriginal people, including the identification of ongoing systemic issues.

The ALSWA pointed out the significance of the historical context surrounding the relationship between police and Aboriginal people in Western Australia, including the deep mistrust of police that many Aboriginal people have. Police oversight bodies in different Australian jurisdictions have formalised mechanisms that aim to ensure their services meet the needs of diverse community groups, and in particular Aboriginal people.

The Committee recommends that the CCC establishes formal mechanisms to improve its engagement with Aboriginal people in Western Australia. Given the global focus through the Black Lives Matter movement it seems timely to revisit such issues.

In addition, over the course of this inquiry several matters emerged which were not the focus of the inquiry but which are tangential and are worth mentioning. These are the need for a statutory review of the *Corruption, Crime and Misconduct Act 2003*; and, better reporting of statistics regarding the investigation of police excessive use of force in Western Australia.

As the title of this report indicates, if the CCC does not fully embrace its role as the only independent oversight body then where are complainants to go? How can the public

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4 Submission 8, Aboriginal Legal Service of Western Australia Limited, p. 9.

expectation that police misconduct is subject to scrutiny be met? How can the public be confident that police powers are subject to adequate scrutiny?

## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Attorney General and the Minister for Police report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



# Findings and Recommendations

## Chapter 2 – Excessive use of force allegations – nature, prevalence, reporting, investigations and sanctions

### Finding 1

Page 8

It is lawful for members of the WA Police Force to use force against another person in certain circumstances, for example, when making an arrest. Use of force is excessive when the force used is more than is justified by law. Whether the force used in a particular situation is excessive depends on the circumstances.

### Finding 2

Page 8

Allegations of excessive use of force by members of the WA Police Force are treated as allegations of serious misconduct and as such fall within the remit of the Corruption and Crime Commission to oversight and/or investigate.

### Finding 3

Page 11

Use of force reporting by the WA Police Force is one way of identifying potential instances of excessive use of force where, for whatever reason, a complaint might not be made. While use of force reporting doesn't identify every instance of misconduct relating to use of force, is it an important mechanism.

### Finding 4

Page 11

The Committee has come to the conclusion that use of force reporting by the WA Police Force does not always capture instances of excessive use of force.

### Finding 5

Page 11

Although the Corruption and Crime Commission currently has access to every use of force report submitted to internal WA Police Force systems, it appears to limit its review of use of force reports to those matters where an allegation is formed or otherwise reported.

### Finding 6

Page 14

Around 12 per cent of all misconduct allegations made against members of the WA Police Force relate to excessive use of force. The number of excessive use of force allegations decreased slightly during 2019-2020.

### Finding 7

Page 17

Early indications are that the introduction of police body worn cameras has had the effect of reducing the number of excessive use of force allegations and also further action required by the Corruption and Crime Commission.

### Finding 8

Page 17

Most allegations of excessive use of force are referred back to the WA Police Force to deal with and investigations or other actions are carried out internally by police.

**Finding 9****Page 18**

Since 2015 the Corruption and Crime Commission has not pursued around half of all allegations of excessive use of force beyond initial assessment.

This number increased in 2019-2020, which saw the Corruption and Crime Commission take no action in around 82 per cent of allegations received.

**Finding 10****Page 18**

Most excessive use of force allegations requiring action are referred back to WA Police Force for action with the Corruption and Crime Commission monitoring the outcome.

Since July 2015 the Corruption and Crime Commission has used its monitor for outcome function in relation to around 37 per cent of excessive use of force allegations.

**Finding 11****Page 18**

The Corruption and Crime Commission closely oversights only a small number of WA Police Force investigations under its monitor and review function, or what is sometimes called active oversight.

Since July 2015 the Corruption and Crime Commission has used its monitor and review function in relation to just under four per cent of excessive use of force allegations.

**Finding 12****Page 18**

Only a very small percentage of allegations are either independently investigated by the Corruption and Crime Commission, or subject to a cooperative investigation between the Corruption and Crime Commission and the WA Police Force.

Since July 2015 the CCC has independently or cooperatively investigated around two per cent of police excessive use of force allegations.

**Finding 13****Page 19**

Fewer than five per cent of excessive use of force allegations against members of the WA Police Force are sustained. While the WA Police Force and WA Police Union provide a rationale for this, the Committee is not convinced that all allegations are captured by current reporting mechanisms. Furthermore the Committee is not convinced that all allegations which are captured are then appropriately investigated—increased oversight by the Corruption and Crime Commission is needed to make this assessment.

**Finding 14****Page 23**

The responsibility for imposing sanctions on WA Police Force members who have been found to have used excessive force rests with the Police Commissioner.

**Finding 15****Page 23**

Between 2013 and 2019, there were 88 officers against whom allegations of excessive use of force were substantiated. Of the sanctions preferred against these officers, 69 per cent were managerial, 13 per cent resulted in criminal charges, 12 per cent resulted in disciplinary charges under section 23 of the *Police Act 1892*, and six per cent resulted in dismissal proceedings.



**Finding 16****Page 23**

The Corruption and Crime Commission has oversight of the WA Police Force response to allegations of serious misconduct, and can consider whether the conclusions reached, and the disciplinary response, were open to be made on the available evidence.

**Finding 17****Page 23**

The Corruption and Crime Commission's review of WA Police Force investigative processes and outcomes, and the sanctions applied, is important because it brings these processes under public scrutiny. This helps to assure the public that allegations are being dealt with properly.

**Recommendation 1****Page 23**

In the interest of transparency, the Corruption and Crime Commission should report where there is a difference of opinion with police about sanctions applied in cases of excessive use of force.

**Chapter 3 – Police oversight in Western Australia****Finding 18****Page 27**

Although the Corruption and Crime Commission provides oversight of the WA Police Force handling of misconduct allegations, the Police Commissioner—as the responsible authority of the agency—is ultimately responsible for misconduct that occurs within the organisation.

**Finding 19****Page 31**

In 2012 concerns raised by the Parliamentary Inspector of the Corruption and Crime Commission prompted the Joint Standing Committee on the Corruption and Crime Commission to recommend an amendment to the (then) *Corruption and Crime Commission Act 2003* which was intended to provide for particular focus on police oversight by the Corruption and Crime Commission. This amendment was not enacted.

**Finding 20****Page 32**

In 2015, following the allocation of responsibility for minor misconduct to the Public Sector Commission, rather than allocating extra resources to increased oversight of the WA Police Force, the Corruption and Crime Commission began to strategically target 'higher value' investigations, with a focus on misconduct 'hotspots' throughout the public sector. This focus now includes, but does not necessarily prioritise, the WA Police Force.

**Finding 21****Page 33**

From 2015 Corruption and Crime Commission practice has been to oversee fewer matters and actions pursuant to sections 40 and 41 of the *Corruption, Crime and Misconduct Act 2003*. Instead, it states that those matters which it does review are carried out with greater rigour.

**Finding 22****Page 33**

The term ‘active oversight’ is used by the Corruption and Crime Commission to describe the work undertaken by its oversight team which combines both monitor and review functions pursuant to sections 40 and 41 of the *Corruption, Crime and Misconduct Act 2003*. It is intended to provide greater rigour to the review of those internal police investigations which are identified for this level of oversight.

**Finding 23****Page 34**

The Corruption and Crime Commission has advised that active oversight is carried out in the case of serious matters such as fatalities, matters where there may be systemic issues, where there is limited capacity for the WA Police Force to act, or where a particular officer has a concerning history of misconduct or questionable action.

**Finding 24****Page 34**

Between 2016-2017 and 2018-2019 around five per cent of police internal excessive use of force investigations were subject to active oversight.

**Finding 25****Page 36**

Corruption and Crime Commission oversight of the WA Police Force handling of excessive use of force allegations provides an independent accountability mechanism. Robust oversight by the CCC is needed to reduce any real or perceived bias of police internal investigations.

**Finding 26****Page 36**

The WA Police Force was intended to be a particular priority for the Corruption and Crime Commission, by virtue of its genesis in the Kennedy Royal Commission. The Committee is not convinced that the current method of assessment adequately prioritises police oversight.

**Recommendation 2****Page 36**

The Corruption and Crime Commission should refocus its efforts and current resources on police oversight primarily, in line with what is arguably a key mandate. It is not enough for police oversight to be treated as one of several strategic themes.

**Finding 27****Page 37**

The Corruption and Crime Commission is the only independent entity with the authority and capacity to oversight the WA Police Force. It should be able to demonstrate with some rigour that excessive use of force matters are being dealt with appropriately.

**Recommendation 3****Page 39**

The Corruption and Crime Commission should regularly interrogate WA Police Force data in order to identify trends and conduct analysis of at-risk areas or officers—and any other such activities that would assist in identifying a particular officer or cohort exhibiting problematic behaviour.

**Recommendation 4****Page 41**

The Corruption and Crime Commission should undertake regular audits of the WA Police Force IAPro system, or any other relevant internal police system, in order to determine to whether use of force incidents are being adequately reported, and if necessary, adequately investigated.

**Chapter 4 – How the Corruption and Crime Commission determines oversight of a matter****Finding 28****Page 43**

The Corruption and Crime Commission has a great deal of discretion in determining when it will undertake its own investigation into a matter. It also has great deal of discretion available to it under the *Corruption, Crime and Misconduct Act 2003* as to what is prioritised and how it goes about this oversight.

**Finding 29****Page 46**

The Corruption and Crime Commission undertakes an initial assessment of all allegations it receives, including those in relation to the WA Police Force, in order to form an opinion as to whether there is a reasonable suspicion that a matter involves serious misconduct. The assessment is also used to make a decision on what action and level of oversight should be taken.

**Finding 30****Page 46**

If an allegation received meets one or more of the ‘seriousness thresholds’ determined by the Corruption and Crime Commission, then the matter is referred to the Operations Committee for a decision on what action should be taken. One of those thresholds is whether the allegation fits within one or more of the identified strategic themes, which include people at risk, the use of force, and the WA Police Force.

**Finding 31****Page 50**

When making decisions about assessments of allegations of excessive use of force by police, the Corruption and Crime Commission will contemplate whether it has confidence in the WA Police Force to adequately investigate the matter.

**Finding 32****Page 50**

The Committee is concerned by the number of use of force matters being sent to districts and divisions, where there may be limited specialised investigative skills available to undertake adequate investigations. Furthermore, the Committee is cognisant that referring matters to districts and divisions can result in either real or perceived conflicts of interest.

**Finding 33****Page 51**

Concerns about certain districts being able to adequately carry out investigations and/or apparent systemic issues have been a factor in determining the level of oversight in recent times. While improvements are reported by the Corruption and Crime Commission, the Committee believes greater oversight is required—currently not enough district led investigations are monitored for the purpose of making definitive assessments about their adequacy.

**Finding 34****Page 52**

The Corruption and Crime Commission is not availing itself of its full capacity to uncover and investigate systemic issues.

**Finding 35****Page 53**

The Committee acknowledges that ‘people at risk’ is one of the Corruption and Crime Commission’s strategic themes which is taken into account when prioritising actions on allegations. However, it remains concerned that complainants who fall into this category may not receive the prioritisation that they deserve. This objective does not appear to be translating into practice.

**Recommendation 5****Page 53**

The Corruption and Crime Commission should engage with specialist community organisations in order to improve its responsiveness to the needs of vulnerable complainants.

**Finding 36****Page 54**

Although the media might draw the Corruption and Crime Commission’s attention to a particular instance that warrants closer scrutiny, given the extraordinary powers and unique capacity of the CCC to delve into police matters, its priority should remain on investigating those matters which may not come to light through any other means.

**Finding 37****Page 55**

The Committee is concerned that certain matters only get real scrutiny by the WA Police Force, and enhanced oversight from the Corruption and Crime Commission, on account of a subject of excessive force having had charges laid against them and the matter coming before a court.

**Chapter 5 – Complaints****Finding 38****Page 58**

Confidence in the WA Police Force is eroded when the public perceives that police have abused their powers and complaints about this are not adequately investigated.

**Finding 39** **Page 58**

Potential complainants are not making complaints to the Corruption and Crime Commission because of a lack of confidence in how their complaint will be dealt with—it is not clear how commonly this occurs.

**Finding 40** **Page 59**

Complaints are critical for identifying instances of excessive use of force—some instances of excessive use of force will go unscrutinised unless a complaint is made. If complainants do not have the confidence to make a complaint, then there is a significant gap in the oversight framework.

**Finding 41** **Page 60**

Confusion about the Corruption and Crime Commission complaint process can cause a complainant to delay making a complaint to the Corruption and Crime Commission.

**Finding 42** **Page 60**

There is sometimes a lack of distinction between the internal complaint process of the WA Police Force and the complaint process of the Corruption and Crime Commission. Although the processes are theoretically distinct, to the complainant they do not always appear to be distinct in practice.

**Finding 43** **Page 61**

The Committee is not convinced that the complaints process is working as well as it could. In the experience of some complainants, the complaint process is circular, costly, inefficient and time consuming. Such a situation leads to unnecessary frustration and delays for complainants.

**Finding 44** **Page 64**

There is a perception, which in some cases appears to be justified, that a complaint about police misconduct will not be investigated fairly by the WA Police Force when the complainant is subject to criminal charges. The Corruption and Crime Commission should give greater attention to such cases.

**Finding 45** **Page 65**

Around a quarter of allegations of police excessive use of force are received from members of the public. This is a much lower rate than what is seen across the sector generally in relation to public reporting of misconduct allegations.

## **Chapter 6 – Matters affecting Aboriginal people**

**Finding 46** **Page 69**

The relationship between the Corruption and Crime Commission and the Aboriginal Legal Service of Western Australia appears to be dysfunctional, with the Aboriginal Legal Service stating that it more often goes directly to the WA Police Force with allegations of excessive use of force rather than to the Corruption and Crime Commission.

**Finding 47****Page 69**

The Committee is deeply troubled that the Aboriginal Legal Service of Western Australia has reached a point where it believes that complaints from Aboriginal people can't 'cut through' to gain the attention of the Corruption and Crime Commission.

**Recommendation 6****Page 70**

The Corruption and Crime Commission should reconsider its prioritisation of complaints to ensure a renewed focus on the needs of Aboriginal people in Western Australia.

**Finding 48****Page 72**

While the investigation of allegations is an important part the Corruption and Crime Commission's role in overseeing the WA Police Force, examining systemic cultural and policy issues is also a vital oversight function.

**Recommendation 7****Page 72**

In assessing whether an allegation of excessive use of force meets one or more of the seriousness thresholds the Corruption and Crime Commission should consider whether the conduct is accompanied by racist comments or conduct.

**Recommendation 8****Page 72**

The Corruption and Crime Commission should be more proactive in investigating the systemic issues being raised by the Aboriginal Legal Service of Western Australia.

**Recommendation 9****Page 72**

The Corruption and Crime Commission should undertake an audit of dog bite incidents to determine whether the use of force was justified and adequately reported by the WA Police Force.

**Recommendation 10****Page 76**

The Corruption and Crime Commission should establish mechanisms to improve its engagement with Aboriginal people in Western Australia. Initiatives developed could also facilitate better engagement with other diverse groups, including those that may be marginalised or vulnerable.

**Finding 49****Page 76**

It is important that the Office of the Parliamentary Inspector of the Corruption and Crime Commission has access to appropriate cultural knowledge in order to enable it to adequately handle complaints of excessive use of force against Aboriginal people. The acting Parliamentary Inspectors have made clear that the organisation currently lacks this expertise.

**Recommendation 11****Page 76**

That the Attorney General ensures that the Office of the Parliamentary Inspector of the Corruption and Crime Commission is sufficiently resourced to provide services that are culturally appropriate and accessible for Aboriginal people.

**Chapter 7 – Additional matters****Finding 50****Page 77**

Over the course of the 40<sup>th</sup> Parliament, the Committee has made note of a range of areas where the *Corruption, Crime and Misconduct Act 2003* is either deficient, obsolete and/or unclear.

**Recommendation 12****Page 77**

That the Attorney General ensure that the *Corruption, Crime and Misconduct Act 2003* is redrafted as a matter of priority. As part of this process, consideration should be given to the prioritisation of police oversight within the legislation.

**Finding 51****Page 79**

There needs to be transparent and accessible publication of outcomes on investigations into allegations of excessive use of force. The WA Police Force has advised that this will occur through publication in the next annual report.

**Finding 52****Page 79**

Both the WA Police Force and the Corruption and Crime Commission should regularly publish comprehensive statistics on how they manage complaints relating to the excessive use of force by police officers.

**Recommendation 13****Page 79**

That the Minister for Police and the Attorney General ensure that the WA Police Force and the Corruption and Crime Commission publish statistics on their investigations into allegations of excessive use of force.





# Chapter 1

## Overview

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**At the start of this inquiry the Committee posed the following questions:**

**“How is the Corruption and Crime Commission overseeing police investigations into allegations of excessive use of force, and is this oversight adequate?”**

**“Is the Corruption and Crime Commission fulfilling the mandate in relation to police oversight as conferred upon it at its establishment?”**

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### Background to this report

- 1.1 Since it was formed in the 40th Parliament, the Joint Standing Committee on the Corruption and Crime Commission (the Committee) has been concerned about the way incidents involving excessive use of force by police officers in Western Australia are either independently investigated, or police internal investigations oversights, by the Corruption and Crime Commission (CCC).
- 1.2 The two examples detailed below stood out to the Committee as quite different instances of CCC oversight of excessive use of force matters. It led the Committee to question if there was consistent, accountable and effective oversight of the WA Police Force by the CCC, as envisioned by the Kennedy Royal Commission and which meets community expectations.<sup>5</sup>
- 1.3 While accepting that the CCC has improved and refined its oversight processes since the first example in 2008, the Committee still had questions around how many allegations were being closely looked at by the CCC and whether this was adequate. It also had questions around when allegations were deemed worthy of independent investigation. Essentially, it asked, ‘how is the CCC overseeing police investigations into allegations of excessive use of force, and is this oversight sufficient?’ And maybe most importantly, ‘is the CCC fulfilling its mandate?’

### The Cunningham and Atoms matter (2008)

- 1.4 Not long after its inception the Committee was made aware of the plight of Dr Cunningham and Ms Atoms who were tasered by WA Police Force officers in 2008. In September 2017 the Parliamentary Inspector of the Corruption and Crime Commission (PICCC) reported to the

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5 In December 2001 Mr Geoffrey Kennedy AO QC was appointed as Royal Commissioner to inquire into and report on whether, since 1 January 1985, there had been corrupt conduct or criminal conduct by any Western Australian police officer. He was also required to inquire into, and to report on, the effectiveness of existing procedures and statutory provisions in investigating and dealing with corrupt and criminal conduct by police officers. He was to inquire into, and to report on, whether legislative change or investigative or administrative procedures were necessary or desirable for the purpose of investigating or dealing with, preventing or exposing, corrupt or criminal conduct by police officers.

Committee on the matter, as the complaint by these two individuals had remained largely unresolved since 2008.

- 1.5 Complaints by Dr Cunningham directly to the WA Police Force in 2008 and 2010 about their treatment had been dismissed. In 2010 a complaint to the CCC about the WA Police Force internal investigations was referred back to the police and was subsequently dismissed.
- 1.6 In 2017 the PICCC concluded that various decisions made by the CCC and the WA Police Force since 2008 had ‘failed to properly render the conduct of the three police officers involved’ in the tasering of Dr Cunningham and Ms Atoms to ‘proper scrutiny.’<sup>6</sup> Insert sentence re. malicious prosecution.
- 1.7 That wasn’t the first PICCC report on the matter. Dr Cunningham had complained to the PICCC’s Office as early as 2010. The PICCC reported on the matter in 2011 within a wider report, which was in response to concerns the PICCC had ‘that serious complaints alleging the excessive use of force by officers of the WA Police were not being adequately investigated by the Commission.’<sup>7</sup> While this report was broadly critical of the CCC’s lack of investigation into the Cunningham and Atoms matter, nothing further eventuated for those individuals at that point.
- 1.8 In December 2016, Dr Cunningham and Ms Atoms successfully sued the WA Police Force officers and the State of Western Australia. The District Court determined that the nature of the WA Police Force officers’ conduct was unlawful and malicious.<sup>8</sup>
- 1.9 In his 2017 report to the Committee on the Cunningham and Atoms matter, the then PICCC endorsed the assessment of his predecessor; essentially, that the CCC ‘failed when it accepted the demonstrably flawed police internal investigation’, and that since then it ‘compounded its failure by refusing to recognise, acknowledge or correct the errors it made by accepting that investigation.’<sup>9</sup>
- 1.10 However, in spite of the conclusions drawn by the PICCC, the CCC has declined to initiate an independent investigation or review, a decision which was the subject of a separate report by the Committee on the matter.<sup>10</sup>
- 1.11 Former CCC Commissioner, Hon John McKechnie QC, declined to be drawn on his predecessor’s decisions in relation to the Cunningham and Atoms matter. His stance was that he was not Commissioner when the original decision was made and that he did ‘not

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6 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector’s report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms*, 12 October 2017, p. 12.

7 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector’s report concerning the procedures adopted by the Commission when dealing with complaints of the excessive use of force by Police*, 8 September 2011, p. ix.

8 *Cunningham v Traynor* [2016] WADC 168

9 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector’s report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms*, 12 October 2017, p. 31.

10 Joint Standing Committee on the Corruption and Crime Commission, *Unfinished business: The Corruption and Crime Commission’s response to the Committee’s report on Dr Cunningham and Ms Atoms*, 30 November 2017.

propose to defend the original decision or concede that it was wrong.’<sup>11</sup> However, he did note that the responsibility for the CCC’s decision to take no further action was his alone. His reasons are set out in two previous reports by this Committee.<sup>12</sup>

### Tasering incident in Fremantle (2017)

- 1.12 In contrast to its stance on the Cunningham and Atoms matter, nearly 10 years later, the CCC did take issue with a WA Police Force internal investigation into the March 2017 tasering of Mr Bill Holt.<sup>13</sup> The CCC tabled its *Report into a Tasering Incident on 31 March 2017 at Fremantle* following an investigation into an incident in March 2017 where Mr Holt was tasered by a WA Police Force officer while sitting in his vehicle. This occurred after he had been administered with a random breath test.
- 1.13 Initially, the Police Conduct Investigation Unit (PCIU) directed the traffic branch within the WA Police Force to conduct an investigation, which ‘found that no offence had been committed by the tasering officer.’ This ‘investigation was reviewed by [the] PCIU who also concluded that the tasering officer had done nothing wrong.’<sup>14</sup>
- 1.14 The CCC had been notified of the incident by the PCIU at the outset of the traffic branch investigation and was ‘dissatisfied’ with the conclusions of the traffic branch and the PCIU investigations. Thus, it subsequently commenced its own investigation.<sup>15</sup>
- 1.15 The CCC concluded that ‘there was no lawful jurisdiction for Mr Holt to be tasered’ and that ‘the tasering was unreasonable and oppressive.’ The CCC ‘formed an opinion of serious misconduct by the officer who administered the taser.’<sup>16</sup>
- 1.16 In addition to forming an opinion of misconduct, the CCC also concluded that the internal WA Police Force investigations into the matter were flawed for reasons set out in detail in its report. It did not suggest ‘that the various investigations were influenced by improper motives.’<sup>17</sup> Rather, the CCC noted a risk that internal investigations such as these are often carried out by officers who lack adequate training, and that subsequent reviews by the dedicated investigative body within the WA Police Force could ‘be limited to process rather than outcome.’<sup>18</sup>

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11 Joint Standing Committee on the Corruption and Crime Commission, *Unfinished business: The Corruption and Crime Commission’s response to the Committee’s report on Dr Cunningham and Ms Atoms*, 30 November 2017, Appendix One.

12 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector’s report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms*, 12 October 2017; and Joint Standing Committee on the Corruption and Crime Commission, *Unfinished business: The Corruption and Crime Commission’s response to the Committee’s report on Dr Cunningham and Ms Atoms*, 30 November 2017.

13 Not his real name—names in the CCC report are anonymised.

14 Corruption and Crime Commission, *Report into a Tasering Incident on 31 March 2017 at Fremantle*, Western Australia, 21 March 2018, p. 1.

15 *ibid.*

16 *ibid.*, p. 2.

17 *ibid.*, p. 53.

18 *ibid.*

## **Rationale for this inquiry**

### **The role of the Joint Standing Committee on the Corruption and Crime Commission**

- 1.17 The framework for overseeing allegations of police misconduct in WA incorporates oversight of the CCC by the Committee. The Committee is responsible for monitoring and reporting to Parliament on the exercise of the CCC and PICCC's functions.
- 1.18 While the Committee is able to look at any matter involving CCC or PICCC oversight it does not tend to investigate individual matters. It does refer matters to the CCC or PICCC. The Committee also reports to the Parliament on systemic or high level matters, this report being one example of this function.

### **Criticism of the Corruption and Crime Commission in the past**

- 1.19 The CCC has been criticised over the years for its lack of action around allegations of excessive use of force by the WA Police Force, particularly in relation to the Cunningham and Atoms matter outlined above.
- 1.20 Historical concerns about CCC oversight of the WA Police Force are outlined more fully in Chapter 3.

### **Recent reports and excessive use of force incidents in the media**

- 1.21 A range of reports have been tabled by the CCC on the issue of excessive use of force by WA Police Force officers, and there have been several incidents reported on in the media recently.
- 1.22 Due to topicality of the issue, the Committee passed a resolution 8 May 2019 to report on the oversight of allegations of excessive use of force, and in particular, to examine the CCC's active oversight policy. Formal terms of reference were adopted on 23 October 2019, and the Houses advised on 24 October 2019.
- 1.23 However, due to the Committee's workload on other matters, and delays caused by disruption to the work of the Parliament due to COVID-19 restrictions, work on the inquiry and compilation of the inquiry report did not begin in earnest until May 2020.

## **Inquiry scope**

- 1.24 The Committee's inquiry examined the CCC's oversight of allegations of excessive use of force against members of the WA Police Force. It scrutinised relevant CCC processes, and in particular, the CCC's 'active oversight' policy. To a lesser extent, and where necessary to understand the methodology employed by the CCC in its oversight, the Committee considered WA Police Force internal policies and processes.
- 1.25 This report provides some commentary on the nature and prevalence of allegations of excessive use of force by WA Police Force officers. It looks at what circumstances lead to an investigation and what type of investigation is conducted in cases of excessive use of force allegations.

- 1.26 It also provides some commentary based on evidence received by the Committee about the experience of complainants and their views on the complaint process. It highlights two areas of particular concern to this Committee. One of these being the experience of Aboriginal people and their engagement with the CCC, and the other being the way in which the CCC prioritises (or doesn't prioritise, as the case may be) allegations of excessive use of force against members of the WA Police Force.
- 1.27 It is hoped that this report will raise the profile of issues identified around excessive use of force, in particular, the way in which the CCC fulfils its legislated oversight function. This report also aims to reassure the public that there is scrutiny of the CCC in relation to these types of allegations.
- 1.28 Longer term, it is hoped that this report will be a resource which can be referred to by future committees, the WA Police Force and CCC officers. It updates previous committee reports, in particular, two 38<sup>th</sup> Parliament Joint Standing Committee on the Corruption and Crime Commission reports:
- *Parliamentary Inspector's Report Concerning the Procedures Adopted by the Commission when Dealing with Complaints of the Excessive Use of Force by Police* (tabled in September 2011)
  - *How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct* (tabled in November 2012).
- 1.29 Importantly, this report aims to inform a wider review of the *Corruption, Crime and Misconduct Act 2003* (CCM Act), an urgent matter upon which this Committee has corresponded routinely with the Attorney General.
- 1.30 The inquiry did not include detailed examination of the internal workings of the WA Police Force, nor did it examine the adequacy of internal policies, procedures, or training on these. This inquiry was focussed on the oversight of the WA Police Force by the CCC. For example, current WA Police Force policy on when force is reasonable was not considered in terms of adequacy.
- 1.31 It was accepted for the purposes of this inquiry that the current legislative and policy framework within which the WA Police Force operates is satisfactory. **Appendix Six** outlines some key internal aspects of WA Police Force operations which directly affect use of force matters.
- 1.32 This inquiry did not investigate individual cases of police misconduct. Furthermore, the inquiry only considered wider police misconduct matters as they had relevance to the investigation of allegations of the use of excessive force.

## Limitations

- 1.33 Due to the evolving situation with COVID-19 at the beginning of 2020, the Committee was forced to limit the number of public hearings held. In addition, investigative travel was not an option. This limited the Committee's ability to gather information, particularly on best practice and other jurisdictional models.
- 1.34 The Committee was also working within a tight timeframe—as noted above, although announced at the end of 2019, the inquiry did not begin in earnest until May 2020. The Committee notes that there are several matters of importance which arose during its investigations which may warrant consideration by the new Joint Standing Committee on the Corruption and Crime Commission in the 41<sup>st</sup> Parliament, should that committee be of a mind to do so. These are outlined in the final chapter of this report.

## Chapter 2

### Excessive use of force allegations – nature, prevalence, reporting, investigations and sanctions

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It is lawful for members of the WA Police Force to use force against another person in certain circumstances, for example, when making an arrest. However, use of force outside the parameters of the law constitutes misconduct and is reportable to the Corruption and Crime Commission.

Most allegations of excessive use of force are referred back to the WA Police Force to deal with. A small percentage are subject to 'active oversight' by the Corruption and Crime Commission. An even smaller percentage are investigated independently by the Corruption and Crime Commission.

Fewer than five per cent of excessive use of force allegations against members of the WA Police Force are sustained. While the WA Police Force and the WA Police Union provide a reasonable rationale for this, the Committee is still not convinced that all allegations are captured by current reporting mechanisms and appropriately investigated.

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#### Use of force by members of the WA Police Force

- 2.1 It is lawful for members of the WA Police Force to use force against another person in certain circumstances, for example, when making an arrest. Use of force is excessive when the force used is more than is justified by law.<sup>19</sup> Whether the force used in a particular situation is excessive depends on the circumstances.

- 2.2 Members of the WA Police Force using force are held individually accountable and the decision to use this force must be lawful. As such, each individual using force must independently justify their decision to use such force.<sup>20</sup>

- 2.3 The WA Police Force has internal policies which set out the circumstances in which force can be used, and how much force can be used.<sup>21</sup> It advises that its members must ensure that they do not use

*Police must be cognisant that the use of tactical options in certain circumstances may cause serious injury. Police must ensure that their use of force is reasonably necessary in the circumstances to reduce a threat and gain control of a subject.*

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*- Submission 9, WA Police Force p. 8.*

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19 *Criminal Code Act Compilation Act 1913*, s. 260.

20 Submission 9, WA Police Force, p. 7.

21 The WA Police Force use of force policy aligns with the Australia New Zealand Policing Advisory Agency (ANZPAA). ANZPAA is a joint initiative of Australian and New Zealand Police Commissioners. ANZPAA proactively partners with policing jurisdictions to identify opportunities for improved performance and better community safety outcomes in Australia and New Zealand. See ANZPAA, *Use of Force Principles*, 2018, accessed 29 June 2020, <<http://www.anzpaa.org.au/publications/general>>

force where none is needed, use more force than what is required, or use force unnecessarily when it is no longer needed.<sup>22</sup> When the use of force by a member of the WA Police Force isn't proportionate (that is, it is excessive and/or unnecessary), it constitutes police misconduct.

- 2.4 Allegations of excessive use of force are generated from police use of force reports and/or by a complaint made to either the CCC or the WA Police Force.<sup>23</sup> The CCC is notified of all allegations of police misconduct. Table 2.1 shows the five most common types of allegations made.

**Table 2.1: Incidence of the five most common excessive use of force allegations<sup>24</sup>**

Prevalence of the five most common allegations	Excessive use of force allegation category	% total allegations of excessive use of force	% allegations sustained in this category	% total allegations sustained
1	Empty hand tactics <sup>25</sup>	65.77	4.17	2.74
2	Handcuffs	13.99	1.46	0.20
3	Common assault	8.38	10.73	0.89
4	Assault occasioning bodily harm	4.09	7.00	0.29
5	Taser	3.89	10.53	0.41

#### **Finding 1**

It is lawful for members of the WA Police Force to use force against another person in certain circumstances, for example, when making an arrest. Use of force is excessive when the force used is more than is justified by law. Whether the force used in a particular situation is excessive depends on the circumstances.

#### **Finding 2**

Allegations of excessive use of force by members of the WA Police Force are treated as allegations of serious misconduct and as such fall within the remit of the Corruption and Crime Commission to oversight and/or investigate.

<sup>22</sup> Submission 9, WA Police Force, p. 4.

<sup>23</sup> All complaints of excessive use of force which involve police are recorded as allegations of serious misconduct by WA Police Force pursuant to the CCM Act. Submission 9, WA Police Force, p. 16.

<sup>24</sup> Submission 9, WA Police Force, p. 16.

<sup>25</sup> 'Empty hand tactics' is a term which refers to self-defence or control techniques executed without the use of a weapon. Such techniques include, but are not restricted to, blocks, strikes, punches, kicks, compliance holds, restraints or similar tactics. This information can be found in the Corruption and Crime Commission's report *Review of police response to an incident in High Street Mall Fremantle on 3 September 2017*, dated 7 February 2019, at pp. 23-24. The report is referencing police policy FR-01.04.1 Use of Empty Hand Tactics.



## Use of force reporting by members of the WA Police Force

2.5 Force is considered to have been used on another person when a physical action is exerted upon that person with a view to reducing a threat and gaining control.<sup>26</sup>

2.6 A use of force incident refers to a situation where a member of the WA Police Force uses a tactical option (see Box 2.1) and such use requires the submission of a use of force report.<sup>27</sup>

### Box 2.1: Tactical options available to police

- artificial incapacitation devices (taser and oleoresin capsicum spray)
- baton
- cordon and contain
- empty hand tactics
- firearm
- negotiation
- other weapons (including police vehicles)
- police dogs and horses
- presence and proximity
- tactical communication and tactical disengagement
- handcuffs and other restraints

Source: Submission 9, WA Police Force, p. 5.

2.7 Recording use of force incidents enables the reporting, recording, monitoring and evaluation of the use of tactical options by members of the WA Police Force.<sup>28</sup> Box 2.2 summarises reporting thresholds.

### Box 2.2: Use of force reporting

WA Police Force members are required to complete use of force reports when the following thresholds are met.

#### ***Firearms, tasers and Oleoresin Capsicum (OC) spray***

Members are required to submit a use of force report when they 'draw and cover' or 'draw and discharge' these tactical options.

Unauthorised discharge is any circumstance where the discharge of a firearm, taser or OC spray occurs, either intentionally or unintentionally, which is not in accordance with relevant legislation, WA Police Force policy and the training and guidelines of the Operational Safety and Tactical Training Unit.

#### ***Batons, handcuffs, empty hand tactics, police dogs, police horses or other weapon***

Members are required to submit a use of force report when the option is used on a subject and causes bodily injury requiring medical care to the subject.

Source: Submission 9, WA Police Force, pp. 5, 10-11.

2.8 Use of force reports include a summary of the incident, procedures for completing the report and a section for supervisor review. The supervisor review includes an assessment of whether the reported use of force is lawfully authorised, justified or excused in law. Once use of force reports are submitted by officers, they are progressed to supervisors, managers

26 Submission 9, WA Police Force, p. 4.

27 This includes all police officers, police auxiliary officers, police custody officers and Aboriginal police liaison officers.

28 Submission 9, WA Police Force, p. 10.

and to a use of force coordinator.<sup>29</sup> Where an incident involving use of force is reviewed and found to be reasonable, the use of force report is finalised. If there is a suspicion that its use was excessive or in breach of policy then it may be reported as misconduct.<sup>30</sup>

- 2.9 Case Study 1 describes what looks to be an example of excessive use of force reported recently in the media. As there was no injury and no complaint made, presumably this use of force incident would not meet the threshold requirements for lodging a use of force report.

### Case Study 1

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#### *Is there a blind spot in the application of use of force reporting?*

A claim of excessive use of force came to the attention of the Committee recently when a media article was published showing an excerpt of CCTV footage where a handcuffed Indigenous boy is seen being brought to the ground and restrained by WA Police Force officers.<sup>31</sup>

The article includes a statement from the President of the WA Law Society, Mr Nicholas van Hattem, that claims the use of force demonstrated is excessive. A WA Police Force spokesperson stated that a review into the incident found the level of force used by the officers was considered necessary and not excessive. A spokesperson also said that 'This use of force did not result in any injuries being received by the male juvenile or any complaint by him about the incident.'<sup>32</sup>

The article goes on to say that the CCTV footage and the WA Police Force internal investigation of the matter only came to light because a member of the public who witnessed the incident was arrested and charged with obstructing police and refusing to provide identification.<sup>33</sup>

The witness pleaded not guilty to the charges and identified that she approached the scene worried about the welfare of the boy. The statements of three officers present during the incident supported the charges against the witness. The witness's legal representative obtained CCTV footage of the incident. When the CCTV footage was submitted as evidence, the WA Police Force dropped the charges against the witness and said they would open an internal investigation into use of force against the boy.<sup>34</sup>

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- 2.10 In the situation described in Case Study 1, even if a use of force report was generated, the CCC is only notified of the matter if the use of force is suspected of being excessive. If there

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29 The Operational Skills Training Faculty use of force coordinator is described by the WA Police Force as the agency's 'subject matter expert for use of force matters.' The use of force coordinator provides assessments of equipment suitability, tactical option selection and commentary relating to improvement within the agency. Submission 9, WA Police Force, p. 12.

30 Submission 9, WA Police Force, p. 11.

31 Michael McGowan and Lorena Allam, 'WA police officer escaped sanction for 'shocking' force against Indigenous boy', *The Guardian* (web-based), 23 June 2020, accessed 23 June 2020, <<https://www.theguardian.com/australia-news/2020/jun/23/wa-police-officer-escaped-sanction-for-shocking-force-against-indigenous-boy>>.

32 *ibid.*

33 *ibid.*

34 *ibid.*

is no alleged excessive use of force reported by the WA Police Force in the first instance, and no complaint is subsequently made, then the CCC is not alerted to the incident.

- 2.11 The Committee is concerned that the CCC has limited visibility where use of force reporting does not adequately identify all potential cases of excessive use of force. Particularly so in the case of a vulnerable individual—for example a child or young person—who would be less likely to make a complaint about the incident to the WA Police Force or the CCC.
- 2.12 As discussed later in Chapter 4, some excessive use of force matters only receive genuine scrutiny because the individual has charges laid against them and the matter goes before a court, resulting in attention being drawn to police action. In the case discussed in that Chapter, a 13 year old child was charged by the WA Police Force for causing damage to a government office reception area and for twice assaulting a police officer. The magistrate raised concerns about the use of force against the child, prompting a CCC review of the matter which it had not been made aware of through other reporting mechanisms.<sup>35</sup>
- 2.13 In spite of its limitations, use of force reporting is one way of identifying potential instances of excessive use of force where, for whatever reason, a complaint might not be made. While use of force reporting doesn't identify every instance of misconduct relating to use of force, is it an important mechanism.
- 2.14 Although the CCC currently has the capability to review every use of force report submitted through its access to internal WA Police Force systems, the CCC appears to limit its review of use of force reports to those matters where an allegation of excessive use of force is formed or otherwise reported.<sup>36</sup> The Committee is of the view that these reports are a source of data that could be interrogated by the CCC in order to uncover systemic issues or problematic behaviours. This is discussed later in Chapter 3.

### Finding 3

Use of force reporting by the WA Police Force is one way of identifying potential instances of excessive use of force where, for whatever reason, a complaint might not be made. While use of force reporting doesn't identify every instance of misconduct relating to use of force, is it an important mechanism.

### Finding 4

The Committee has come to the conclusion that use of force reporting by the WA Police Force does not always capture instances of excessive use of force.

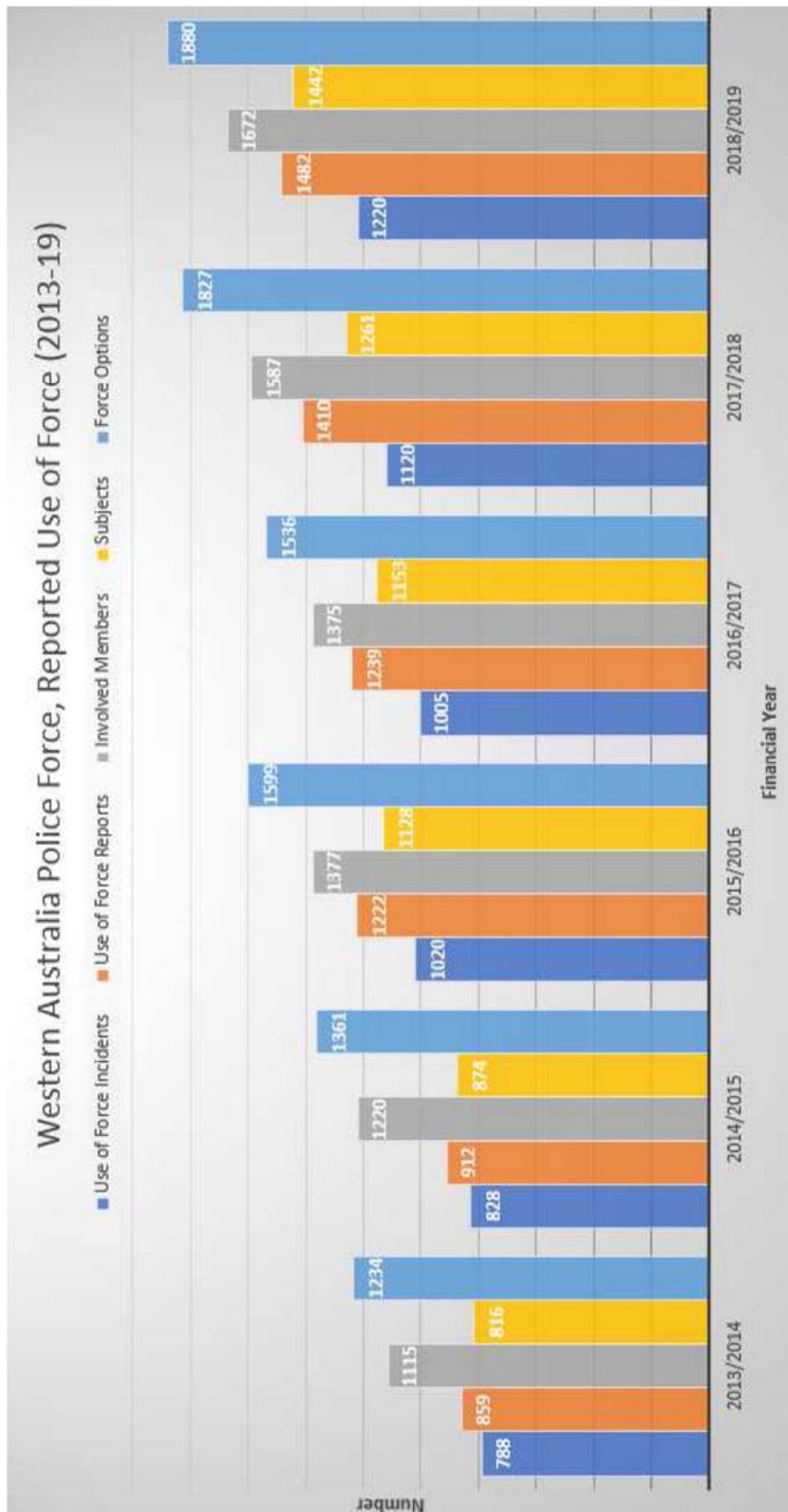
### Finding 5

Although the Corruption and Crime Commission currently has access to every use of force report submitted to internal WA Police Force systems, it appears to limit its review of use of force reports to those matters where an allegation is formed or otherwise reported.

35 Corruption and Crime Commission, *Review of a WA Police Force investigation into use of force in respect of a child*, Western Australia, 20 April 2020, p. 1.

36 Submission 9, WA Police Force, p. 11; and Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, pp. 11-12.

Figure 2.1: Reported use of force by members of the WA Police Force<sup>37</sup>



<sup>37</sup> Submission 9, WA Police Force, Attachment 1.

## How many allegations of excessive use of force are made each year?

- 2.15 Between 11 and 13 per cent of all misconduct allegations made against members of the WA Police Force relate to excessive use of force.<sup>38</sup>
- 2.16 The WA Police Force submits that between 2013 and 2019, a total of 7,124 use of force reports were generated. During that period 2,445 allegations of excessive use of force were made.<sup>39</sup>
- 2.17 As Figure 2.1 shows, the number of use of force incidents (force requiring a police report to be lodged) is trending upwards. The WA Police Union argues that the increase in use of force incidents over the past six years is largely due to the following factors:
- Increasing numbers of violent offences fuelled by a corresponding increase in the level of substance abuse in the community.
  - Violent offences becoming a larger proportion of workload.
  - Rising levels of family and domestic violence.
  - A growing percentage of the population suffering high or very high levels of psychological distress and the fact that this distress is often untreated.
  - The proliferation of dangerous weapons and their potential use in the commissioning of violent crimes.
  - A greater risk of injury to frontline officers.
  - Body worn cameras having no impact on offender behaviour or assaults on police.<sup>40</sup>
- 2.18 The Committee also received data from the CCC.<sup>41</sup> Tables 2.2 and 2.3 below show how many allegations of excessive use of force the CCC receives in relation to the WA Police Force each reporting period. These allegations constitute, on average, 12 per cent of overall police misconduct allegations assessed by the CCC.
- 2.19 While allegations against members of the WA Police Force are generally increasing in number, in 2019-2020 allegations of excessive use of force have decreased slightly. The CCC advises that this could be due to a range of factors, including those listed below.
- COVID-19 may have reduced WA Police Force interactions with the public.
  - Anecdotally, WA Police Force members say drug-related crime decreased over this period.
  - The roll-out of body worn cameras has meant that more allegations are initially ruled out due to evidentiary material not previously available now impacting assessments. The

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38 According to information provided to the Committee by the WA Police Force in August 2018, of the 16,306 allegations of police misconduct recorded by police in the five preceding years, 1,803 of those related to the use of force (averaging around 11 per cent). This percentage is generally consistent with figures provided to the Committee by the CCC.

39 Submission 9, WA Police Force, p. 16.

40 Submission 11, WA Police Union, p. 23.

41 Statistics received from the CCC do not always clearly correspond with data received from the WA Police Force. This does not necessarily demonstrate inaccuracies, but appears due largely to differences in data collection and reporting. This issue is addressed in the final chapter of this report.

rollout of body worn cameras for WA Police Force officers commenced in June 2019. By October 2020, it is anticipated that approximately 4,254 body worn cameras will have been deployed state-wide. Box 3.3 in Chapter 3 provides some detail on this recent initiative by the WA Police Force.<sup>42</sup>

**Table 2.2: Corruption and Crime Commission excessive use of force allegation source data<sup>43</sup>**

Allegation source	CCM Act	2015-16	2016-17	2017-18	2018-19	2019-20
WA Police Force	s28	177	234	272	265	255
Individuals (the public)	s25	31	47	66	85	79
Public Sector Commission	s45M(d)	0	1	0	0	0
Commission's own proposal	s26	0	1	0	1	2
Reviewable police action	s21A	73	4	2	Now received under s.28	
Other information received	s22	0	2	0	0	0
<b>Total</b>		<b>281</b>	<b>289</b>	<b>340</b>	<b>351</b>	<b>336</b>

**Table 2.3: Corruption and Crime Commission excessive use of force allegations compared to all police misconduct allegations<sup>44</sup>**

	2015-16	2016-17	2017-18	2018-19	2019-20
All allegations against police reviewed by CCC	2260	2632	2557	2822	3094
Police excessive use of force allegations as a % of all police allegations	12.4%	11.0%	13.3%	12.4%	10.9%

#### **Finding 6**

Around 12 per cent of all misconduct allegations made against members of the WA Police Force relate to excessive use of force. The number of excessive use of force allegations decreased slightly during 2019-2020.

<sup>42</sup> Addendum to Corruption and Crime Commission submission provided at hearing on 1 July 2020.

<sup>43</sup> *ibid.*, and Submission 6, Corruption and Crime Commission, p. 2.

<sup>44</sup> Addendum to Corruption and Crime Commission submission provided at hearing on 1 July 2020.

## How many investigations are there and who carries them out?

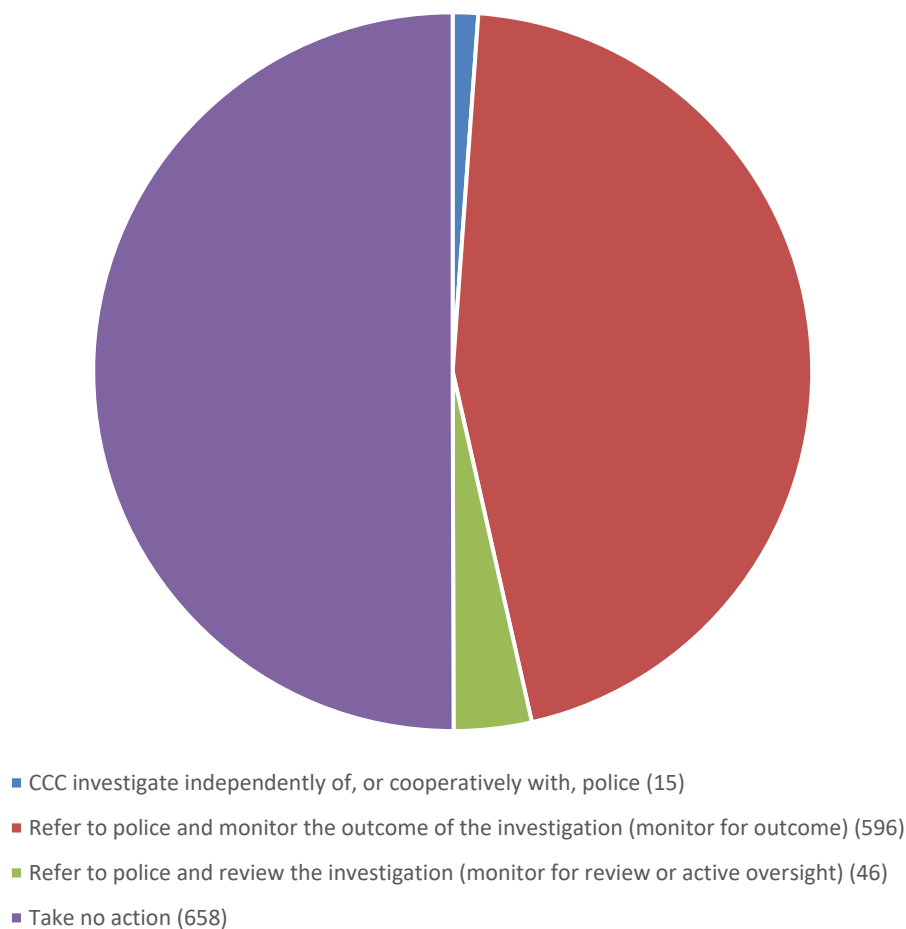
2.20 Most allegations come from the WA Police Force itself, with a small proportion being complaints made directly to the CCC (see Table 2.2 above). The CCC assesses all allegations to determine what should be done. Generally, at least half are assessed as requiring no action (see Figure 2.2).

*Most notifications and allegations about Police conduct come to the Commission from the Police Force itself, and only a small proportion require intervention by the Commission.*

*- Corruption and Crime Commission, Media Statement, 21 March 2018*

Figure 2.2: CCC allegation assessment decisions – excessive use of force by the WA Police Force<sup>45</sup>

Allegations assessed and actions undertaken in relation to excessive use of force by police for reporting periods 2016-2017 to 2019-2020



<sup>45</sup> Submission 6, Corruption and Crime Commission, p. 7; and Addendum to Corruption and Crime Commission submission provided at hearing on 1 July 2020.

- 2.1 During the 2019-2020 reporting period 82 per cent of allegations were deemed to require no action. The CCC posits that this sharp increase might be attributed to the following factors:
- A previous cautionary approach in assessing allegations, referring more to the WA Police Force subject to active oversight by the CCC.
  - The increasing maturity and experience of the CCC assessment team and triage process.
  - Expanded access to a number of WA Police Force systems which provides more information and evidence at the assessment stage.
  - As already noted above, the roll-out of body worn cameras which provides footage and evidentiary material previously not available.
  - The CCC notes that a contributing factor could be that allegations may have come from mentally ill, drug-affected and/or alcohol-affected complainants.<sup>46</sup>
- 2.2 The majority that do require action are referred back to the WA Police Force for investigation. The number of internal WA Police Force investigations into excessive use of force allegations has increased since 2017 and also accounts for an increasing percentage of all internal WA Police Force misconduct investigations.<sup>47</sup>
- 2.3 Most of these are subject to monitoring for outcome—around 37 per cent of excessive use of force allegations. This involves an obligation that the agency provides a detailed report back to the CCC, usually on completion of any action taken. The sorts of matters referred in this way are generally less serious. However, more serious matters may be referred back to the WA Police Force if the CCC is confident that the matter will be appropriately addressed.<sup>48</sup>
- 2.4 A small number of allegations referred back to the WA Police Force for action are subject to the CCC's monitor and review function, which is also sometimes called 'active oversight'.<sup>49</sup> Since 2015 the CCC has referred 46 excessive use of force allegations back to the WA Police Force for monitor and review. This constitutes just under four per cent of allegations assessed by the CCC during this time. Active oversight is discussed in Chapter 3.
- 2.5 Only a very small percentage of allegations are either independently investigated by the CCC, or subject to a cooperative investigation between the CCC and the WA Police Force. Between 2016-2017 and 2018-2019 the CCC conducted four investigations (three independent and one cooperative) that arose out of excessive use of force allegations against WA Police Force officers. Collectively the four investigations contained 12 allegations. Three of these investigations were the subject of reports tabled in Parliament.<sup>50</sup>

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46 Addendum to Corruption and Crime Commission submission provided at hearing on 1 July 2020.

47 Mr Noel Gartlan, Detective Superintendent, Internal Affairs Unit, WA Police Force, *Transcript of Evidence*, 20 June 2018, p. 5. Mr Gartlan told the Committee that between 2016 and 2017 the number of internal investigations into excessive use of force increased from 6.4 per cent of the total WA Police Force misconduct investigations to 9.2 per cent.

48 Submission 6, Corruption and Crime Commission, p. 11.

49 Active oversight is carried out pursuant to sections 40 and 41 of the CCM Act. See Submission 6, Corruption and Crime Commission, p. 9.

50 Corruption and Crime Commission, *Report into a taser incident on 31 March 2017 at Fremantle*, Western Australia, 21 March 2018; Corruption and Crime Commission, *Review of police response to an incident in High Street Mall Fremantle on 3 September 2017*, Western Australia, 7 February 2019; and



- 2.6 Since July 2015 the CCC has independently or cooperatively investigated around two per cent of police excessive use of force allegations.
- 2.7 Table 2.4 shows what action was taken by the CCC in relation to all excessive use of force allegations since 2015-2016. **Appendix Six** provides more detail on the role of the CCC and how it carries out those actions in relation to allegations.

**Table 2.4: CCC allegation assessment decisions – excessive use of force by the WA Police Force<sup>51</sup>**

Allegation assessment decision	2015-16	2016-17	2017-18	2018-19	2019-20
CCC investigate independently	2	0	1	6	2
CCC investigate cooperatively with police	0	0	5	1	0
Refer to police as the 'appropriate authority' for internal investigation	221	Categorisation no longer used. Allegations dealt with under the 'monitor for outcome', 'monitor for review' and/or 'active oversight' functions. <sup>52</sup>			
Refer to police and monitor the outcome of the investigation (monitor for outcome)	1	173	208	163	52
Refer to police and review the investigation (monitor for review or active oversight)	0	11	15	15	5
Take no action	57	72	75	76	219
Take no action (record police outcome)	0	33	36	90	57
Take no action (allegation does not constitute serious misconduct)	0	0	0	0	1
<b>TOTAL</b>	<b>281</b>	<b>289</b>	<b>340</b>	<b>351</b>	<b>336</b>

#### **Finding 7**

Early indications are that the introduction of police body worn cameras has had the effect of reducing the number of excessive use of force allegations and also further action required by the Corruption and Crime Commission.

#### **Finding 8**

Most allegations of excessive use of force are referred back to the WA Police Force to deal with and investigations or other actions are carried out internally by police.

Corruption and Crime Commission, *Report on an incident in the Fremantle Offender Management Area 1 January 2017*, Western Australia, 28 February 2019. See Submission 6, Corruption and Crime Commission, p. 8.

51 Submission 6, Corruption and Crime Commission, p. 7; and Addendum to Corruption and Crime Commission submission provided at hearing on 1 July 2020.

52 In the 2016-2017 financial year, the CCC implemented a number of changes to better align with the broader functions undertaken by its newly created oversight team. As a result, internal changes were made to the case management information system to reflect the CCC's assessment decisions in accordance with section 33(1)(c) of the CCM Act and its subsequent responsibilities pursuant to section 40 (monitor for outcome) and section 41 (monitor for review or 'active oversight'). Ms Lesley Storey, Executive Manager, Corruption and Crime Commission, email, 27 July 2020.

**Finding 9**

Since 2015 the Corruption and Crime Commission has not pursued around half of all allegations of excessive use of force beyond initial assessment.

This number increased in 2019-2020, which saw the Corruption and Crime Commission take no action in around 82 per cent of allegations received.

**Finding 10**

Most excessive use of force allegations requiring action are referred back to WA Police Force for action with the Corruption and Crime Commission monitoring the outcome.

Since July 2015 the Corruption and Crime Commission has used its monitor for outcome function in relation to around 37 per cent of excessive use of force allegations.

**Finding 11**

The Corruption and Crime Commission closely oversees only a small number of WA Police Force investigations under its monitor and review function, or what is sometimes called active oversight.

Since July 2015 the Corruption and Crime Commission has used its monitor and review function in relation to just under four per cent of excessive use of force allegations.

**Finding 12**

Only a very small percentage of allegations are either independently investigated by the Corruption and Crime Commission, or subject to a cooperative investigation between the Corruption and Crime Commission and the WA Police Force.

Since July 2015 the CCC has independently or cooperatively investigated around two per cent of police excessive use of force allegations.

## How many allegations are sustained?

2.8 According to WA Police Force data, between 2013 and 2019 less than five per cent of excessive use of force allegations were sustained.<sup>53</sup>

**Table 2.5: Allegations of excessive use of force investigated by WA Police Force and number sustained<sup>54</sup>**

Reporting period	# investigations	# allegations	# sustained allegations	% allegations sustained
2013-14	152	392	27	6.87
2014-15	140	386	29	7.51
2015-16	134	320	14	4.37
2016-17	159	382	12	3.14
2017-18	184	528	27	5.11
2018-19	180	437	10	2.28

53 Submission 9, WA Police Force, p. 16. Statistics received from the CCC put the number of allegations sustained at around six per cent. This is because the CCC does not include in this calculation the allegations on which it takes no action. Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020.

54 *ibid*, Attachment 4.

- 2.9 In the WA Police Force submission, the overall number of excessive use of force investigations where the allegations were sustained has declined since 2013-2014.<sup>55</sup> The figures provided (reproduced in Table 2.5) show that in 2013 seven per cent of allegations into excessive use of force were sustained. This number dropped to two per cent during the 2018-2019 reporting period.<sup>56</sup>
- 2.10 Furthermore, the prevalence of sustained excessive use of force allegations, when compared to the total number of allegations, is also in decline. The WA Police Force submission notes that there were 13.2 million interactions between police and members of the public from 2013 to 2019. This resulted in 2,445 excessive use of force allegations with 119 of those being sustained. A total of 88 officers received some form of sanction.<sup>57</sup> Sanctions are discussed further below, and the different types of sanctions which may be applied are detailed in **Appendix Five**.
- 2.11 The WA Police Force asserts that the policing environment is becoming more violent.<sup>58</sup> This is supported by evidence from the WA Police Union.<sup>59</sup> It is possible that increasing violence has necessitated an increase in the use of force by the WA Police Force, meaning that allegations of force being excessive are less likely to be sustained.
- 2.12 The WA Police Force argues that while relevant CCC reports tabled in Parliament between 2013 and 2019 identify shortcomings in a number of excessive use of force investigations carried out through police internal processes. It is open to conclude here that there is no evidence supporting a systemic failure in the application of use of force by WA Police Force members.<sup>60</sup>
- 2.13 It is the view of the Committee that while the above conclusions are reasonable, it is difficult to identify whether there are systemic issues without examining a large enough sample of matters. As outlined in this chapter, very few police investigations are overseen with any rigour by the CCC. The concern is that if investigations are not being carried out adequately by the WA Police Force, allegations which should be sustained may not be.

#### **Finding 13**

Fewer than five per cent of excessive use of force allegations against members of the WA Police Force are sustained. While the WA Police Force and WA Police Union provide a rationale for this, the Committee is not convinced that all allegations are captured by current reporting mechanisms. Furthermore the Committee is not convinced that all allegations which are captured are then appropriately investigated—increased oversight by the Corruption and Crime Commission is needed to make this assessment.

55 Overall number per 1,000 police.

56 Submission 9, WA Police Force, p. 16.

57 *ibid.*, p. 17.

58 *ibid.* According to WA Police Force since 2013 there has been a 108% increase in the number of mental health related incidents, 34% increase in family violence incidents and an 83% increase in disturbance incidents during the same period. The number of incidents attended by police in which the subject is armed (with edged or other weapons) is trending upwards. In 2018/19, 25% of subjects involved in [use of force] incidents were armed with some form of weapon; 13% armed with an edged weapon, 5% armed with a firearm and 7% armed with 'other weapon'.

59 Submission 11, WA Police Union, pp. 8-13.

60 Submission 9, WA Police Force, p. 19.

## Sanctions applied when an allegation is sustained

- 2.14 In instances where allegations of excessive use of force by a WA Police Force officer are substantiated, the application of sanctions against that officer is the responsibility of the WA Police Force under the authority of the Police Commissioner.<sup>61</sup>
- 2.15 A variety of options are available to the WA Police Force applying sanctions to officers found to have used excessive force. These range in gravity from an informal conduct report, through to criminal charges. They may also include a formal managerial sanction, a sanction under section 23 of the *Police Act 1892*, or loss of confidence proceedings. In the case of criminality, sanctions are applied by the courts in the first instance. Following a court outcome, WA Police Force may then apply additional sanctions, depending on the case.
- 2.16 Between 2013 and 2019, there were 88 officers against whom allegations of excessive use of force were substantiated. Of the sanctions preferred against these officers, 69 per cent were managerial, 13 per cent resulted in criminal charges, 12 per cent resulted in disciplinary charges under section 23 of the *Police Act 1892*, and six per cent resulted in dismissal proceedings (i.e. Commissioner's loss of confidence proceedings).<sup>62</sup> More detail on these options (and when they have been used) can be found at **Appendix Five**.

*Other than in exceptional circumstances, the Commission will not comment on the adequacy of any penalty imposed. Penalty is in the discretion of the Commissioner of Police ... and in the exercise of discretion, persons may reasonably reach different conclusions.*

*- Corruption and Crime Commission, Review of a WA Police Force investigation into use of force in respect of a child, 20 April 2020, p. 1.*

## The CCC can, and should, make a difference by reviewing sanctions

- 2.17 As the CCC has oversight of the WA Police Force response to allegations of serious misconduct, it 'can consider whether their conclusions reached, and disciplinary response, were open to be made on the available evidence.'<sup>63</sup>
- 2.18 The CCC has a number of actions available to it if it identifies a matter where a sanction is not deemed to be appropriate:

The Commission may provide informal feedback during engagement with the WA Police Force. It may provide formal commentary in a review closure report, or it may amend its original decision and have more active involvement in the matter, such as commencing its own investigation.<sup>64</sup>

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61 Submission 6, Corruption and Crime Commission, p. 16.

62 Submission 9, WA Police Force, p. 19, Attachment 6.

63 Submission 6, Corruption and Crime Commission, p. 16.

64 *ibid.*

## Case Study 2

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CCC reports: *Review of Police response to an incident in a country town where excessive force was used and an arrested person's details not recorded, and Further review of the WA Police Force response to an incident in the lock-up of a country town*<sup>65</sup>

21 March 2018 – first CCC report tabled in Parliament, which raised concerns about the management of WA Police Force officers who demonstrate a pattern of behaviour in excessive use of force. The CCC's review found that the WA Police Force adequately dealt with the particular matter of S/C Herman's use of force. However, the CCC noted the officer's extensive complaints history. It raised questions about the effectiveness of previous managerial interventions in relation to sustained allegations of excessive use of force. The CCC recommended the development of bespoke training and active management of officers with repeated patterns of excessive use of force.

August 2018 – WA Police Force Operational Skills Faculty implemented a program to deliver bespoke training to officers who demonstrate a pattern of excessive use of force. The officer's operational status is suspended until completion of the training.

22 September 2018 – S/C Herman was involved in a new excessive use of force allegation.

24 October 2018 – WA Police Force notified the CCC of the new matter.

25 October 2018 – the relevant district was tasked by PCIU to undertake an investigation into the incident. A sergeant conducted a managerial investigation. The allegations of excessive use of force and breach of Code of Conduct for failing to submit a use of force report were not sustained. Other allegations of breach of custody procedures and duty of care were sustained. Deficiencies in the investigative practices of the officers were identified but not addressed in the investigation.

26 December 2018 – S/C Herman and another officer received managerial intervention notices. The investigation was finalised by the district.

11 January 2019 – PCIU reviewed the investigation and returned it to the district for additional work.

25 February 2019 – the CCC decided to conduct a review of the finalised investigation.

4 March 2019 – an amended report was returned to the PCIU from the district. As a result, verbal guidance was given to both officers. The PCIU reviewed the case and closed the file.

The CCC review found the district investigation was incomplete, and the decision by the district to 'pre-emptively finalise the investigation and apply disciplinary sanctions prior to review by PCIU, hindered any possibility of appropriate remedial action.'<sup>66</sup>

However, the broader review of the WA Police Force response to the four recommendations in the first report found that WA Police Force had taken appropriate steps to address three of the four recommendations. Work continues on the fourth recommendation and the CCC will follow up on this recommendation in one year.<sup>67</sup>

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65 Reports tabled by the Corruption and Crime Commission on 21 March 2018 and 9 April 2020 respectively.

66 Corruption and Crime Commission, *Further review of the WA Police Force response to an incident in the lock-up of a country town*, Western Australia, 9 April 2020, p. 15.

67 *ibid.*, p. 17.

- 2.19 Case Study 2 provides an example where the CCC carried out two reviews of an investigation of an officer involved in multiple incidents of excessive use of force. The first review raised concerns about the effectiveness of previous managerial responses to sustained allegations of excessive use of force by the officer. The report made four recommendations for improvement, and the second review followed up to see how these recommendations had been implemented.
- 2.20 As part of the WA Police Force response to the first CCC report and its recommendations, the police implemented an early intervention case management initiative for the officer in question. In its submission to the inquiry, the WA Police Force acknowledged that previous early intervention attempts had failed to prevent the officer's unprofessional conduct. As a result, a case officer was assigned to review the matter and the actions taken to date. Areas of concern were highlighted and discussed with the officer.
- 2.21 The WA Police Force submission acknowledges that in this particular case it was not until the officer was reminded of the prospect of criminal charges and/or the loss of employment that he acknowledged his failings and took responsibility for his actions. Discussion with the officer also occurred in relation to personal issues impacting upon his work.<sup>68</sup>
- 2.22 Case Study 2 demonstrates how the CCC review ensured that action was taken where it otherwise may not have been carried out quite so rigorously. In this case, the CCC's review identified a flaw in the process. This assisted the WA Police Force to develop an intervention program that had a direct and positive impact upon the behaviour of an officer exhibiting ongoing problematic behaviour. The Committee is of the view that this is a compelling reason for the CCC to carry out its police oversight role in a way that is more than simply investigating a handful of excessive use of force matters each year. This is discussed further in Chapter 3.
- 2.23 Another recent CCC report lays out in some detail an instance where the CCC and WA Police Force differed in opinion over the investigation of use of force against a 13 year old child.<sup>69</sup> The CCC report reviewed the police investigation which found that there was insufficient evidence to prefer criminal charges against the officers for all matters. The CCC reported that both officers in question declined to participate in an interview under the *Criminal Investigation Act 2006*, and were then directed to participate in a managerial interview, noting that 'admissions made under the compulsion of a managerial interview are not admissible in criminal proceedings.'<sup>70</sup>
- 2.24 Having reviewed the police investigation, the CCC concluded that the 'investigation did fail and criminal proceedings for assault should have been instituted.'<sup>71</sup> In response to the CCC's conclusions, the WA Police Force noted that the officer in question 'received a significant penalty for his conduct pursuant to the *Police Act 1892* s 23, which may be comparable to

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68 Submission 9A, WA Police Force, p. 7.

69 Corruption and Crime Commission, *Review of a WA Police Force investigation into use of force in respect of a child*, Western Australia, 20 April 2020.

70 *ibid.*, p. 8.

71 *Ibid.*, p. 11.

that imposed by a criminal court.’<sup>72</sup> While the CCC accepted this response, it reported that it remained ‘of the view that criminal proceedings for assault should have been instituted and the matter resolved in court.’<sup>73</sup>

- 2.25 This form of oversight, whereby the CCC reports publicly on failings in the WA Police Force’s processes and choices in relation to investigations and sanctions, is important because it brings these processes under public scrutiny. This helps to assure the public that meaningful oversight is occurring, and that allegations against WA Police Force officers are not ignored or dismissed.

#### **Finding 14**

The responsibility for imposing sanctions on WA Police Force members who have been found to have used excessive force rests with the Police Commissioner.

#### **Finding 15**

Between 2013 and 2019, there were 88 officers against whom allegations of excessive use of force were substantiated. Of the sanctions preferred against these officers, 69 per cent were managerial, 13 per cent resulted in criminal charges, 12 per cent resulted in disciplinary charges under section 23 of the *Police Act 1892*, and six per cent resulted in dismissal proceedings.

#### **Finding 16**

The Corruption and Crime Commission has oversight of the WA Police Force response to allegations of serious misconduct, and can consider whether the conclusions reached, and the disciplinary response, were open to be made on the available evidence.

#### **Finding 17**

The Corruption and Crime Commission’s review of WA Police Force investigative processes and outcomes, and the sanctions applied, is important because it brings these processes under public scrutiny. This helps to assure the public that allegations are being dealt with properly.

#### **Recommendation 1**

In the interest of transparency, the Corruption and Crime Commission should report where there is a difference of opinion with police about sanctions applied in cases of excessive use of force.

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72 *ibid.*, 20 April 2020, p. 13.

73 *ibid.*





## Chapter 3

### Police oversight in Western Australia

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The oversight of misconduct and corruption within the WA Police Force is the responsibility of the Corruption and Crime Commission and should be seen as a core function in line with its genesis in the Kennedy Royal Commission.

In 2012 legislative amendment was recommended to provide for particular focus on police oversight by the Corruption and Crime Commission. This amendment was not enacted.

The Corruption and Crime Commission currently prioritises use of its resources according to strategic themes. The WA Police Force is one of six strategic themes. This is not adequate. Rather, it should be proactively overseeing the WA Police Force by way of audit, research projects and interrogation of data, in addition to investigating allegations of misconduct.

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#### The Corruption and Crime Commission

3.1 The Kennedy Royal Commission, established in 2001, reported on whether there had been any corrupt conduct or criminal conduct by WA Police Force officers since 1 January 1985. It made recommendations for improvement to legislative and policy provisions for investigating, dealing with, preventing, and exposing WA Police Force officers engaged in corrupt or criminal conduct.

3.2 One of the outcomes of the Kennedy Royal Commission was that the CCC was established in 2004, replacing the Anti-Corruption Commission.<sup>74</sup> The statutory review of this legislation carried out in 2008 noted that 'the impetus for the establishment of the CCC came as a result of concerns about police corruption.'<sup>75</sup>

*For too many years the community's demands for action were ignored. This undermined public confidence in our Police Service and jeopardised the reputations of honest and hardworking police officers. The State Government promptly established the Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. The constant stream of allegations or admissions of assaults, perjury, theft and bribery has caused even the most cynical to agree that previous efforts to combat police corruption in this State have been ineffective.*

*- Hon J.A. McGinty, MLA, Attorney General, Legislative Assembly, Hansard, 15 May 2003, p. 7861.*

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74 This was done by way of passage of the Corruption and Crime Bill 2003. The predecessors of the CCC emerged as a result of events during what is now known as the WA Inc. era. In 1988 the Official Corruption Commission (later renamed the Anti-Corruption Commission in 1996) was established. See Harry C.J. Phillips, *Parliamentary Committees in the Western Australian Parliament: An Overview of their Evolution, Functions, and Features*, Parliament of Western Australia, 2017, pp. 344-351.

75 Gail Archer SC, *Review of the Corruption & Crime Commission Act 2003*, Western Australia, February 2008, p. 21.

- 3.3 As a result, the role of the Ombudsman in reviewing police conduct was transferred to the new CCC.<sup>76</sup> The CCC was thus established as the oversight body for police in WA, with significant powers to investigate WA Police Force officers.<sup>77</sup>
- 3.4 The Ombudsman has some oversight capability in that this Office can receive administrative complaints about the WA Police Force. However, the oversight of misconduct and corruption within the WA Police Force is the responsibility of the CCC.
- 3.5 Under the CCM Act the CCC has jurisdiction to investigate, or otherwise oversight action taken in relation to, allegations of serious misconduct—all police misconduct is serious misconduct.<sup>78</sup> Police misconduct includes misconduct described in section 4 of the CCM Act and also additional conduct described as ‘reviewable police action.’<sup>79</sup> Reviewable police action, amongst other things, includes ‘any action taken by a member of the Police Force ... that (a) is contrary to law; or (b) is unreasonable, unjust, oppressive or improperly discriminatory...’.<sup>80</sup>
- 3.6 Although the CCC provides oversight of the WA Police Force handling of misconduct allegations, the Police Commissioner—as the responsible authority of the agency—is ultimately responsible for misconduct that occurs within the organisation.<sup>81</sup> Most police misconduct investigations (including those into allegations of excessive use of force) are undertaken internally by the WA Police Force, with varying degrees of oversight afforded by the CCC. Therefore, the CCC should satisfy itself that the systems in place and the culture of the organisation ensure that this responsibility is properly and rigorously exercised.
- 3.7 The CCC has a great deal of discretion in determining when it will undertake its own investigation into a matter. The CCC undertakes very few of its own investigations into

*... the State Government is confident that the vast majority of dedicated and hardworking police officers will welcome [the Corruption and Crime Commission] Bill and the creation of the CCC. The Bill will restore the public confidence in the Western Australia Police Service that their corrupt colleagues have eroded.*

*- Second reading speech, Hon. J. McGinty, Attorney General, Legislative Assembly, Hansard, 15 May 2003, p. 7864.*

<sup>76</sup> Hon J.A. McGinty, MLA, Attorney General, Legislative Assembly, *Hansard*, 15 May 2003, p. 7863.

<sup>77</sup> The stated purpose of the Corruption and Crime Commission Bill 2003 was ‘to provide for the establishment and operation of a Corruption and Crime Commission, which will have the powers to investigate Western Australian Judges, Ministers, Members of Parliament, police officers and other public officers.’

<sup>78</sup> *Corruption, Crime and Misconduct Act 2003*, s. 3. Under this section police misconduct is defined as misconduct by a member of the Police Force; an employee of the Police Department; a person seconded to perform functions and services for, or duties in the service of, the Police Department; or reviewable police action.

<sup>79</sup> For a definition of ‘reviewable police action’ see *Corruption, Crime and Misconduct Act 2003*, s. 3. Reviewable police action is reported to the CCC under s. 21A.

<sup>80</sup> *Corruption, Crime and Misconduct Act 2003*, s. 3.

<sup>81</sup> Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 10.

allegations of excessive use of force by WA Police Force officers, or indeed any police misconduct allegations.

#### **Finding 18**

Although the Corruption and Crime Commission provides oversight of the WA Police Force handling of misconduct allegations, the Police Commissioner—as the responsible authority of the agency—is ultimately responsible for misconduct that occurs within the organisation.

### **Police oversight 2003–2014**

- 3.8 Police oversight has been carried out with varying levels of rigour over time by the CCC. Concerns about police oversight were expressed throughout the course of the 2008 *Review of the Corruption and Crime Commission Act 2003* (known as the Archer Review). For example, the ALSWA expressed concerns that the CCC:
- rarely interviewed complainants
  - did not often interview witnesses identified by a complainant
  - rarely (if ever) consulted with the ALSWA
  - requested any further information required directly from the WA Police Force.<sup>82</sup>
- 3.9 The ALSWA concluded that ‘this in effect is a non-investigation and has the inevitable outcome of creating a perception that the police are biased in favour of their own and that the CCC is not willing to examine or challenge the police investigation.’<sup>83</sup>
- 3.10 Furthermore, the ALSWA criticised the CCC's practice of referring complaints to the WA Police Force for investigation, rather than conducting an independent investigation. It submitted that 99 per cent of its complaints were referred back to the WA Police Force to investigate itself. This figure was largely corroborated with other evidence given to the review.<sup>84</sup>
- 3.11 However, the review concluded that the CCC still monitored ‘far more home agency investigations than similar oversight bodies in other jurisdictions’ and that it did give particular attention to the WA Police Force.<sup>85</sup>
- 3.12 The PICCC reported (as part of this statutory review process) that for the period 1 July 2004 to 30 June 2006 all the CCC investigations audited were found to have been finalised satisfactorily; that is, the CCC process was adequately followed. The PICCC reported finalising 68 process complaints during his tenure and did not find any instances ‘where the CCC had not discharged its functions properly.’<sup>86</sup>

82 Gail Archer SC, *Review of the Corruption & Crime Commission Act 2003*, Western Australia, February 2008, p. 29

83 *ibid.*

84 *ibid.*, pp. 24-25.

85 *ibid.*, p. 35.

86 *ibid.*

- 3.13 However, over the next couple of years the PICCC did go on to form concerns around the CCC's oversight of the WA Police Force.
- 3.14 The Committee is aware of several failings in oversight around this time. In June 2009 the CCC advised two complainants that it had completed a review of the adequacy of the WA Police Force investigation into their complaint about a tasering incident.
- 3.15 The complainants were advised that the CCC review consisted of examining the complaint, WA Police Force officers' statements and reports, and the investigation report. The CCC advised that it had 'carefully examined' the material gathered during the investigation and formed the view that the investigating officer appeared 'to have properly considered the issues' raised in the complaint 'and in light of the available evidence, reached appropriate conclusions.' The CCC then advised that further involvement in the matter by the CCC 'would be unlikely to alter this outcome.'<sup>87</sup>
- 3.16 Subsequently, as a result of another process, it became evident to the complainants that both the CCC and the WA Police Force did not speak to key witnesses in relation to the event—not even the tasering officer was interviewed.<sup>88</sup> This did not accord with CCC processes at the time, which dictated that a review should include ensuring that all relevant witnesses and complainants were interviewed.<sup>89</sup>
- 3.17 In 2011 a report was submitted by the PICCC at the time, the Hon Christopher Steytler QC, to the Joint Standing Committee on the Corruption and Crime Commission of the 38<sup>th</sup> Parliament. This was done in response to concerns about CCC investigations into use of force by WA Police Force officers arising from numerous complaints from people dissatisfied with how their complaints to the CCC were dealt with.
- 3.18 The PICCC recommended that the CCC give more weight to conducting independent investigations into 'instances at the upper end of the category of serious and credible complaints concerning the use of excessive force by police, especially complaints concerning the unnecessary discharge of a firearm or Taser.'<sup>90</sup>
- 3.19 As a result of concerns held, the PICCC requested and reviewed statistical information concerning such investigations. These statistics were widely quoted as evidence of a lack of adequate police oversight by the CCC. They revealed that over a 21-month period (July 2009 to March 2011) the CCC received a total of 381 complaints concerning the use of excessive force by members of the WA Police Force, but conducted only one independent

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87 Submission 13, closed submission, pp. 19-21.

88 *ibid.*

89 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission handles allegations and notifications of police misconduct*, 15 November 2012, p. 50. Commissioner Macknay later (in 2012) advised the 38<sup>th</sup> Parliament's Joint Standing Committee on the Corruption and Crime Commission of all the factors that could, and usually would, be considered as part of a section 41 review of a police investigation (see Chapter 4 for an explanation of the types of oversight actions undertaken by the CCC). One of those was 'whether all relevant witnesses and complainants have been interviewed.'

90 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's report concerning the procedures adopted by the Commission when dealing with complaints of the excessive use of force by Police*, 8 September 2011. See Recommendations at p. 35 of the report.

investigation. This was the matter of the tasering of Mr Kevin Spratt at the Perth watch-house in August 2008, which had received wide publicity. These statistics largely led the PICCC to prepare the 2011 report to Parliament outlining his concerns.<sup>91</sup>

3.20 In 2012, the Joint Standing Committee confirmed its view that, in the past, the CCC had 'not devoted adequate priority to its police oversight role.'<sup>92</sup> It did, however, note improvements in efforts made by the CCC in the intervening period in that it was starting to afford 'greater priority to' allegations of police misconduct than it had done in the past. It reported that during 2012 the CCC 'significantly increased its investigative effort with respect to allegations made in relation to the WA Police.'<sup>93</sup>

3.21 Due to scrutiny following this revelation, the newly appointed CCC Commissioner Mr Roger Macknay QC gave evidence to the Joint Standing Committee regarding changes that he had implemented within the CCC since his appointment in November 2011. Essentially, he said that the CCC had 'doubled the amount of resources ... spent in relation to the police oversight area.' Ten independent investigations were conducted in relation to allegations of police excessive use of force over a 12 month period.<sup>94</sup>

3.22 In addition to investigations, other types of oversight were also progressed under CCC Commissioner Macknay. A research team within the CCC was formed which looked at specific policing matters in consultation with the WA Police Force. A research project involving the scrutiny of CCTV in the Perth CBD and Northbridge was undertaken in an attempt to assess use of force reporting. Several matters identified were further investigated.<sup>95</sup> There were also random audits and system evaluations carried out across the police districts between March 2010 and September 2011.<sup>96</sup>

3.23 This increased focus on the WA Police Force continued during the 2013-2014 reporting period in relation to excessive use of force.<sup>97</sup> As a result of this focus, and the resulting 'one-off' reports and notifications, there was a marked increase in the number of allegations which involved assault and excessive use of force.<sup>98</sup>

### **Legislative amendment suggested to mandate priority for police oversight**

3.24 Arising from the recognition in 2011 that not enough CCC resources were being allocated to police oversight, and that not enough excessive use of force allegations were being investigated by the CCC, legislative amendment seeking to better establish focus on police oversight was proposed by the then Joint Standing Committee on the Corruption and Crime Commission.

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91 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission handles allegations and notifications of police misconduct*, 15 November 2012, p. 4.

92 *ibid.*, Chairman's Foreword.

93 *ibid.*

94 *ibid.*, pp. 52-53.

95 *ibid.*, p. 51 and Appendix One, p.3.

96 *ibid.*, p. 51.

97 Corruption and Crime Commission, *Annual Report 2014-15*, Western Australia, 25 September, p. 12.

98 *ibid.*, p.89. The number of allegations increased from 703 in 2012-2013 to 1,154 in 2013-2014.

- 3.25 As a result of its own inquiries and the PICCC's representations to it, the Joint Standing Committee recommended that section 7A of the (then) *Corruption and Crime Commission Act 2003* be amended to read:

The main purposes of this Act are:

- (a) to aid the efforts of the WA Police to combat and reduce the incidence of organised crime; and
- (b) to improve continuously the integrity of the WA Public Sector **and in particular the WA Police.**<sup>99</sup> [emphasis added]

- 3.26 In a previous report, the Joint Standing Committee had also recommended that section 7A of the Act be amended to 'emphasise that the oversight of the WA Police by the CCC is specific and unique within the overall CCC role.' The Joint Standing Committee took the view 'that this oversight should be essentially proactive' and 'that the role of overseeing, and thereby enhancing the capacity and capability of, the WA Police should be a core function of the CCC, and explicitly referred to as such within the CCC Act.'<sup>100</sup>

- 3.27 In response to the Joint Standing Committee's recommendation, the (then) Attorney General advised that he was introducing a Bill into Parliament to transfer 'the CCC's responsibility for public sector misconduct, and the CCC's responsibilities for corruption prevention and education, to the Public Sector Commissioner.'<sup>101</sup> He concluded that:

This will mean, in the first instance, that the CCC will be able to devote more attention to the oversight of police misconduct investigations. This, together with your Committee's observation that the current Commissioner is placing increased emphasis on police oversight, would appear to obviate the need for the Committee's proposed amendment to Section 7A of the CCC Act 2003.<sup>102</sup>

- 3.28 The Bill subsequently passed and responsibility for minor misconduct was transferred to the Public Sector Commission as planned. No specific amendment was made to focus the CCC's attention on the WA Police Force.

- 3.29 The former PICCC, the Hon Michael Murray AM QC, told the Committee in 2019 that, since the 2014 legislative amendments did not include his predecessor's suggestion to effect prioritisation of police oversight, this remains 'an area which continues to raise difficult decisions for the Commission as to how best to apply its resources...'<sup>103</sup>

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99 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission handles allegations and notifications of police misconduct*, 15 November 2012, p. iii and p. 8.

100 Joint Standing Committee on the Corruption and Crime Commission, *Corruption Risks of Controlled Operations and Informants*, June 2011, pp. 31-32.

101 Hon. Michael Mischin MLC, Attorney General, *Government response to JSCCCC reports 1 and 2 of June 2013*, 1 August 2013, p. 2.

102 *ibid.*

103 Hon Michael Murray AM QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 11 October 2019, p. 1.

- 3.30 The balance between allocation of CCC resources to police oversight, as opposed to resources allocated to its role as the anti-corruption body overseeing the rest of the WA public sector, has long been a tension that is difficult to resolve.<sup>104</sup>

#### **Finding 19**

In 2012 concerns raised by the Parliamentary Inspector of the Corruption and Crime Commission prompted the Joint Standing Committee on the Corruption and Crime Commission to recommend an amendment to the (then) *Corruption and Crime Commission Act 2003* which was intended to provide for particular focus on police oversight by the Corruption and Crime Commission. This amendment was not enacted.

### **A changing role for the Corruption and Crime Commission from 2015**

- 3.31 There was significant change to the way the CCC operated in 2015. Legislative change saw responsibility for minor misconduct removed from its remit and assigned to the Public Sector Commission. All misconduct allegations against members of the WA Police Force remained the purview of the CCC.
- 3.32 The re-positioning of the CCC under the leadership of Acting CCC Commissioners Mr Neil Douglas and Mr Christopher Shanahan led to a more strategic approach to CCC oversight across all organisations, including the WA Police Force. In effect this meant that, going forward, the CCC would:
- ... not seek to focus on responding directly to each individual allegation received, reported or notified to it, but rather seek to engage identified corruption and serious misconduct "hot spots" by targeted investigations of strategic value. [...] The underlying concept of this approach is that with fewer but "higher value" investigations conducted in a targeted and systematic manner the Commission will be better placed to reveal, disrupt and reduce systemic corruption and serious misconduct in the Western Australian public sector, and thereby deliver greater value to the Western Australian community and government.<sup>105</sup>
- 3.33 There have been two practical outcomes of this approach. One is that fewer investigations are carried out or monitored by the CCC and instead there is a greater emphasis placed on active oversight. Active oversight is detailed in the following section.
- 3.34 The other outcome is that oversight of the WA Police Force is undertaken as part of a wider strategy and assessment process, which is also discussed further below.

<sup>104</sup> For example, see comments by former Acting CCC Commissioner Herron, cited in: Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's report concerning the procedures adopted by the Corruption and Crime Commission when dealing with complaints of excessive use of force by police*, 8 September 2011, p. 82.

<sup>105</sup> Corruption and Crime Commission, *Report on an Administrative Matter Relating to the Functions of the Commission Pursuant to Section 88 of the "Corruption and Crime Commission Act 2003"* (known as the 'Repositioning Report'), Western Australia, 21 April 2015, p. 7.

#### **Finding 20**

In 2015, following the allocation of responsibility for minor misconduct to the Public Sector Commission, rather than allocating extra resources to increased oversight of the WA Police Force, the Corruption and Crime Commission began to strategically target 'higher value' investigations, with a focus on misconduct 'hotspots' throughout the public sector. This focus now includes, but does not necessarily prioritise, the WA Police Force.

#### **Active oversight**

3.35 Essentially, following the changes in 2015, fewer matters were to be subject to 'monitor and review' by the CCC. Instead matters would be prioritised according to risk assessment and identified 'hotspots'. Those investigations which were overseen by the CCC under its monitor and review function were to be 'far more rigorous and inquisitive' along the lines of CCC investigative practices; there would just be fewer of them.<sup>106</sup>

3.36 The term 'active oversight' is used by the CCC to describe the work undertaken by its oversight team which combines both monitor and review functions pursuant to sections 40 and 41 of the CCM Act, in line with this more rigorous review function (see Box 3.1).

#### **Box 3.1: The active oversight review process**

The active oversight review process commences with an engagement meeting held with the WA Police Force—CCC officers will explain why the CCC is reviewing the matter, raise any concerns, and detail the activities and proposed schedule of the active oversight process.

It continues with regular liaison throughout the course of the investigation or other action. This involves 'incident-specific engagement' and the CCC's oversight team 'engage with the WA Police Force on a monthly basis to obtain progress reports for each matter that is currently subject to active oversight.' The CCC 'may also seek or be provided with updates during engagement between members of the Operations Directorate and the WA Police Force.' In this way the CCC 'tracks the progress and direction of the WA Police Force response to each matter.'

Once the investigation is finalised, 'a comprehensive review of the investigation report, evidence relied upon and decisions made is undertaken.'

The process culminates in a CCC report providing 'a review outcome as to whether the actions taken by the agency were adequate and the outcomes reached were open to be made.'

The CCC reports to Parliament and also reports back to the WA Police Force. Reports contain feedback and, if appropriate, recommendations.

Sources: Submission 6, Corruption and Crime Commission, p. 10. Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 7.

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106 *ibid.*, p. 10. So whereas between 2009 to 2011 the number of section 41 monitor and review actions in relation to excessive use of force matters was around 40 per cent, currently the CCC monitors for review around four per cent of excessive use of force allegations.



- 3.37 Active oversight is carried out in the case of serious matters such as fatalities, matters where the CCC thinks there may be systemic issues, where there is limited capacity for the WA Police Force to act, or where a particular officer has a concerning history of misconduct or questionable action.<sup>107</sup>
- 3.38 Former CCC Commissioner McKechnie described this new method as a way to fulfil the CCC's mandate more cost-effectively.<sup>108</sup> The CCC advises that when it refers an allegation to the WA Police Force for action, the monitor and review functions provide it with visibility over how the matter is dealt with. These functions 'provide the CCC with an alternative to undertaking an independent investigation; a response which can be time and resource intensive.'<sup>109</sup>
- 3.39 According to information provided by the CCC, an independent investigation usually 'requires a team of highly qualified investigators; analysts and other specialist support officers who undertake investigative actions.' This can be compared to the CCC oversight review team, comprised of two officers, which 'is able to thoroughly monitor and review an authority's response to an allegation of serious misconduct.' The CCC states that this active monitor and review process provides 'the public with a level of confidence that the response is appropriate.'<sup>110</sup>
- 3.40 The CCC carries out active oversight in relation to a relatively small sample of WA Police Force internal investigations. Between 2016-2017 and 2018-2019 the CCC actively monitored and reviewed WA Police Force management of 28 matters involving 41 allegations of excessive use of force.<sup>111</sup> This means that, in effect, the CCC had active oversight of around five per cent of WA Police Force excessive use of force investigations during that period.

#### **Finding 21**

From 2015 Corruption and Crime Commission practice has been to oversee fewer matters and actions pursuant to sections 40 and 41 of the *Corruption, Crime and Misconduct Act 2003*. Instead, it states that those matters which it does review are carried out with greater rigour.

#### **Finding 22**

The term 'active oversight' is used by the Corruption and Crime Commission to describe the work undertaken by its oversight team which combines both monitor and review functions pursuant to sections 40 and 41 of the *Corruption, Crime and Misconduct Act 2003*. It is intended to provide greater rigour to the review of those internal police investigations which are identified for this level of oversight.

107 Ms Emma Johnson, Director, Assessment and Strategy Development, Corruption and Crime Commission, *Transcript of Evidence*, 18 October 2017, p. 5. See also Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 18 October 2017, p. 8.

108 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 18 October 2017, p. 5.

109 Submission 6, Corruption and Crime Commission, p. 7.

110 *ibid.*, pp. 7-8.

111 *ibid.*, p. 11.

**Finding 23**

The Corruption and Crime Commission has advised that active oversight is carried out in the case of serious matters such as fatalities, matters where there may be systemic issues, where there is limited capacity for the WA Police Force to act, or where a particular officer has a concerning history of misconduct or questionable action.

**Finding 24**

Between 2016-2017 and 2018-2019 around five per cent of police internal excessive use of force investigations were subject to active oversight.

**Strategic themes**

3.41 Rather than allocating resources to increased oversight of the WA Police Force as a consequence of the changes in 2015, priority is accorded to matters through the lens of the CCC's strategic themes.<sup>112</sup> The CCC has identified six strategic themes that guide its work and inform decision-making. These are:

- people at risk
- procurement and financial management
- data and information
- policy, regulation and licensing
- use of force
- WA Police Force.<sup>113</sup>

3.42 The WA Police Force is given a strategic focus along with other identified high risk areas/agencies in the public sector, but does not appear to be accorded any additional focus outside this assessment process.<sup>114</sup> The audits and research projects on police misconduct matters, conducted following the negative publicity in 2011 and 2012, do not appear to have been continued.

3.43 The Acting CCC Commissioner, Mr Scott Ellis, explained to the Committee that the CCC engages with matters that come in through the assessment process. Through this process it identifies circumstances or matters where an active involvement is identified as necessary in accordance with strategic themes and other relevant factors. He noted that this is 'not a random process that is an allocation of resources to an area that we think is or might be a problem.'<sup>115</sup>

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112 Mr Ian Norcock, Director, Assessment and Strategy Development, Corruption and Crime Commission, *Transcript of Evidence*, 13 February 2019, p. 14.

113 Submission 6, Corruption and Crime Commission, pp. 5-6.

114 Corruption and Crime Commission, *Report on the Misconduct Intelligence Assessment of the Western Australian Public Sector*, Western Australia, 26 March 2015, pp. 28-29.

115 Mr Scott Ellis, Acting Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 13.

3.44 The Chief Executive of the CCC advised the Committee that if there were more resources available, more independent or cooperative investigations could be undertaken, although a system of triage, or prioritisation, would still need to be adhered to.<sup>116</sup>

3.45 Thus allegations relating to members of the WA Police Force are treated much the same as those relating to the rest of the public sector, rather than being a core priority for the CCC.

## **Police oversight should be prioritised by the Corruption and Crime Commission**

3.46 Allegations of serious misconduct against members of the WA Police Force account for just over half of the allegations received by the CCC.<sup>117</sup> Around 12 per cent of allegations relate to excessive use of force.

3.47 Such abuses of power by members of the WA Police Force undermine the integrity of the WA Police Force and undermine public trust in this institution. This is particularly true if the

*Save for institutionalized corruption, the use of excessive force by police can be regarded as the most serious form of police misconduct because of its very real impact on affected citizens and because of its wider impact on society's confidence in those entrusted to uphold the law.*

*- Hon Christopher Steytler QC, former Parliamentary Inspector of the Corruption and Crime Commission (June 2012)*

incident is captured on video and it appears, for all intents and purposes, that the force used is not justified.

3.48 CCC oversight of the WA Police Force handling of excessive use of force allegations provides an independent accountability mechanism. Robust oversight by the CCC is needed to reduce any real or perceived bias of police internal investigations. Oversight also offers an avenue to address investigative failures that can arise from the mishandling of a matter.

3.49 The WA Police Force acknowledges that regardless of the mechanisms in place to support stringent internal investigations, it does occasionally get investigations wrong.<sup>118</sup> It recognises the benefits provided by independent oversight of allegations of misconduct and identifies that '... where community expectations are not met, the CCC oversight provides opportunities for police to meet that expectation.'<sup>119</sup>

3.50 Very few allegations of excessive use of force are substantiated. This could be an accurate reflection of events. However, the Committee is concerned that allegations which should be

<sup>116</sup> Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 13.

<sup>117</sup> This is partly attributable to 'the lower reporting threshold imposed on the WA Police Force requiring it to report all allegations, including those related to minor misconduct and reviewable police action' which is 'a condition not imposed upon the wider public sector.' See Corruption and Crime Commission, *2016-17 Annual Report*, Western Australia, September 2017, p. 29.

<sup>118</sup> Submission 9, WA Police Force, p. 18.

<sup>119</sup> *ibid.*, p. 19.

substantiated are not being upheld, due to the fact that they are not being adequately investigated.

- 3.51 The Committee is of the view that WA Police Force misconduct was intended to be a particular priority for the CCC, by virtue of its genesis in the Kennedy Royal Commission. It is not convinced that the current method of assessment in accordance with strategic themes adequately prioritises police matters, particularly those of excessive use of force. It concludes that the CCC should refocus its efforts and resources on police oversight primarily, in line with what is arguably a key mandate.

**Finding 25**

Corruption and Crime Commission oversight of the WA Police Force handling of excessive use of force allegations provides an independent accountability mechanism. Robust oversight by the CCC is needed to reduce any real or perceived bias of police internal investigations.

**Finding 26**

The WA Police Force was intended to be a particular priority for the Corruption and Crime Commission, by virtue of its genesis in the Kennedy Royal Commission. The Committee is not convinced that the current method of assessment adequately prioritises police oversight.

**Recommendation 2**

The Corruption and Crime Commission should refocus its efforts and current resources on police oversight primarily, in line with what is arguably a key mandate. It is not enough for police oversight to be treated as one of several strategic themes.

**Suggestions for additional actions to oversight the WA Police Force**

- 3.52 The Committee understands that only a small number of allegations will be investigated or actively overseen by the CCC attributed to resourcing constraints and priorities. However, it takes the view that investigations are only one way of fulfilling its oversight role. Not enough investigations or reviews are undertaken for the CCC to demonstrate that excessive use of force allegations are always adequately dealt with.
- 3.53 The CCC is the only entity with the authority and capacity to oversight the WA Police Force with any rigour, particularly in relation to excessive use of force matters. It must be able to demonstrate a confidence that investigations are being conducted appropriately within the WA Police Force.
- 3.54 The CCC is uniquely vested with capabilities to exercise oversight of the WA Police Force in a way that differs to oversight of other public sector agencies. For example, the CCC's access to internal WA Police Force information systems leaves the CCC well positioned to identify systemic issues or deficiencies relating to police misconduct. CCC officers 'have access to the

WA Police Force IAPro system and have the capability to review all UoF reports, allegations of misconduct and investigations into misconduct.<sup>120</sup>

3.55 Oversight should go further than just reviewing investigations—oversight should be proactive. When the Corruption and Crime Commission Bill was introduced in 2003 a proactive role was envisaged for the CCC. It was not intended to limit the CCC’s role to the receipt and investigation of formal allegations.

3.56 Oversight actions in addition to the receipt and investigation of formal allegations are carried out by other commensurate bodies in Australia. The Victorian Independent Broad-based Anti-corruption Commission (IBAC) commenced an audit of how Victoria Police handles complaints made by Aboriginal people, which is discussed in Chapter 6.

*The CCC will have the power to be proactive. The CCC will be proactive in relation to all its functions, ranging from taking a strong prevention and education role to investigating matters when there has been no formal allegation of misconduct, and taking the initiative to report on relevant matters.*

*- Hon J.A. McGinty, MLA, Attorney General, Legislative Assembly, Hansard, 15 May 2003, p. 7863.*

3.57 The NSW Law Enforcement Conduct Commission (LECC) reports that in 2018-2019, it undertook three on-site audits as well as numerous desktop audits which related to the NSW Police Force complaint handling system.<sup>121</sup> The LECC reports that its audit function has enabled it to ‘gain valuable insights’ into how the NSW Police Force manages misconduct matters.<sup>122</sup>

3.58 And finally, the Queensland Crime and Corruption Commission recently published two audit reports relating to police—one relating to assessing complaints of corruption and the other concerning responses to corruption-related failure of duty (carried out in conjunction with a public sector audit).<sup>123</sup>

3.59 The following sections detail two suggestions for increased oversight—auditing and the interrogation of data.

#### **Finding 27**

The Corruption and Crime Commission is the only independent entity with the authority and capacity to oversight the WA Police Force. It should be able to demonstrate with some rigour that excessive use of force matters are being dealt with appropriately.

120 Submission 9, WA Police Force, p. 13.

121 Law Enforcement Conduct Commission, *Annual Report 2018-19*, New South Wales, October 2019, p. 40.

122 *ibid.*

123 Crime and Corruption Commission, *Annual Report 2018-19*, Queensland, 30 August 2019, p. 48.

### Interrogation of data for trends in problematic behaviour

- 3.60 Case Study 5 in Chapter 5 outlines a matter where a man complained about his treatment at the hands of a WA Police Force officer, alleging excessive use of force whilst he was handcuffed.
- 3.61 Inquiries by the PICCC into the matter in 2018 revealed that the police officer in question had a history of six complaints against him which alleged excessive use of force on separate occasions between 2012 and 2015.
- 3.62 The PICCC noted the ‘behavioural consistency’ of the discrete complaints. He speculated in correspondence to this Committee that these factors might be considered by the CCC in making a ‘decision as to whether or not the matter requires further action by way of investigation and recommendations to the appropriate authority.’<sup>124</sup> The CCC did eventually prepare a brief for prosecution of the officer, but only after the PICCC took up the matter.
- 3.63 The Committee suggests that interrogation of police data by the CCC for trends and greater analysis of at-risk areas or officers could be useful for identifying a particular officer or cohort exhibiting problematic behaviour.
- 3.64 The tension for the WA Police Force is the balance between being satisfied that an officer attracting numerous complaints is ‘simply doing their job in a very busy environment’ rather than engaging in misconduct.<sup>125</sup> This is less ambiguous where the officer might have sustained a number of excessive use of force allegations. In these cases, the WA Police Force has a risk assessment process. Police Commissioner Mr Chris Dawson advised that he:
- ... would like to see that even further enhanced where the CCC and the police have a very keen trend interest in both individual or indeed subject areas that might attract a higher propensity of complaints. [...] If I could generalise it to a police station and you say, “Why is this police station and the numbers of officers there getting a higher number?”, that is the sort of far more intensive relationship between us and the CCC that I think really behoves better public accountability. I am not saying it does not occur now, [...] but I think that is probably an area that we could work collaboratively even more than we do now.<sup>126</sup>
- 3.65 The CCC Chief Executive advised the Committee that an individual officer or cohort of officers might be subject to a greater level of oversight if and when the same names appear to be recurring in the allegations received by the CCC for assessment.<sup>127</sup> This action is commended. It should be recognised though, that this method of identification does rely on allegations against an officer being made each time excessive force is used.

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124 Hon Michael Murray AM QC, Parliamentary Inspector of the Corruption and Crime Commission, Letter, 28 March 2018, p. 2.

125 Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 14.

126 *ibid.*

127 Mr Ray Warnes, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 6.

3.66 Police Commissioner Dawson told the Committee that the WA Police Force would welcome ‘greater analysis of at-risk areas or officers’ by way of CCC analysis of data that is made available to it.<sup>128</sup> For example, the WA Police Force IAPro system complements police use of force reporting and the police complaint management system. It aims to identify officers who are at higher risk of behaviour which could constitute misconduct.

3.67 Another such system is the WA Police Force Digital Evidence Management System (DEMS) which is where body worn camera data is stored. In December 2019, liaison with the CCC was undertaken to facilitate CCC access to DEMS.<sup>129</sup> Body worn cameras are a relatively new initiative (see Box 3.3). As noted in Chapter 2, early indications are that more allegations are initially ruled out due to the availability of additional evidentiary material which impacts assessments.

### **Box 3.3: Body worn cameras for WA Police Force officers**

The rollout of body worn cameras for WA Police Force officers commenced in June 2019.

By October 2020, it is anticipated that approximately 4,254 body worn cameras will have been deployed state-wide.

The newly introduced means of capturing use of force events will provide the WA Police Force with new opportunities to improve service. In 2019, the WA Police Force commenced liaison to provide the CCC with access to all stored body worn camera data, a move that will complement its existing access to all internal investigations and use of force reports.

The WA Police Force Body Worn Camera policy includes the following provisions:

- Where a body worn camera has been allocated, it is mandatory to wear and record incidents in accordance with this policy.
- Body worn cameras should only be activated by an officer where it is safe and practicable to do so and when the officer reasonably believes its use will:
  - Assist in capturing a use of force event.
  - Assist in capturing evidence and/or facts pertinent to an operational matter.
  - Provide transparency and a factual record of actions and events.
  - Improve the interaction with a member of the public or community.

According to snapshot data retrieved from IAPro, as at 9 December 2019, 8,412 use of force reports with body worn camera were reviewed by the WA Police Force.

Source: Adapted from information on p. 11 of WA Police Force, Submission 9, 24 January 2020.

### **Recommendation 3**

The Corruption and Crime Commission should regularly interrogate WA Police Force data in order to identify trends and conduct analysis of at-risk areas or officers—and any other such activities that would assist in identifying a particular officer or cohort exhibiting problematic behaviour.

128 Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 18.

129 Submission 9, WA Police Force, p. 11.

### **Audit of police data and actions taken in relation to use of force**

3.68 It was suggested to the Committee there are some forensic tools that could be used to audit and interrogate data collated by the WA Police Force in order to assess the adequacy of reporting on, and dealing with, excessive use of force matters.

3.69 For example, the draw and discharge of tasers (which the WA Police Force says accounts for around three per cent of excessive use of force allegations) could be an area that is audited by the CCC.<sup>130</sup> The Committee heard that:

... tasers are programmed to run on a five-second recurrent cycle. The reason they are programmed in that way is to incapacitate a person, because that is why one would use a taser. If a police officer is using a taser, it should be to incapacitate; otherwise, essentially, they should not be seeking to use it. If, for some reason, they decided that they would not like to use that five-second recurrent cycle, they can turn off a safety switch and basically then use the drive-stun method, which basically puts the gun up against the person's body for less than five seconds. If you were to do that, basically, the reason you are doing that is to use it as a compliance tool, which is explicitly outlawed as far as the policy is concerned. In other words, in any situation where a taser was used for less than five seconds, that should be a red flag to the CCC, or indeed anyone else, that is looking at that evidence to say, "Why in this instance was the taser deployed for less than five seconds?" In other words, that is just a very simple forensic tool that an oversight body could rely upon. I think they need to do their homework a little bit in relation to these sorts of issues, so they can crosscheck, cross-examine and actually determine the veracity of the use of force reports.<sup>131</sup>

3.70 The Committee inquired of the CCC as to whether there would be any merit in undertaking random audits of the WA Police Force IAPro system, or any other relevant internal police system, without receipt of a formal notification or complaint.

3.71 The Chief Executive of the CCC advised that with adequate resourcing 'there would be an appetite to do that.'<sup>132</sup> However he also indicated that, more importantly, he would like to see a less passive approach to the oversight afforded by the CCC more generally across the public sector, and not just limited to the WA Police Force. He indicated that while he 'would certainly keep an open mind' on the issue of auditing, he places greater importance on having the resources to more actively monitor how organisations are progressing their misconduct investigations and other relevant actions.<sup>133</sup>

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130 Mr Chris Dawson, Commissioner, WA Police Force, Letter, 1 August 2018.

131 Private citizen, *Transcript of Evidence*, closed submission, 1 July 2020, p. 8.

132 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 12.

133 *ibid.*



3.72 Acting CCC Commissioner Ellis explained that a random audit process:

... would involve diverting resources away from matters which do seem to warrant investigation to other matters where there were no indications that active investigation or active oversight or a full investigation is warranted. I accept there is some utility in random audits to keep people on their toes, but we are devoting resources to areas where we cannot say that there is a problem, but certainly there are matters which lead us to think that we need to have an active role. That is part of the choice we make.<sup>134</sup>

3.73 The Committee understands the enthusiasm demonstrated by the CCC in wanting to actively pursue oversight of all WA public sector authorities, not just the WA Police Force. However, for reasons outlined throughout this report, the Committee is of the view that the CCC should focus proactive oversight on the WA Police Force.

#### **Recommendation 4**

The Corruption and Crime Commission should undertake regular audits of the WA Police Force IAPro system, or any other relevant internal police system, in order to determine to whether use of force incidents are being adequately reported, and if necessary, adequately investigated.

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134 Mr Scott Ellis, Acting Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 13.



## Chapter 4

### How the Corruption and Crime Commission determines oversight of a matter

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The Corruption and Crime Commission has a great deal of discretion in determining when it will undertake its own investigation into a matter, and also as to what is prioritised and how it undertakes oversight.

In order to determine further action on allegations, an assessment is undertaken to measure the allegations against a range of 'seriousness thresholds'. This assessment process applies to all allegations received, not just those regarding the WA Police Force.

When making decisions about assessments of allegations of excessive use of force by police, the Corruption and Crime Commission will contemplate whether it has confidence in the WA Police Force to adequately investigate the matter. It generally considers the WA Police Force to be competent when it comes to internal investigations. The Committee is of the view that concerns with some district-led investigations are still relevant.

The Committee has formed some concerns about the prioritisation of oversight which it outlines in this chapter. It concludes by suggesting that, rather than prioritising 'low hanging fruit' the Corruption and Crime Commission should focus on the oversight or investigation of more difficult to prove cases, or cases that might not come to light through any other means.

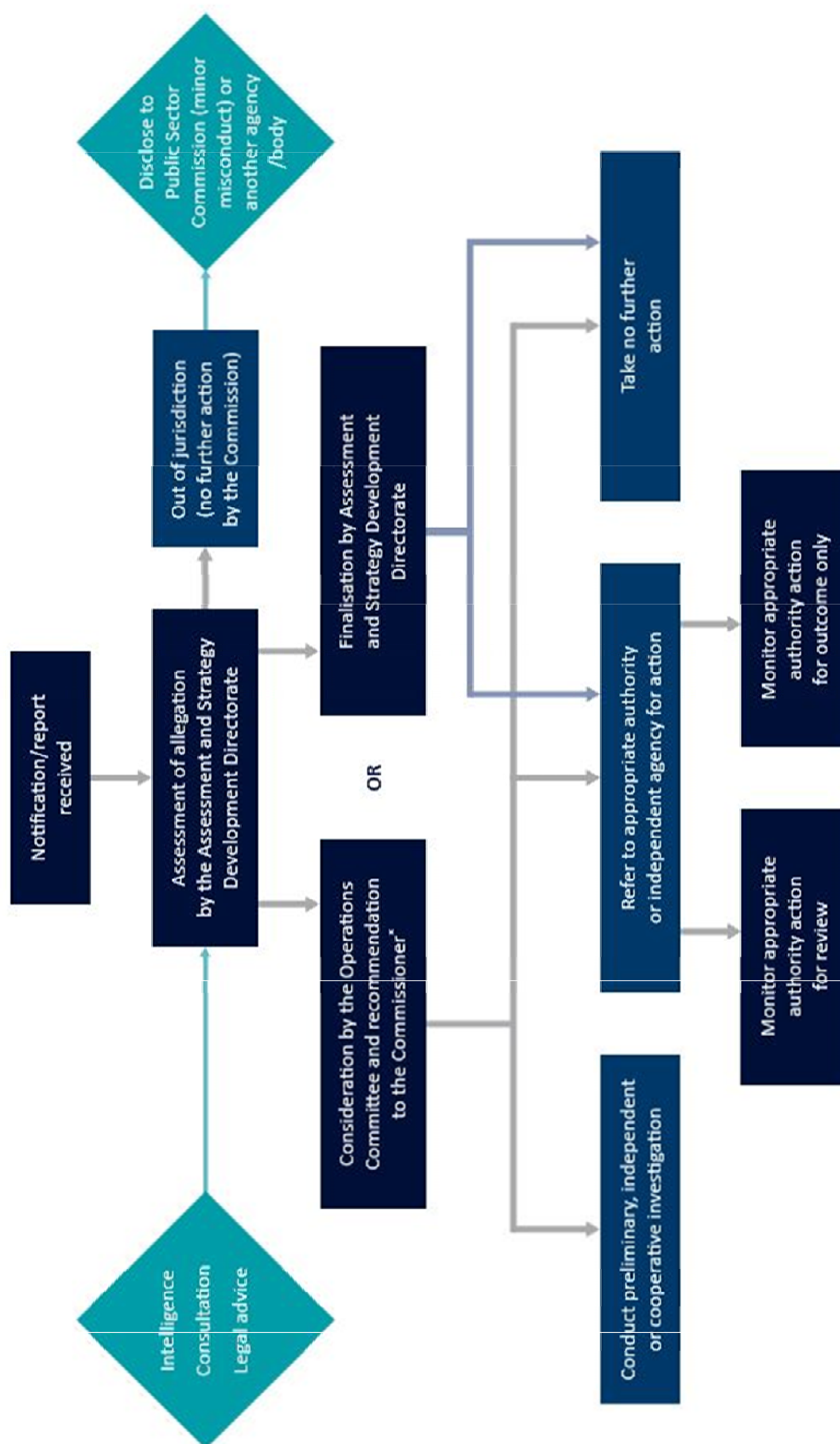
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- 4.1 As noted in the previous chapter, since 2015 the CCC has formulated a system of prioritisation which it uses to assess matters and determine what action it will take in relation to them. This system is applied to all matters that come before it, whether it be police matters or matters from the rest of the public sector.
- 4.2 Varying degrees of oversight can be undertaken by the CCC at its own discretion. For example, the CCC has a great deal of discretion in determining when it will undertake its own investigation, or whether it undertakes 'active oversight' of a matter that is referred back to the home agency to deal with. It also is able to determine the allocation of resources to WA Police Force matters, as opposed to resources allocated to matters in the wider public sector.

#### **Finding 28**

The Corruption and Crime Commission has a great deal of discretion in determining when it will undertake its own investigation into a matter. It also has great deal of discretion available to it under the *Corruption, Crime and Misconduct Act 2003* as to what is prioritised and how it goes about this oversight.

Figure 4.1: The Corruption and Crime Commission assessment process<sup>135</sup>



## Assessment of allegations to determine level of oversight

- 4.3 The CCC's Assessment and Strategy Directorate (ASD) assesses all allegations received, in order to form an opinion as to whether there is a reasonable suspicion that a matter involves serious misconduct. The assessment is also used to make a decision on what action and level of oversight should be taken by the CCC.<sup>135</sup> Figure 4.1 on the opposite page illustrates the CCC assessment process.
- 4.4 This assessment identifies cases that invoke seriousness thresholds. It can also identify matters that do not invoke the thresholds, but which are considered to be of sufficient seriousness that a further assessment is warranted. A range of information is taken into account by the ASD when assessing police matters.<sup>137</sup>
- 4.5 The CCC's ASD refers allegations to the Operations Committee for further consideration and possible investigative action when one or more of the following seriousness thresholds are met:
- the involvement of senior officers or officials
  - evidence of collusion or coercion
  - significant financial loss
  - extensive or serious injuries are sustained
  - there is a threat to public safety or resources
  - there is a threat to government or a public authority's integrity
  - strategic themes (those relevant here are people at risk, use of force and the WA Police Force—see Chapter 3 for a discussion on the CCC's strategic themes)
  - directorate initiated (allegations where the CCC Commissioner and/or a Director consider that escalation to the Operations Committee is appropriate)
  - systemic issues relating to a public authority's processes, systems or culture.<sup>138</sup>
- 4.6 This suggests that all allegations involving excessive use of force are referred to the Operations Committee for further assessment because these sorts of allegations fit within one or more of the CCC's strategic themes (see Chapter 3). These types of allegations often meet other seriousness thresholds too—for example, injuries may be sustained, systemic issues may be apparent, or more senior officers might be involved.

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135 Submission 6, Corruption and Crime Commission, p. 4

136 *ibid.*

137 For example, when considering what action should be taken in relation to a particular WA Police Force matter, the CCC will consider the allegation and information about the WA Police Force response to the allegation. The CCC will also obtain and examine available evidence including the subject officer's misconduct history; the station/unit history; footage; relevant medical records and information relating to injuries; witness statements; WA Police Force use of force reports and other records; and custody records. Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, pp. 5-6.

138 Submission 6, Corruption and Crime Commission, p. 5; and Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 6.

**Finding 29**

The Corruption and Crime Commission undertakes an initial assessment of all allegations it receives, including those in relation to the WA Police Force, in order to form an opinion as to whether there is a reasonable suspicion that a matter involves serious misconduct. The assessment is also used to make a decision on what action and level of oversight should be taken.

**Finding 30**

If an allegation received meets one or more of the ‘seriousness thresholds’ determined by the Corruption and Crime Commission, then the matter is referred to the Operations Committee for a decision on what action should be taken. One of those thresholds is whether the allegation fits within one or more of the identified strategic themes, which include people at risk, the use of force, and the WA Police Force.

**Factors influencing the level of oversight afforded by the CCC to excessive use of force matters**

- 4.7 The CCC advises that ‘the Operations Committee takes into account a number of considerations when making decisions about assessments of allegations of excessive use of force by the WA Police Force.’<sup>139</sup>
- 4.8 The CCC advises that two of these considerations are the level of confidence that it has in the WA Police Force to adequately investigate the matter, and also whether the use of CCC resources on the matter is deemed to be in the public interest.<sup>140</sup>
- 4.9 The CCC claims that the level of resourcing required varies depending upon whether the matter is independently or cooperatively investigated, or whether active oversight is enacted over a matter. It notes that ‘resources are limited and must be deployed effectively as investigations are resource intensive.’<sup>141</sup> Assessments recommending resource-intensive investigations need to meet one or more of the CCC’s ‘seriousness thresholds.’<sup>142</sup>
- 4.10 The Committee has also observed a number of other factors which appear to influence the level of oversight and resources allocated to an allegation of excessive use of force.

**Capacity of the WA Police Force to adequately address the matter via internal mechanisms**

- 4.11 One consideration informing the CCC’s response to an allegation is the CCC’s confidence in the WA Police Force to adequately investigate the matter.<sup>143</sup> The assessment of the responsible authority’s ability to investigate a matter is a prime consideration for the CCC when allocating resources.<sup>144</sup>

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139 Submission 6, Corruption and Crime Commission, p. 6.

140 *ibid.*

141 *ibid.*

142 Mr Ray Warnes, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 7.

143 Submission 6, Corruption and Crime Commission, p. 6.

144 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 10.

- 4.12 The CCC reports that, for the most part, the WA Police Force arrives at the ‘right decision in terms of thorough investigations.’ The CCC holds that WA Police Force ‘investigation practices are very good, certainly those that have been done by the internal affairs unit’ which takes on ‘the more complex and serious matters.’<sup>145</sup> Less serious matters are often referred back to a relevant district to investigate.
- 4.13 The CCC will consider whether the matter has ‘been assigned to the Internal Affairs Unit (IAU) or to the district for investigation.’ The CCC reports a greater degree of confidence in the IAU than it does in some district investigations.<sup>146</sup>
- 4.14 A large number of allegations are referred to districts and divisions for investigation. The WA Police Force advised the Committee in 2018 that of the 1,803 allegations classified as ‘Use of Force’ or ‘Use of Force related Assault’ in the preceding five years:
- 1,686 (94 per cent) were investigated by the District/Division
  - 117 (six per cent) were investigated by the Internal Affairs Unit.<sup>147</sup>
- 4.15 The Committee understands the rationale that by handling police misconduct investigations at a district level managerial accountability in overseeing officers is improved.<sup>148</sup>
- 4.16 However of concern to the Committee is that at a district level there may be limited specialised investigative skills available to undertake adequate investigations.<sup>149</sup> The CCC told the Committee that there has been an improvement over the last 12 to 18 months in district led investigations, largely due to improved oversight by the PCIU. However it remains cautious about the ‘quality of investigations and the fact that they are not looking at criminality and that there might be conflicts.’<sup>150</sup>
- 4.17 Referring matters to districts and divisions can result in either real or perceived conflicts of interest. The CCC told the Committee that ‘it is very hard for district officers, certainly when they are in the same office, to investigate their own.’<sup>151</sup> Even in situations where an investigating officer shows no bias toward the officer subject to investigation, the perception

***WA Police Force is considered to be more competent at internal investigations than any other agency.***

*- Mr Ray Warnes, Chief Executive, Corruption and Crime Commission*

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145 *ibid.*, p. 3.

146 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 5.

147 Mr Chris Dawson, Commissioner, WA Police Force, Letter, 1 August 2018, Appendix A.

148 Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 12.

149 The Police Commissioner told the Committee in 2018 that he was not satisfied that devolving some matters to districts and divisions resulted in adequate investigation. He noted that investigative skills are a particular and specialised skill set not possessed by all 6,800 officers in WA. Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 20 June 2018, p. 6.

150 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 14.

151 *ibid.*, p. 13.

of a conflict of interest can be damaging in itself. Investigations that are seen to be unbiased and impartial help to maintain public confidence.<sup>152</sup>

- 4.18 The purpose of this inquiry was not to examine the adequacy of police internal investigations. However, these considerations do impact upon the level of oversight that the Committee believes the CCC should be implementing. The Committee is of the view that district led investigations constitute an area that requires vigilant oversight. It is not convinced that the CCC monitors a large enough sample of investigations to make any definitive assessment about how well district investigations are carried out.

#### **Concerns about particular districts**

- 4.19 Concerns about certain districts being able to adequately carry out an investigation and/or apparent systemic issues have been a factor in determining the level of CCC oversight in recent times. This concern can also extend to a particular officer, or cohort.

- 4.20 For example, the CCC identified Fremantle as a district of concern and as a result, opted to closely oversight and investigate several use of force matters which occurred within Fremantle.

*We had some concerns with Fremantle, if I am frank about that, with the number of incidents. We wanted to look at that to see whether there was anything systemically occurring at Fremantle, even though they were disparate cases and allegations.*

*- Mr Ray Warnes, Corruption and Crime Commission, Transcript of Evidence, 1 July 2020, p. 6.*

- 4.21 Case Studies 3 and 4 on the following pages detail CCC oversight of two recent investigations in Fremantle. Both these matters demonstrate concerning systemic issues.
- 4.22 It took the CCC several years to form and then act on concerns about the Fremantle district. The allegations made by Dr Cunningham and Ms Atoms about the district-led investigations into their matter date back to 2008-2009. Given the seriousness of those allegations the CCC should have been monitoring excessive use of force matters arising from Fremantle much sooner than it appears to have done. Furthermore, even after forming concerns about the Fremantle district-led investigations, the CCC declined to re-investigate their complaint.

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152 United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, United Nations, Vienna, July 2011, p.41.



### Case Study 3<sup>153</sup>

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#### ***Review of police response to an incident in High Street Mall Fremantle on 3 September 2017***

This report examined whether excessive force was used by three WA Police Force officers and an auxiliary officer in the arrest of a man outside a Fremantle hotel in September 2017.

The case was selected for investigation by the CCC due to the following factors:

- the matter involved the apparently unnecessary dislocation of the arrested person's finger raising the seriousness level;
- the arrested person appeared compliant and yet he was struck with a knee to his back several times;
- the criminal investigation by WA Police Force (IAU) was closed early with the progression of a Managerial Investigation; and
- a use of force report was not finalised by WA Police Force officers involved in the arrest.

The incident was captured on CCTV operating in the High Street Mall in Fremantle.

The subject of the force, Mr Wells\*, was initially charged with three counts of assaulting a public officer, obstructing public officers and failing to comply with the request to give personal details. The charges were discontinued by the Fremantle Prosecuting Branch of the WA Police Force after issues over the conduct of the police officers involved were identified.

The WA Police Force IAU initially decided not to pursue criminal proceedings against any of its officers after Mr Wells indicated he was not prepared to lodge a complaint.

The CCC formed opinions of misconduct in respect of two officers.

The most senior officer involved resigned before the IAU completed its investigation. He was convicted of common assault and fined \$1,800.

A senior constable was convicted of assault occasioning bodily harm and fined \$3,500, and also was subject to a Police Commissioner's loss of confidence process. He resigned in April 2019.

At the time of the tabling of the CCC's report, the IAU was continuing to examine the supervision issues evident from this incident, including those relating to the use of force reporting, the review process and the preparation and management of the prosecution brief.

\*not his real name

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153 Case study compiled from the following sources: Corruption and Crime Commission, *CCC finalises review of police response to incident*, Media Statement, 7 February 2019; and Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 13.

Case Study 4<sup>154</sup>

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***Report on an incident in the Fremantle Offender Management Area  
1 January 2017***

This report examined the arrest and subsequent detention of a woman in Fremantle. It was an independent investigation conducted by the CCC.

Ms Duncan\* was involved in a physical interaction with WA Police Force officers after her daughter was stopped for a random breath test. During the course of this struggle, Ms Duncan's hip was dislocated, causing her immediate and continuing pain.

Ms Duncan was taken to Fremantle Police Station where she was detained for more than five hours. The report reveals that there were many failings, by many officers, to afford Ms Duncan timely and necessary medical attention. The CCC found that, collectively, the actions on the night justify an opinion that the treatment of Ms Duncan was oppressive, unjust and contrary to law.

The CCC made the point that current WA Police Force policies and procedures in relation to dealing with injured detained persons are comprehensive and sufficient, and that problems arise when those policies and procedures are not adhered to.

The CCC also noted that the physical construction of the Offender Management Area (OMA) in Fremantle did not comply with the Police Building Codes and is unsuitable for disabled persons, among others. In this incident WA Police Force officers had to carry/drag Ms Duncan up nine steps and it is clear that her pain was exacerbated by the stairs and the lack of other suitable facilities. The CCC recommended that the government give urgent consideration to upgrading the Fremantle OMA to a compliant standard.

The WA Police Force IAU also conducted a comprehensive investigation and made recommendations for disciplinary proceedings in respect of a number of officers.

\*not her real name

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**Finding 31**

When making decisions about assessments of allegations of excessive use of force by police, the Corruption and Crime Commission will contemplate whether it has confidence in the WA Police Force to adequately investigate the matter.

**Finding 32**

The Committee is concerned by the number of use of force matters being sent to districts and divisions, where there may be limited specialised investigative skills available to undertake adequate investigations. Furthermore, the Committee is cognisant that referring matters to districts and divisions can result in either real or perceived conflicts of interest.

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154 Case study compiled from: Corruption and Crime Commission, *CCC reports on failings in police handling of a person in custody*, Media Statement, 28 February 2019.

### Finding 33

Concerns about certain districts being able to adequately carry out investigations and/or apparent systemic issues have been a factor in determining the level of oversight in recent times. While improvements are reported by the Corruption and Crime Commission, the Committee believes greater oversight is required—currently not enough district led investigations are monitored for the purpose of making definitive assessments about their adequacy.

### Systemic issues

4.23 The CCC advises that it may opt to look at cases where there might be a broader systemic issue; that is, whereby one matter presenting a particular concern might also be a concern identified as being present in other cases. In a matter where the WA Police Force IAU could otherwise investigate, this may be the deciding factor in the CCC determining to undertake an independent investigation.

4.24 Discussed elsewhere in this report is the example of a 13 year old child who was charged by the WA Police Force for causing damage to a government office reception area and for twice assaulting a WA Police Force officer.<sup>155</sup> When the charges against the child were heard in court, the magistrate dismissed the assault charges and raised concerns that a WA Police Force officer had acted with aggression and violence towards the child, and also raised the possibility of some dysfunction within the wider policing culture.<sup>156</sup>

4.25 These adverse comments triggered a further response within the WA Police Force and also prompted the ALSWA to make a complaint on behalf of the child to the CCC and the WA Police Force.<sup>157</sup> What is concerning here is that this appears to be the first time the incident was flagged as being problematic. It was following the magistrate's comments that the WA Police Force reported the matter to the CCC, and then conducted a criminal investigation which was subject to 'active oversight' by the CCC.<sup>158</sup> Notably, the WA Police Force did not capture the incident through internal reporting on use of force.

4.26 If this case does signal wider dysfunction, then this systemic issue does not appear to have been picked up by the CCC, at least until this matter came to light.

*Part of the lens that we apply is: is there a systemic issue? If we look at all the matters that we have given to police over a period of time in terms of their investigation and if we think that there seems to be a common policy failing, practice or some incident that just seems to keep repeating itself, we might have a look at not just the particular incident, but all the incidents and make a report on that.*

*- Mr Ray Warnes, Corruption and Crime Commission, Transcript of Evidence, 1 July 2020, p. 5.*

155 Corruption and Crime Commission, *Review of a WA Police Force investigation into use of force in respect of a child*, Western Australia, 20 April 2020, p. 1.

156 *ibid.*, p. 1 and p. 14.

157 *ibid.*, p. 4.

158 *ibid.*, p. 1.

- 4.27 The question troubling the Committee is how does the CCC determine whether a matter represents wider systemic problems, particularly if the CCC is only carrying out a small proportion of investigations itself, and when active oversight is only undertaken in five per cent of police investigations into excessive use of force?
- 4.28 The Committee is not convinced that the CCC is availing itself of its full potential when it comes to addressing systemic issues within the WA Police Force. The CCC needs to cast its net wider than allegations received from WA Police Force reporting mechanisms.

**Finding 34**

The Corruption and Crime Commission is not availing itself of its full capacity to uncover and investigate systemic issues.

**People at risk**

- 4.29 The CCC annual report of 2018-2019 defines people at risk as:

People at risk are those who, because of a decreased capacity to protect themselves or remove themselves from a situation, are at increased risk of being victims of serious misconduct. Vulnerable people can also have a limited capacity to report serious misconduct. Public officers who work with people at risk operate in a difficult environment. The need to conform with the law and agency priorities, while respecting and responding to the vulnerabilities of individuals, can be a challenging balance and the risk of serious misconduct in these situations is significant.<sup>159</sup>

- 4.30 In relation to excessive use of force allegations, the CCC advises that its assessment 'considers if the arrested person is indigenous and/or a juvenile which coincides with the Commission's strategic theme 'people at risk'.'<sup>160</sup>
- 4.31 In spite of this apparent prioritisation, the Committee remains concerned about complainants who may be vulnerable in some way. It is not convinced that people at risk, or vulnerable groups, are adequately prioritised in the assessment process. For example, the ALSWA told the Committee that while the CCC states that vulnerable people and Aboriginal people are a priority for them, the ALSWA does not see that translating into action.<sup>161</sup>
- 4.32 The Committee notes commentary from the CCC that a recent increase in 'take no action' outcomes for allegations in 2019-2020 may be the result of complaints having come from 'mentally ill, drug affected [or] alcohol affected complainants'.<sup>162</sup>

159 Corruption and Crime Commission, *Annual Report 2018-19*, Western Australia, 26 September 2019, p. 23.

160 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 5.

161 Ms Alice Barter, Managing Lawyer, Civil Law and Human Rights Unit, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 7.

162 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, p. 4. Notes provided to a table on page 4 of this letter indicate that an increase in 2019/2020 in the allocation of complaints to the 'take no action' category may be in part due to the allegations having come 'from mentally ill, drug affected, alcohol affected complainants.'

- 4.33 The Committee acknowledges these factors may make the complaint more difficult to investigate and an outcome of serious misconduct less certain. But the vulnerability of the individual may mean their complaint is more legitimate, not less. The vulnerability of the individual may also heavily impact on their ability to follow through the complaints process, and this should be taken into account when assessing how best to manage these complaints.
- 4.34 The CCC needs to take into account the particular needs of diverse, and sometimes vulnerable or marginalised, groups in the community. This involves accounting for the needs of people impacted by mental health issues, people impacted by drugs and alcohol, people living with a disability, people from culturally and linguistically diverse communities, people experiencing social or economic disadvantage, people experiencing homelessness, the LGBTQI community, young people and Aboriginal and Torres Strait Islander people.
- 4.35 The Committee encourages the CCC to consider engaging with agencies with expertise in these areas, such as the Mental Health Commission, the Drug and Alcohol Office, the Mental Health Law Centre, Disability Services and other specialist community organisations. This would increase awareness and visibility of, and responsiveness to, the complaints from such individuals. The development of a community engagement unit within the CCC, as recommended in Chapter 6, would also facilitate this.

#### **Finding 35**

The Committee acknowledges that ‘people at risk’ is one of the Corruption and Crime Commission’s strategic themes which is taken into account when prioritising actions on allegations. However, it remains concerned that complainants who fall into this category may not receive the prioritisation that they deserve. This objective does not appear to be translating into practice.

#### **Recommendation 5**

The Corruption and Crime Commission should engage with specialist community organisations in order to improve its responsiveness to the needs of vulnerable complainants.

### **Media coverage and the availability of footage**

- 4.36 Media coverage, usually arising from the emergence of footage of an incident, appears to spur the CCC to get involved in a matter.<sup>163</sup> For example, an arrest incident by WA Police Force officers at Hamilton Hill was reviewed by the CCC due to ‘the repetitive and visually confronting nature of the force used by the officers’ and the ‘public interest generated by the media coverage of the incident.’<sup>164</sup>

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163 Submission 13, closed submission, p. 24; and Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 4.

164 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 27 March 2020, p. 1. See also the report: Corruption and Crime Commission, *Review of an arrest incident by Western Australian Police at Hamilton Hill*, Western Australia, 1 November 2018

- 4.37 This was done even although the CCC's initial assessment of the 'allegations relating to the level of force used did not give rise to any concerns about the appropriateness of the investigation being carried out by the WA Police Force.'<sup>165</sup>
- 4.38 The additional review did not change the original findings. Despite the nature of the exchange that was filmed, the conclusion was that the officers at the scene did not use excessive force.
- 4.39 The Committee does not necessarily see the value in the CCC investigating or reviewing a matter simply because it has received media attention, unless there are concerns identified with the police investigation or other issues which require the powers of the CCC to be utilised. Whilst acknowledging that public confidence is eroded when an incident of excessive use of force is seen as not being investigated, the pressure of public scrutiny via the media, in itself, should be impetus for the WA Police Force to carefully examine the matter and report back to the CCC as directed.
- 4.40 Although the media and/or the emergence of footage of an incident might draw the CCC's attention to a particular instance that warrants closer scrutiny, given the extraordinary powers and unique capacity of the CCC to delve into police matters, its priority should remain on investigating those matters which may not come to light through any other means.

**Finding 36**

Although the media might draw the Corruption and Crime Commission's attention to a particular instance that warrants closer scrutiny, given the extraordinary powers and unique capacity of the CCC to delve into police matters, its priority should remain on investigating those matters which may not come to light through any other means.

**Adverse findings as part of judicial proceedings**

- 4.41 Similarly, as with the reporting of an incident in the media, the CCC will engage in closer oversight of a use of force matter if there has been an adverse comment made in the proceedings of a court.
- 4.42 The Committee has seen a number of cases where a member of the judiciary has raised concerns about the behaviour of WA Police Force officers. These are instances where the WA Police Force has laid charges against an individual relating to an incident, and in the course of the matter being heard in court a member of the judiciary has questioned whether excessive force was used by the officers involved.
- 4.43 Discussed earlier in this report is a recent CCC report which examined a matter where a 13 year old child was charged by the WA Police Force for causing damage to a government office reception area and for twice assaulting a police officer.<sup>166</sup>

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165 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 27 March 2020, p. 1.

166 Corruption and Crime Commission, *Review of a WA Police Force investigation into use of force in respect of a child*, Western Australia, 20 April 2020, p. 1.

- 4.44 When the charges against the child were heard in court, the magistrate dismissed the assault charges and raised concerns that a WA Police Force officer had acted with aggression and violence towards the child.<sup>167</sup> The magistrate also raised concerns that the behaviour demonstrated by the officer may be so common and run of the mill that WA Police Force officers accept such behaviour as reasonable.<sup>168</sup>
- 4.45 The WA Police Force reported the matter to the CCC and conducted a criminal investigation into the use of force against the child. The CCC reviewed the investigation. Disciplinary findings were made against the officers involved.<sup>169</sup>
- 4.46 Some matters only receive genuine scrutiny because the individual has charges laid against them and the matter goes before a court, resulting in attention being drawn to police action. The Committee poses this question—how many instances are missed because this level of scrutiny is not afforded because the matter doesn't ever come before a court?

**Finding 37**

The Committee is concerned that certain matters only get real scrutiny by the WA Police Force, and enhanced oversight from the Corruption and Crime Commission, on account of a subject of excessive force having had charges laid against them and the matter coming before a court.

**Conclusions about the Corruption and Crime Commission's prioritisation of oversight**

- 4.47 When the profile of a matter is raised by media coverage, the emergence of footage, or by way of judicial comment, in most cases it would appear appropriate for the WA Police Force to carry out the necessary investigations and report back to the CCC. After all, the CCC reports an overall satisfaction with the way that the WA Police Force carries out investigations.
- 4.48 It appears to the Committee that these types of high profile investigations can be just as easily carried out by the WA Police Force. The CCC has a range of extraordinary powers that enable it to investigate the more difficult to prove cases, or cases that might not come to light through any other means. For example, a lack of footage in a matter should prompt the CCC to take on the investigation if other factors indicate potential misconduct. Consideration should be given to harder-to-prove allegations, particularly those involving vulnerable people.
- 4.49 Furthermore, interrogating data and auditing police records, as recommended in the previous chapter, would assist in identifying matters which might not come to light through other means. If matters are not coming to light through existing reporting mechanisms, the CCC should be examining the reasons for this.

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167 *ibid.*

168 *ibid.*, p. 14.

169 *ibid.*, p. 1.





# Chapter 5

## Complaints

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The Corruption and Crime Commission's complaint handling process needs to instil confidence in the public, so that if someone is unfortunately the subject of police excessive use of force— they can be confident in making a complaint to the Corruption and Crime Commission and knowing that it will be dealt with adequately.

The Committee has heard the experiences of complainants who hesitate to make a complaint to the Corruption and Crime Commission because of a lack of confidence in the complaint process. Complainants have found the process circular, confusing, costly and time consuming.

Perhaps even more concerning are those instances where people who are the subject of excessive use of force don't make a complaint at all. The Corruption and Crime Commission has told the Committee that the number of complaints about excessive use of force it receives from members of the public appears lower than what it should be.

These are indicators that aspects of the Corruption and Crime Commission's complaint handling process require improvement.

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### Summary of concerns about the complaints process

- 5.1 A key component of the CCC's police oversight function is handling complaints made about police misconduct. Significant powers are entrusted to members of the WA Police Force, allowing officers to legitimately use force in order to carry out their duties. When the exercise of these powers is called into question through a complaint of excessive use of force, the public needs to be satisfied that the matter is effectively investigated to maintain confidence in the WA Police Force. Confidence in the WA Police Force is eroded when the public perceives that a complaint about police misconduct is not adequately investigated.
- 5.2 Since its formation in 2017, this Committee has been privy to commentary and criticism about the complaints process in relation to allegations of misconduct by members of the WA Police Force—in particular, the circular process by which the CCC appears to deal with complaints.
- 5.3 The Committee has heard how aspects of the CCC's complaint handling process have eroded the confidence held by members of the public, although it is difficult to quantify how many people have felt betrayed by the process.

- 5.4 The WA Police Force told the Committee how the integrity of the complaints process depends on complainants feeling that their complaint will be thoroughly investigated:

It is really important from our police legitimacy point of view that the public has confidence that if they make a complaint, they may not get the outcome that they want but ... they know it has been thoroughly investigated, there has been an oversight body that has also investigated it and there is reason for the outcome...<sup>170</sup>

- 5.5 Although it is encouraging to see the WA Police Force recognising this important principle concerning public confidence, the Committee is not convinced this is the common experience of complainants. The Committee has seen scenarios where potential complainants are not making complaints to the CCC because of a lack of confidence in how their complaint will be dealt with—this is addressed in further detail in the following chapter.

- 5.6 Complaints are critical in identifying instances of excessive use of force. Although use of force reporting (discussed in Chapter 2), or media interest and the findings of a judiciary member (discussed in Chapter 4) may trigger an investigation into excessive use of force—some instances of excessive use of force will go unscrutinised unless a complaint is made. This means that public confidence in the complaints process is also a critical component of robust oversight.

- 5.7 The issues that have come before the Committee, and which have caused it some concern, can be summarised as follows:

- Some complainants believe that the CCC hasn't properly addressed their complaint. This is usually in circumstances where the action taken by the CCC has been simply to review the police internal investigation or other action, rather than conduct an independent or cooperative investigation.
- The circular nature of the complaints process, where the complainant can become exasperated by the process.
- Instances where victims of excessive use of force feel penalised by the process.

- 5.8 These issues are detailed throughout the remainder of this chapter. First though, is a brief explanation of the complaints process.

**Finding 38**

Confidence in the WA Police Force is eroded when the public perceives that police have abused their powers and complaints about this are not adequately investigated.

**Finding 39**

Potential complainants are not making complaints to the Corruption and Crime Commission because of a lack of confidence in how their complaint will be dealt with—it is not clear how commonly this occurs.

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170 Mr Valdo Sorgiovanni, Acting Assistant Commissioner, Professional Standards, WA Police Force, Transcript of Evidence, 1 July 2020, p. 15.

**Finding 40**

Complaints are critical for identifying instances of excessive use of force—some instances of excessive use of force will go unscrutinised unless a complaint is made. If complainants do not have the confidence to make a complaint, then there is a significant gap in the oversight framework.

## What is the process for handling complaints of police excessive use of force?

- 5.9 Individuals who want to make a complaint about excessive use of force by police can complain to the WA Police Force or to the CCC. When the WA Police Force receives a complaint, it is required to advise the CCC.<sup>171</sup> Effectively this means that the CCC is advised of all complaints against members of the WA Police Force.<sup>172</sup> The WA Police Force publicly advises that if a complainant is not satisfied with how their complaint is handled by the police, they can contact the CCC.<sup>173</sup>
- 5.10 In addition to receiving complaints concerning excessive use of force from the WA Police Force, the CCC also receives complaints directly from members of the public.<sup>174</sup> Upon receipt of a complaint, the CCC assesses the allegation and makes a decision about the action it will take in response to the complaint.<sup>175</sup> Chapter 4 details the CCC's discretion in determining what action it will take on a matter and the level of oversight it may adopt.
- 5.11 The CCC's website identifies how if a complainant is dissatisfied with action taken by the CCC, they have the option to make a complaint to the PICCC (the role of the PICCC is outlined in **Appendix Six**).<sup>176</sup> Although the PICCC can't compel the CCC to take action on a particular matter, the PICCC may make a recommendation to the CCC, that it takes a different course of action such as undertaking an investigation of a complaint.
- 5.12 This Committee is responsible for monitoring and reporting to Parliament on the exercise of the CCC and PICCC's functions. While the Committee is able to look at any matter involving CCC or PICCC oversight it does not tend to investigate individual complaints. It does refer complaints to the CCC or PICCC.

171 *Corruption, Crime and Misconduct Act 2003*, s. 21(a).

172 Investigations into excessive use of force do not only occur in response to complaints. Use of force reporting can also identify alleged misconduct which may be a trigger for an investigation. Use of force reporting is outlined in Chapter 2.

173 WA Police Force, *Making a Complaint about the Police*, 28 November 2018, accessed 30 June 2020, <<https://www.police.wa.gov.au/Police-Direct/Commendations-and-complaints/Complaints-About-WA-Police-Personnel/Complaints-information>>.

174 Submission 6, Corruption and Crime Commission, p. 2.

175 Every allegation must be assessed, as provided by section 32(1), *Corruption, Crime and Misconduct Act 2003*.

176 Corruption and Crime Commission, *Frequently asked questions: What if I am unhappy with how the Commission has dealt with me or my report*, accessed 26 August 2020, <<https://www.ccc.wa.gov.au/faqs>>.

## **A collapse in distinction between the Corruption and Crime Commission and WA Police Force complaint processes**

- 5.13 The Committee heard from a private citizen, who described how they made a complaint to the WA Police Force and delayed submitting a complaint to the CCC because of the ‘confusing nature of the CCC complaint process.’<sup>177</sup>
- 5.14 In particular, this complainant identified that it was unclear whether the internal police complaint process must run its course before the CCC would intervene.<sup>178</sup> They told the Committee that they perceived a ‘collapse in distinction between the internal complaints process of the WA Police and the complaints process of the CCC.’<sup>179</sup> Although the two complaint processes are ‘theoretically distinct’, from the point of view of this complainant, in practice, the distinction was not clear.<sup>180</sup>

### **Finding 41**

Confusion about the Corruption and Crime Commission complaint process can cause a complainant to delay making a complaint to the Corruption and Crime Commission.

### **Finding 42**

There is sometimes a lack of distinction between the internal complaint process of the WA Police Force and the complaint process of the Corruption and Crime Commission. Although the processes are theoretically distinct, to the complainant they do not always appear to be distinct in practice.

## **A circular process**

- 5.15 In his 2017-2018 annual report, the former PICCC, the Hon Michael Murray AM QC, stated that during that reporting period the CCC in some cases had ‘continued to demonstrate flawed assessments of complaints of serious misconduct by police involving the excessive use of force.’<sup>181</sup>
- 5.16 He noted that the complaint process becomes circular, and, while within the bounds of the legislation, is ‘costly, inefficient, time consuming and provokes further unnecessary frustration and delay for the complainant.’ He reported that, in his experience, the cycle is often as follows:
- A person complains to the CCC about the conduct.
  - The CCC refers the complaint to the WA Police Force for internal investigation.
  - The CCC endorses a patently incorrect determination by police that no misconduct occurred.
  - The person complains to the PICCC.

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177 Submission 13, closed submission, p. 18.

178 *ibid.*

179 *ibid.*, p. 35.

180 *ibid.*

181 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2017-2018*, Western Australia, September 2018, p. 6.

- The PICCC details the miscarriage to the CCC.
- If the CCC accepts the PICCCs recommendation for re-investigation, the CCC refers the matter back to the WA Police Force to address the original inadequacies.<sup>182</sup>

5.17 The PICCC identified that:

The Commission's response to my observations in this regard is that it does not have the resources to undertake such reinvestigations itself, despite serious misconduct by police being a statutory focus for it. It says it must rely on its oversight power to ensure that the police internal investigation is conducted properly. However, this is no answer to the consequences described.<sup>183</sup>

5.18 On 11 October 2018, in a radio interview on 6PR, former CCC Commissioner McKechnie stated that he was only aware of one instance where the CCC had endorsed an incorrect determination by the WA Police Force during 2017-2018.

5.19 Case Study 5 on the following page details a matter reported to the Committee, and is presumably the matter referred to by the former CCC Commissioner. It is an example of the circular complaints process which can lengthen the timeframe of distress and other costs experienced by a complainant.

5.20 The complainant in Case Study 5 told *The West Australian* in 2017 that 'the saga had been financially and emotionally draining but [that he] wanted to pursue it in the hope the [police officers] would face some disciplinary action.'<sup>184</sup>

**Finding 43**

The Committee is not convinced that the complaints process is working as well as it could. In the experience of some complainants, the complaint process is circular, costly, inefficient and time consuming. Such a situation leads to unnecessary frustration and delays for complainants.

182 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2017-2018*, Western Australia, September 2018, p. 6.

183 *ibid.*

184 Gabrielle Knowles, 'Perth man continues fight to have police officer punished for 'excessive force' during his arrest', *The West Australian* (web-based), 14 October 2017, accessed 12 August 2020, <<https://thewest.com.au/news/wa/perth-man-continues-fight-to-have-police-officer-punished-for-excessive-force-during-his-arrest-ng-b88627889z#:~:text=Perth%20man%20continues%20fight%20to%20have%20police%20officer,back%20in%202012%20but%20continues%20to%20drag%20on.>>>.

Case Study 5<sup>185</sup>

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***An incorrect assessment by the Corruption and Crime Commission***

In October 2017 the Committee received correspondence from an individual regarding a complaint he made to the Corruption and Crime Commission (CCC) against the WA Police Force.

This man's complaint arose from an incident in 2012 where he was charged with two counts of assaulting a police officer. A magistrate found that a WA Police Force officer used excessive force against the man while he was handcuffed. The man was still found guilty of one of the assault charges, but was acquitted at a re-trial in 2015, which was ordered after CCTV footage of the incident emerged. This magistrate found that he had no case to answer because the officer using force against him had crossed the line and that the officer's denial of excessive use of force 'beggars belief.'<sup>186</sup>

Following his acquittal, the man complained to the CCC about the conduct of the officers involved. The CCC referred the complaint to the WA Police Force for action. The CCC advised that it would review the outcome of the action taken by the WA Police Force and that it would conduct an independent review if required.

The WA Police Force IAU advised in due course that the allegations were not sustained, were unfounded, and that no criminal charges would be preferred.

The complainant was advised by the WA Police Force of his ability to seek recourse with the CCC should he be dissatisfied with this outcome. The man subsequently complained to the CCC. The CCC advised that it reviewed the WA Police Force investigation, including viewing the CCTV footage, considering the evidence given by WA Police officers in court and during interviews, and assessing the conclusions reached by police investigators.

The CCC formed the view that the WA Police Force dealt with the allegations appropriately and advised that its file on the matter was closed. The CCC did not advise the complainant that he could take the matter up with the PICCC.

A complaint was then made to this Committee and the PICCC's Office in 2017 by way of lawyers acting for the complainant.

Between October 2017 and April 2018 there was a volume of correspondence between the PICCC and the CCC. The CCC initially declined to review the matter independently, or refer back to the WA Police Force. However, eventually the CCC Commissioner was persuaded to give the matter further consideration, with an independent review to be conducted by a more senior and experienced CCC officer.

In September 2018, the Committee was advised by the PICCC that CCC Commissioner McKechnie had provided a brief of evidence to the State Solicitor's Office for consideration of prosecution of a WA Police Force officer arising from the incident.

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185 This case study is compiled with reference to correspondence from, and material provided by, the complainant's lawyers and the former PICCC, Hon Michael Murray AM QC.

186 Gabrielle Knowles, 'Perth man continues fight to have police officer punished for 'excessive force' during his arrest', *The West Australian* (web-based), 14 October 2017, accessed 12 August 2020, <<https://thewest.com.au/news/wa/perth-man-continues-fight-to-have-police-officer-punished-for-excessive-force-during-his-arrest-ng-b88627889z#:~:text=Perth%20man%20continues%20fight%20to%20have%20police%20officer,back%20in%202012%20but%20continues%20to%20drag%20on.>>.

## When charges are laid concurrently with a complaint of excessive use of force

- 5.21 In some instances, individuals who make a complaint about police misconduct have been arrested and charged in relation to the incident where force was used. The charges commonly relate to assaulting or obstructing a WA Police Force officer. The Committee has been told by private citizens that the complaints process is unfair in these circumstances because of the lack of differentiation between the officers involved in investigating their complaint, and those involved with progressing the prosecution of the complainant.<sup>187</sup>
- 5.22 The Committee received evidence from a private citizen who described how they made a complaint about police misconduct to the CCC and subsequently received a phone call from an officer within the PCIU regarding their complaint. The officer asked for details about the incident and as the complainant began recounting their version of events, the officer interrupted the complainant to advise that anything said could be used as evidence against them as there were serious charges pending. The complainant received charges in the mail later that week. This person described the complaints process as unfair because they could not provide the full details of the event to the officer who had contacted them.<sup>188</sup>
- 5.23 Police Commissioner Dawson told the Committee that when a person makes a complaint about excessive use of force, an officer involved in the incident cannot investigate the matter themselves irrespective of whether the complainant is facing a criminal charge—such investigation must be done by another independent officer with oversight by the CCC.<sup>189</sup>
- 5.24 Such independence may exist internally within the WA Police Force. However, evidence received by the Committee suggests that there is a perception, which may in some cases be justified, that a complaint will not be dealt with fairly when it is being investigated by WA Police Force officers under these circumstances. The Committee is uncertain how widespread this perception is, or how often this actually happens. However, any occurrence has the effect of diminishing overall confidence in the complaint system.
- 5.25 Case Study 7 above outlines a matter where a man was charged with two counts of assaulting a police officer in 2012. The man complained about his treatment at the hands of a WA Police Force officer, alleging excessive use of force whilst he was handcuffed. The man was eventually acquitted of both assault charges, but only after a protracted struggle to have his name cleared. A magistrate ultimately found that he had no case to answer because the officer using force against him had crossed the line and that the officer's denial of excessive use of force was not credible.<sup>190</sup> This was in spite of the IAU reviewing that matter

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187 Submission 4, closed submission, p. 2; Submission 12, closed submission, p. 1; and Submission 13, closed submission, pp. 14-15.

188 Submission 4, closed submission, p. 2.

189 Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 16.

190 Gabrielle Knowles, 'Perth man continues fight to have police officer punished for 'excessive force' during his arrest', *The West Australian* (web-based), 14 October 2017, accessed 12 August 2020, <<https://thewest.com.au/news/wa/perth-man-continues-fight-to-have-police-officer-punished-for-excessive-force-during-his-arrest-ng->

and finding no wrong-doing, and a subsequent complaint to the CCC which also reviewed the matter and which upheld the police findings.

- 5.26 The Committee is afraid that in these types of cases independence cannot be ensured within the WA Police Force and that the CCC should give greater attention to such cases. When an individual is facing the prospect of charges being laid against them, it needs to be clear to them that any criminal investigation will not impact upon the independence of an investigation into their complaint about police misconduct. Without this reassurance, a complainant might come to the conclusion that they are the subject of a malicious prosecution that is influenced by their complaint.
- 5.27 The CCC needs to ensure that it is fulfilling its police oversight role in a way that complainants can be confident in the independence of an investigation into their complaint—which is currently not occurring for all complainants.

#### **Finding 44**

There is a perception, which in some cases appears to be justified, that a complaint about police misconduct will not be investigated fairly by the WA Police Force when the complainant is subject to criminal charges. The Corruption and Crime Commission should give greater attention to such cases.

### **How confident are members of the public in making a complaint about police excessive use of force?**

- 5.28 Table 5.1 below shows the number of allegations relating to police excessive use of made by the public to the CCC over recent years. From the table, we can see a general increasing trend in the number of allegations made by the public and also the WA Police Force, with the exception of 2019-2020. The CCC identifies that although this recent decrease appears to be positive, 'it is not possible to be definitive of the reasons'.<sup>191</sup>
- 5.29 Generally, a low or decreasing number of complaints made by the public against police is desirable. However, it is important to note a high or increasing rate of complaints does not necessarily indicate a lack of confidence in police. In fact, it can indicate greater confidence in complaints resolution.<sup>192</sup> This is based on the notion that there will be more reporting if people are confident that complaints will be dealt with adequately.<sup>193</sup> It is necessary to monitor changes in the rate of complaints in order to identify reasons for the changes.<sup>194</sup>

b88627889z#:~:text=Perth%20man%20continues%20fight%20to%20have%20police%20officer,back%20in%202012%20but%20continues%20to%20drag%20on.>.

191 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, p. 3.

192 Australian Government Productivity Commission, *Report on Government Services 2020*, p. 6.7, accessed 27 June 2020, <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/police-services/rogs-202006-partc-6-police-services-interpretative-material.pdf>>.

193 United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, United Nations, Vienna, July 2011, p. 36.

194 Australian Government Productivity Commission, *Report on Government Services 2020*, p. 6.7, accessed 27 June 2020, <<https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice/police-services/rogs-202006-partc-6-police-services-interpretative-material.pdf>>.



**Table 5.1: Corruption and Crime Commission excessive use of force allegation source data<sup>195</sup>**

Allegation source	CCM Act	2015-16	2016-17	2017-18	2018-19	2019-20
WA Police Force	s28	177	234	272	265	255
Individuals (the public)	s25	31	47	66	85	79
Public Sector Commission	s45M(d)	0	1	0	0	0
Commission's own proposal	s26	0	1	0	1	2
Reviewable police action	s21A	73	4	2	Now received under s.28	
Other information received	s22	0	2	0	0	0
<b>Total</b>		<b>281</b>	<b>289</b>	<b>340</b>	<b>351</b>	<b>336</b>

5.30 The Chief Executive of the CCC spoke to the Committee about how he perceived public confidence in making a complaint. He told the Committee that around 39 per cent of allegations about police misconduct are from the public, which is 'close to what we see across the whole sector.'<sup>196</sup> However, he qualified that by saying, in relation to allegations concerning excessive use of force, that this number sits at around 24 per cent, which is 'a lot lower than maybe what it should or could be.'<sup>197</sup>

5.31 There are a number of agencies responsible for police oversight in other jurisdictions, which provide useful examples of how oversight bodies are focussing on understanding and improving public confidence in their complaint processes (see **Appendix Seven** for two examples).

#### **Finding 45**

Around a quarter of allegations of police excessive use of force are received from members of the public. This is a much lower rate than what is seen across the sector generally in relation to public reporting of misconduct allegations.

195 Submission 6, Corruption and Crime Commission, p. 2; and Addendum to Corruption and Crime Commission submission provided at hearing on 1 July 2020.

196 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 18.

197 *ibid.*

## The role of the Parliamentary Inspector of the Corruption and Crime Commission

- 5.32 The significance of the PICCC's role in oversight of excessive use of force allegations was particularly notable in the case of Dr Cunningham and Ms Atoms (this case is discussed in Chapter 1 and was also the subject of a separate report by this Committee).<sup>198</sup> In this matter the PICCC investigated a complaint made by Dr Cunningham and Ms Atoms that the CCC had failed to adequately scrutinise an allegation of excessive use of force arising from a tasering incident. The PICCC reported to Parliament and exposed numerous procedural failings by both the WA Police Force and the CCC.
- 5.33 More recently, the former PICCC made the observation that 'allegations of police misconduct, particularly in relation to the alleged misuse of force by police officers, do not account for a significant proportion of complaints received' by the Office of the PICCC.<sup>199</sup> Of the matters relating to alleged police excessive use of force 'a smaller proportion of those files were considered to contain substantively justifiable allegations of police misconduct of this kind.'<sup>200</sup>
- 5.34 The PICCC told the Committee that:
- A possible conclusion which may be drawn [...] is that to the extent that there is alleged reportable police misconduct of this kind, such events are being adequately dealt with by both the Corruption and Crime Commission and the Police Conduct Investigation Unit, without any subsequent referral to the Parliamentary Inspector by complainants.<sup>201</sup>
- 5.35 Although the Committee sees how this conclusion may be drawn, another possible explanation could be that complainants are not aware of, and/or are not making complaints to, the PICCC's Office.
- 5.36 The Aboriginal Legal Service of Western Australian (ALSWA) told the Committee that although it has raised systemic issues with the PICCC, individual complaints are not made to this Office.<sup>202</sup>
- 5.37 Although the PICCC performs a valuable role in handling complaints made about the CCC, it is not clear whether the Office has a sufficient degree of visibility in the public so that complainants will pursue this avenue.

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198 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms*, 12 October 2017.

199 Submission 7, Parliamentary Inspector of the Corruption and Crime Commission, p. 1.

200 *ibid.*

201 *ibid.*

202 Ms Alice Barter, Managing Solicitor, Civil Law and Human Rights Unit, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 1.

## Chapter 6

### Matters affecting Aboriginal people

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The relationship between the Corruption and Crime Commission and the Aboriginal Legal Service of Western Australia appears to be dysfunctional, with the Aboriginal Legal Service stating that it more often goes directly to the WA Police Force with allegations of excessive use of force rather than to the Corruption and Crime Commission.

The Committee is deeply concerned that the Aboriginal Legal Service of Western Australia has reached a point where it believes that complaints from Aboriginal people can't 'cut through' to gain the attention of the Corruption and Crime Commission.

The Corruption and Crime Commission should reconsider its prioritisation of complaints to ensure a renewed focus on the needs of Aboriginal people in Western Australia. The Corruption and Crime Commission should also give serious consideration to investigating the systemic issues being raised by the Aboriginal Legal Service of Western Australia.

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6.1 Of all the issues that have arisen over the course of this inquiry, the Committee has been most troubled about what it has discovered regarding the relationship between the CCC and the ALSWA.

6.2 The principles of substantive equality require equality of outcomes. Based on the evidence outlined in this chapter, the Committee has formed the view that the CCC, in dealing with Aboriginal people, has failed to appreciate the necessity of achieving that objective.

*In our experience of them, the CCC is completely tone deaf when it comes to dealing with Aboriginal people and issues.*

*- Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia, Transcript of Evidence, 1 July 2020, p. 3.*

#### **A dysfunctional relationship?**

6.3 This Committee was extremely concerned to discover during the course of this inquiry that the ALSWA considers the CCC to be 'completely tone deaf when it comes to dealing with Aboriginal people and issues.'<sup>203</sup>

6.4 The Committee was particularly disturbed to hear that over the past two years, the ALSWA has referred only a handful of matters to the CCC, because the CCC 'very rarely conducts its own investigation into complaints against police.'<sup>204</sup> The ALSWA stated that invariably, complaints are referred back to the WA Police Force, and 'the outcome is that the

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203 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 3.

204 Submission 8, Aboriginal Legal Service of Western Australia, p. 9.

Commission discontinues its involvement in the matter or appears to oversee the investigation in a very limited capacity only.<sup>205</sup>

- 6.5 Given the historical context of the relationship between police and Aboriginal people in this state, including that many Aboriginal people have ‘a deep and historical mistrust of police’, the Committee was disappointed to hear that the ALSWA goes to the WA Police Force ‘directly when we need to more times than going to the CCC’.<sup>206</sup>

*It saddens me that Aboriginal people once again, are seen as not being important in the whole scheme of things. That includes my limited understanding of where we sit within the CCC’s eyes.*

- 6.6 While the WA Police Force is to be commended for the work it has done in improving the relationship with the ALSWA and Aboriginal people more broadly, it speaks volumes that the WA Police Force is viewed as more accessible and responsive to the needs of Aboriginal people than the agency tasked with investigating complaints against the police.

*- Mr Dennis Eggington, CEO, ALSWA, Transcript of evidence, 1 July 2020.*

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- 6.7 The ALSWA commented on some of the factors that may be relevant in the CCC’s perceived reluctance to take on their cases:

Aboriginal people are not the subject of inquiries into unexplained wealth. They are not the highflying public servants or local councillors who have been investigated for allegedly rorting the public purse. The complaints that we make rarely cut through, which means, in many ways, the CCC is yet another government institution that fails Aboriginal people – and dismally.<sup>207</sup>

- 6.8 The Committee is deeply troubled that the ALSWA has reached a point where it believes that complaints from Aboriginal people cannot ‘cut through’ to gain the attention of the CCC.

- 6.9 The ALSWA reported that it has assisted over 180 clients with complaints about members of the WA Police Force in the five years 2015-2019. Less than 7 per cent of these were referred to the CCC, and over the past two years, only a handful of complaints have been sent on to the CCC.<sup>208</sup>

- 6.10 The ALSWA notes that in those few cases where it has requested the CCC conduct its own investigation, the typical response has been that the CCC was either ‘unable to form an opinion of serious misconduct’ or that it has ‘refocussed its efforts’ and oversees fewer investigations...’.<sup>209</sup>

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205 *ibid.*

206 Mr Dennis Eggington, Chief Executive Officer, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 2.

207 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 2.

208 Submission 8, Aboriginal Legal Service of Western Australia, p. 9.

209 *ibid.*

- 6.11 It is therefore not surprising that the ALSWA concludes that the CCC ‘does not sufficiently investigate nor oversee allegations of excessive use of force by WA police officers.’<sup>210</sup>
- 6.12 ALSWA also raises concerns about police investigating police, including that many serious allegations ‘are investigated by the officer in charge of the subject officers’, and that this is neither effective nor procedurally fair.<sup>211</sup>
- 6.13 Given this context, the ALSWA argues for the creation of an independent investigative body to conduct investigations into complaints about members of the WA Police Force.<sup>212</sup> The Committee has not inquired into the feasibility of establishing a separate body and makes no comment on this suggestion. However, it does suggest some improvements to the CCC which can be implemented within the existing structure. The Committee considers that the CCC should reconsider its prioritisation of complaints to ensure a renewed focus on the needs of Aboriginal people in Western Australia.
- 6.14 The Committee is concerned that if people believe that their complaint will not be considered, they are unlikely to either lodge it in the first place, or to continue to pursue it. As the ALSWA described, for many people, pursuing such a complaint against the WA Police Force may not be worth the effort.

In a lot of our really serious matters ... clients are juveniles who have a lot going on in their lives ... they might have other vulnerabilities such as mental health issues or addiction issues, and often they do not come back to us. This is the tip of the iceberg, what we are talking about. There are a whole lot of other matters that do not even get to us, or the clients discontinue engaging with us because they do not have the time or energy.<sup>213</sup>

- 6.15 Complaints that are not lodged or pursued mean that misconduct may be able to continue unchecked, further undermining the public’s trust in the WA Police Force.

#### **Finding 46**

The relationship between the Corruption and Crime Commission and the Aboriginal Legal Service of Western Australia appears to be dysfunctional, with the Aboriginal Legal Service stating that it more often goes directly to the WA Police Force with allegations of excessive use of force rather than to the Corruption and Crime Commission.

#### **Finding 47**

The Committee is deeply troubled that the Aboriginal Legal Service of Western Australia has reached a point where it believes that complaints from Aboriginal people can’t ‘cut through’ to gain the attention of the Corruption and Crime Commission.

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210 *ibid.*, p. 11.

211 *ibid.*

212 *ibid.*

213 Ms Alice Barter, Managing Lawyer, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 9.

### Recommendation 6

The Corruption and Crime Commission should reconsider its prioritisation of complaints to ensure a renewed focus on the needs of Aboriginal people in Western Australia.

#### **Box 6.4: The context for Aboriginal people in Western Australia in relation to allegations of excessive use of force by members of the WA Police Force<sup>214</sup>**

Western Australia has the highest rate of over representation of Aboriginal and Torres Strait Islander adults and juveniles in the criminal justice system in Australia. Aboriginal and Torres Strait Islander people represent 3% of the population but constitute 27% of the adult prisoner population across the nation.

However, in WA Aboriginal and Torres Strait Islander people make up almost 40% of the adult prisoner population and 73% of the juvenile detention population. As at 31 March 2017, 46% of female prisoners were Aboriginal or Torres Strait Islander women (compared to 34% nationally).

ALSWA clients also experience structural bias and discriminatory practices within the justice system itself. These include over-policing; lack of culturally appropriate programs in the community and in prison; mandatory sentencing; punitive bail laws; insufficient resourcing of Aboriginal-specific legal services; and lack of language interpreters.

The former Chief Justice of Western Australia, Wayne Martin has argued that:

Over-representation amongst those who commit crime is, however, plainly not the entire cause of over-representation of Aboriginal people. The system itself must take part of the blame. Aboriginal people are much more likely to be questioned by the police than non-Aboriginal people. When questioned they are more likely to be arrested rather than proceeded against by summons. If they are arrested Aboriginal people are more likely to be remanded in custody than given bail. Aboriginal people are much more likely to plead guilty than go to trial, and if they go to trial, they are much more likely to be convicted. If Aboriginal people are convicted, they are much more likely to be imprisoned than non-Aboriginal people, and at the end of their term of imprisonment they are much less likely to get parole than non-Aboriginal people.

Western Australia has the worst over representation of Aboriginal people in the criminal justice system, followed by the Northern Territory.

The ALSWA makes two points regarding this situation, firstly that crime statistics do not measure the true prevalence of crime in a community, rather they measure the demographics of those people who are caught and punished for criminal behaviour.

Secondly, if higher rates of offending among Aboriginal people were the sole cause of disproportionate incarceration rates then there should be no difference in the rate of over representation between different states and territories. As observed by Morgan and Motteram:

Unless one espouses the absurd notion that Aboriginal Western Australians are many times more evil than their inter-state colleagues, this cannot explain why Western Australia's imprisonment rate is so much higher than the rest of the country.

Many of ALSWA's clients experience socio-economic disadvantage, a continuing negative impact of colonisation and dispossession, trauma from the stolen generations, intergenerational trauma, substance abuse, homelessness and overcrowding, lack of education, and physical and mental health issues. These factors can underpin people's enmeshment in the criminal justice system.

Source: Aboriginal Legal Service of Western Australia Limited.

214 Based on information provided in Submission 8, Aboriginal Legal Service of Western Australia, pp. 4-5.

**Systemic issues relevant to excessive use of force which are experienced by Aboriginal people in Western Australia**

- 6.16 The ALSWA raised with the Committee a systemic issue that it has been seeking to have examined by the CCC:

ALSWA concerns about the use of WA Police dogs were raised with the Commission in September 2017 and given the systemic and serious nature of this issue, ALSWA requested the Commission conduct a comprehensive review of WA Police policies and procedures in relation to the use of dogs, as well as an independent investigation of relevant individual complaints. ALSWA understands the Commission was unable to form an opinion of serious misconduct in any of these matters and referred them to WA Police.<sup>215</sup>

- 6.17 A broader review of the systemic issues involved does not appear to have occurred, and the ALSWA's frustration at this issue's inability to gain traction with the CCC is clear.

In 2017, we sent three [dog bite matters] to the Corruption and Crime Commission and I wrote a cover letter saying that this was a systemic issue and that it needed to be looked into seriously, just like the commission did with that fantastic taser report a few years ago. We were just told: not interested. Those matters were referred by the commission back to the police, to the canine squad, to investigate. It is an ongoing issue where people who are very close to the subject officers are investigating. It just cannot be objective; there is no way it can be. I think every single complaint except for one that we have lodged about dog bites has been unsustainable. One matter in particular was unsustainable at the police complaint level, and the commission had oversight of that because it referred it back to the police, and we commenced civil action ... we had a different outcome.<sup>216</sup>

- 6.18 While it is not the Committee's role to tell the CCC where to allocate its resources and which investigations to take on, this issue is clearly one of considerable concern for the ALSWA.

- 6.19 Another systemic issue raised by the ALSWA in the course of this inquiry is what has been described as 'the improper use of police discretion':

... what really needs to be looked at, which is so readily brushed away, is police misconduct involving the improper use of police discretion, which happens all too frequently, is rarely scrutinised, and goes largely unchecked, and means that that sort of misconduct and impropriety never really gets exposed, and it impacts on Aboriginal people on a daily basis.<sup>217</sup>

- 6.20 The Committee notes that racist speech or behaviour during an interaction between WA Police Force members and Aboriginal West Australians may contribute to or be an

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215 Submission 8, Aboriginal Legal Service of Western Australia, p. 8.

216 Ms Alice Barter, Managing Lawyer, Civil Law and Human Rights Unit, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 8.

217 Mr Peter Collins, Director of Legal Services, Aboriginal Legal Service of Western Australia, *Transcript of Evidence*, 1 July 2020, p. 3.

exacerbating factor in escalating the interaction. This should be taken into account by the CCC when considering whether to investigate.

- 6.21 Racism is one area that the Committee feels is not clearly identified in the CCC's seriousness thresholds, although it does acknowledge that the strategic theme of 'people at risk' or the seriousness threshold of systemic issues may capture aspects of racism. Racist behaviour might be exhibited in a matter where other seriousness thresholds are not clearly met, which means that matters may go unexamined.
- 6.22 The Committee notes that the CCC advised that it was considering systemic issues affecting Aboriginal people in July 2019.

ALSWA provided feedback that it believed the Commission hasn't addressed the systemic issue of institutional racism in the police treatment of at-risk Aboriginal persons, particularly those in remote areas, often with intellectual or physical disabilities. The Commission advised it assesses individual cases based on the available information and that work was being conducted in relation to identifying systemic issues.<sup>218</sup>

- 6.23 The Committee would like to see the CCC giving serious consideration to the systemic issues being raised by the ALSWA. For example, the use of police dogs as outlined in Box 6.5 on the following page. While the investigation of allegations is an important part the CCC's role in overseeing the WA Police Force, examining systemic cultural and policy issues is also a vital oversight function.

**Finding 48**

While the investigation of allegations is an important part the Corruption and Crime Commission's role in overseeing the WA Police Force, examining systemic cultural and policy issues is also a vital oversight function.

**Recommendation 7**

In assessing whether an allegation of excessive use of force meets one or more of the seriousness thresholds the Corruption and Crime Commission should consider whether the conduct is accompanied by racist comments or conduct.

**Recommendation 8**

The Corruption and Crime Commission should be more proactive in investigating the systemic issues being raised by the Aboriginal Legal Service of Western Australia.

**Recommendation 9**

The Corruption and Crime Commission should undertake an audit of dog bite incidents to determine whether the use of force was justified and adequately reported by the WA Police Force.

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218 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, p. 15.



**Box 6.5: ALSWA calls for systemic review into the use of police dogs in WA**

According to the ALSWA, the use of police dogs by the Western Australia Police Force (WA Police) causes ongoing physical and mental harm and yet the use of police dogs has not been the subject of the same level of scrutiny as other tactical options. The available data shows that 43 per cent of all victims of police dog bite victims in Western Australia over a three year period were Aboriginal. Recent incidents brought to the attention of the ALSWA confirm the use of police dogs can cause ongoing physical and mental harm.

The ALSWA submitted that 'Available data from Western Australia shows that nearly one fifth of all victims of police dog bites were 18 years and under. Further, most of those victims (12 out of 17) were Aboriginal.'

Sample case studies provided by the ALSWA:

**A 9 year old Aboriginal male, 'A'** was playing with his friend at a football club. The boys broke two locks and a window to enter the club. Once inside, A's friend stole a can of soft drink. Police attended and entered the club with a police dog on a long leash. A was bitten by the dog and fell over. The dog then grabbed A's leg and dragged him along the floor. A's mother took him to the hospital where he received treatment for minor injuries and bruises.

**A 15 year old Aboriginal male, 'R'** was arrested on suspicion of stealing a bicycle. When the police attended the scene, R dropped the bicycle and began to run away. R was unaware that a police dog was chasing him until he looked over his shoulder whilst running. The dog launched at R, biting his right buttock. The injury was 0.5cm deep and there were 2 abrasions either side of the puncture wound. R was treated in hospital. R was charged with Disorderly behaviour in public for his conduct during the arrest.

**A 15 year old Aboriginal female, 'L'** was arrested for non-compliance with her curfew in a regional town. She was located at a residence, a struggle ensued and the police dog was deployed. L received treatment in hospital for three wounds to her upper right thigh. L's injuries were so serious that the wounds were bleeding through the bandages when she presented at the ALSWA regional office the next day.

**Sample recommendations from ALSWA on policy relating to the use of police dogs**

- (a) WA Police should collect data on:
  - (i) the number of times police dogs are deployed;
  - (ii) the subsequent number of people bitten for each type of deployment; and
  - (iii) the age, ethnicity of each person bitten and the charges laid against them.
- (b) The Corruption and Crime Commission should undertake a review of the use of police dogs having regard to:
  - (i) whether there is a disproportionate use of dogs against Aboriginal people;
  - (ii) whether there is a disproportionate use of dogs against young people;
  - (iii) whether an offence was involved and if so, what offence; and
  - (iv) whether police dogs are being used as a compliance tool.
- (c) Police dogs should not be deployed in situations involving juveniles.
- (d) Police dogs should only be deployed to arrest a person who is suspected of committing a serious offence.
- (e) Police dogs should be muzzled when being used by WA Police.
- (f) WA Police officers should be required to file a Use of Force report for every incident where a police dog causes injury to a person, takes hold, or comes into physical contact with any person.
- (g) WA Police should introduce a review body to review all instances of deployment of police dogs.

Source: Aboriginal Legal Service of Western Australia Limited.<sup>219</sup>

### Initiatives to improve community engagement in other Australian jurisdictions

- 6.24 In addition to improving its management of individual complaints and systemic issues raised by Aboriginal people, the Committee would like to see the CCC taking a more proactive approach to engaging with broader Aboriginal communities. This could extend to other diverse community groups, including those that may be marginalised or vulnerable.

*I could be wrong but my strong suspicion is there is probably not one person who is Aboriginal who is employed at the CCC.*

- 6.25 The CCC advised the Committee that ‘officers from the Commission’s Assessment and Oversight areas have met with the Aboriginal Legal Service ... representatives on a regular basis since around 2016, meeting three times a year.’<sup>220</sup> The Committee also notes that the CCC submitted that the ALSWA is the only non-government agency with which it has ‘regular engagement meetings to open up lines of communication and to provide an opportunity ... to raise any questions or seek clarification regarding any matters.’<sup>221</sup>

*- Mr Peter Collins, Aboriginal Legal Service of Western Australia, Transcript of Evidence, 1 July 2020, pp. 2-3.*

- 6.26 The CCC has provided the Committee with details of the matters discussed at the last two meetings. A regular liaison meeting at least every six months with the ALSWA is a start. However, the Committee is aware that in other jurisdictions, agencies similar to the CCC have instituted formalised mechanisms to improve access and engagement with target communities. For example, the LECC in NSW.

- 6.27 The LECC undertakes community engagement, specifically focussed on ensuring that its services are accessible to diverse community groups.

The [LECC] recognises the strong need for targeted community engagement and works directly with community organisations to increase awareness of the role of the Commission, its purpose, accessibility to it and trust. This work is critical to facilitate communication with community members who may wish to report law enforcement misconduct or maladministration but do not feel confident to do so.<sup>222</sup>

- 6.28 The LECC has established a Diversity Action Plan, which ‘aims to ensure that the needs of people from cultural and linguistically diverse backgrounds, people with disabilities and those from vulnerable communities have access to the Commission and all of its functions.’<sup>223</sup> It also has a Community Engagement team, which works with community legal centres, Legal Aid, the Aboriginal Legal Service and other organisations to raise awareness of the LECC.<sup>224</sup>

219 Submission 8A, Aboriginal Legal Service of Western Australia, Letter and Attachment, p.2.

220 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, Letter, 22 July 2020, p. 15.

221 *ibid.*

222 Law Enforcement Conduct Commission, *Annual Report 2018-19*, New South Wales, October 2019, p. 59.

223 *ibid.*, p. 66.

224 *ibid.*, p. 59.

6.29 The LECC ‘recognises the overrepresentation of Aboriginal people in the criminal justice system and is committed to working with Aboriginal communities to ensure the Commission is accessible.’<sup>225</sup> During 2018-2019, LECC staff undertook training in Working with Aboriginal Communities with the NSWPF.<sup>226</sup>

[LECC] staff meet regularly with the Aboriginal Legal Service to identify communities that may benefit from LECC outreach, and to discuss potential systemic issues which may form the basis of Commission research reports. The Commission’s Community Engagement team also regularly meets with teams within Legal Aid to identify hard-to-reach communities that may respond to outreach work by the LECC.<sup>227</sup>

6.30 Queensland has similar initiatives. The Queensland Crime and Corruption Commission (CCC QLD) launched its first Reconciliation Action Plan (RAP) in 2018-19, which incorporates outcomes relating to the internal operations of the CCC QLD as well as its engagement with external stakeholders. The CCC QLD identifies that a key element of its RAP is the ‘commitment to improving employment outcomes for Aboriginal and Torres Strait Islander people within the CCC.’<sup>228</sup> This has seen the CCC QLD take steps to encourage Aboriginal and Torres Strait Islander people to apply for roles within the CCC QLD.<sup>229</sup> It is also working towards the establishment of an external Aboriginal and Torres Strait Islander Community Reference Group.<sup>230</sup>

6.31 In Victoria, IBAC has commenced a different type of initiative to examine how Victoria Police manages its relationship with Aboriginal people. IBAC has commenced an audit of how Victoria Police handles complaints involving Aboriginal people. Stakeholders consulted by IBAC in developing the audit scope included representatives from various Aboriginal community organisations.<sup>231</sup>

6.32 As part of the audit, the IBAC is seeking to ‘identify good practice that can be considered more broadly by Victoria Police and raise awareness of IBAC’s police oversight role among Aboriginal people and the broader Victorian community.’ IBAC has identified that it would ‘undertake further engagement with these and other stakeholders to explore issues identified by the audit, including why Aboriginal people may be reluctant to make complaints to Victoria Police.’<sup>232</sup>

6.33 This Committee would like to see the development of similar initiatives within the CCC here in WA to improve engagement with the Aboriginal community. In addition, the Committee notes speculation from witnesses to this inquiry regarding the employment of Aboriginal

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225 *ibid.*

226 *ibid.*, p. 60.

227 *ibid.*

228 Crime and Corruption Commission, *Annual Report 2018-19*, Queensland, 30 August 2019, p. 54.

229 *ibid.*

230 *ibid.*, p. 58.

231 Independent Broad-based Anti-corruption Commission, *Annual Report 2018-19*, Victoria, 5 September 2019, p. 67.

232 *ibid.*

people within the CCC (or lack thereof), and suggests that this is another area to which the CCC could usefully turn its attention.

- 6.34 The Committee suggests the establishment of a community engagement unit, and the development of a Reconciliation Action Plan. This could benefit not only Aboriginal people, but other diverse groups also.

#### **Recommendation 10**

The Corruption and Crime Commission should establish mechanisms to improve its engagement with Aboriginal people in Western Australia. Initiatives developed could also facilitate better engagement with other diverse groups, including those that may be marginalised or vulnerable.

#### **Comments from the Office of the Parliamentary Inspector of the Corruption and Crime Commission**

- 6.35 As part of this inquiry, the Committee was in discussion with the current acting Parliamentary Inspectors of the CCC, regarding the role of the PICCC in examining complaints of excessive use of force by WA Police Force officers. The acting PICCCs commented that:

We note the submission by the Aboriginal Legal Service as to the importance of cultural knowledge and sensitivity in evaluating allegations of police misconduct concerning Aboriginal people. Should this Office find itself reviewing more allegations about police misconduct in this context, we consider that expertise in this area would be required in order to do justice to this important function.<sup>233</sup>

#### **Finding 49**

It is important that the Office of the Parliamentary Inspector of the Corruption and Crime Commission has access to appropriate cultural knowledge in order to enable it to adequately handle complaints of excessive use of force against Aboriginal people. The acting Parliamentary Inspectors have made clear that the organisation currently lacks this expertise.

#### **Recommendation 11**

That the Attorney General ensures that the Office of the Parliamentary Inspector of the Corruption and Crime Commission is sufficiently resourced to provide services that are culturally appropriate and accessible for Aboriginal people.

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233 Mr Matthew Howard SC and the Hon John Chaney SC, Acting Parliamentary Inspectors of the Corruption and Crime Commission, Letter, 20 July 2020, p. 3.

# Chapter 7

## Additional matters

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**This chapter details two additional matters which emerged that were not the focus of the inquiry but which are tangential and are worth mentioning.**

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- 7.1 Over the course of this inquiry several additional matters emerged which were not the focus of the inquiry but which are tangential and are worth mentioning. The Committee outlines them here for future reference by the next Joint Standing Committee on the Corruption and Crime Commission, the CCC and other stakeholders.

### **The Corruption, Crime and Misconduct Act must be redrafted as a matter of priority**

- 7.2 Chapter 3 of this report outlines the way in which the CCC has had to determine its own priorities and assessment processes in the absence of clear direction under the CCM Act to prioritise police oversight.
- 7.3 Over the course of the 40<sup>th</sup> Parliament, the Committee has observed a wide range of areas where the CCM Act is either deficient, obsolete and/or unclear. It has corresponded numerous times with the Attorney General on the matter.
- 7.4 It is unfortunate that, despite repeated requests from this Committee the CCM Act has not been comprehensively reviewed since 2008. In the meantime, there have only been piecemeal amendments. The Committee has compiled a large amount of information about areas in the Act that require reform or clarification.
- 7.5 The former CCC Commissioner McKechnie, advised the Committee that, based on his experience, a whole new Act needs to be drafted, rather than attempting to amend the existing legislation. The Committee agrees.
- 7.6 The Committee contends that the CCM Act should be reviewed and possibly re-drafted as a matter of priority. Any such review should take into account consideration of what level of priority should be given to police oversight. The Committee is of the view that this priority must be clearly delineated within the legislation.

#### **Finding 50**

Over the course of the 40<sup>th</sup> Parliament, the Committee has made note of a range of areas where the *Corruption, Crime and Misconduct Act 2003* is either deficient, obsolete and/or unclear.

#### **Recommendation 12**

That the Attorney General ensure that the *Corruption, Crime and Misconduct Act 2003* is redrafted as a matter of priority. As part of this process, consideration should be given to the prioritisation of police oversight within the legislation.

### Increased transparency

- 7.7 One area that could stand significant improvement is the transparency and availability of information and statistics regarding the investigation of police excessive use of force in Western Australia.
- 7.8 The United Nations Office on Drugs and Crime identifies that in order to ensure public confidence, it is good practice to disclose the number of complaints received, the nature of the complaints and their consequences, including numbers of officers that have been disciplined and criminally prosecuted.<sup>234</sup>
- ...displaying transparency with regard to all areas including failures and problems and acknowledging mistakes shows that police are concerned about their legitimacy and thus enhances public trust.*
- United Nations Office on Drugs and Crime, Handbook on police accountability, oversight and integrity, United Nations, Vienna, July 2011, pp. 36-37.*
- 7.9 Both the WA Police Force and the CCC should be publishing a detailed account of their activities in this area every year, possibly in the annual report or on their websites. The Committee is firmly of the view that the publication of this sort of information would greatly assist public trust in the WA Police Force.
- 7.10 Currently, information about the outcomes of internal investigations are not regularly published by the WA Police Force.
- 7.11 During the evidence-gathering stage of this inquiry, the Committee was able to obtain a sample selection of the available statistics from both the WA Police Force and the CCC, and would like to see such statistics made publicly available on a regular basis.
- 7.12 Relevant statistical information could be de-identified, to protect the details of both the complainants and the WA Police Force officers. It should include the number and type of complaints and allegations, the type of force used, the investigations undertaken, the outcomes, and the imposition of sanctions upon guilty officers. It should also include the number of allegations found to be unsubstantiated and the number of officers exonerated.
- 7.13 It would also be helpful if the WA Police Force and the CCC were able to provide some consistency in how the statistics are reported, so that comparisons can be made between the activities and results achieved by each agency. This would also enable the monitoring and analysis of trends to occur across years.
- 7.14 The WA Police Force has given an undertaking to resume publishing statistics in its annual report, and the Committee commends the WA Police Force for this initiative.<sup>235</sup> Given that the WA Police Force and the use of force are both strategic themes for the CCC, the Committee would like to see detailed statistics published by the CCC also.

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234 United Nations Office on Drugs and Crime, *Handbook on police accountability, oversight and integrity*, United Nations, Vienna, July 2011, pp.36-37.

235 Mr Chris Dawson, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 8.

**Finding 51**

There needs to be transparent and accessible publication of outcomes on investigations into allegations of excessive use of force. The WA Police Force has advised that this will occur through publication in the next annual report.

**Finding 52**

Both the WA Police Force and the Corruption and Crime Commission should regularly publish comprehensive statistics on how they manage complaints relating to the excessive use of force by police officers.

**Recommendation 13**

That the Minister for Police and the Attorney General ensure that the WA Police Force and the Corruption and Crime Commission publish statistics on their investigations into allegations of excessive use of force.



Ms M.M. Quirk, MLA  
CHAIR





# Appendix One

## Committee's functions and powers

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- 7.15 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.
- 7.16 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.
- 7.17 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*.
- 7.18 The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.



## Appendix Two

### Submissions received

No.	Name	Position	Organisation
1	Not disclosed	Private citizen	Not applicable
2	Not disclosed	Private citizen	Not applicable
3	Not disclosed	Private citizen	Not applicable
4	Not disclosed	Private citizen	Not applicable
5	Not disclosed	Private citizen	Not applicable
6	Mr Ray Warnes	Chief Executive	Corruption and Crime Commission
7	Hon Michael Murray AM QC	Parliamentary Inspector of the Corruption and Crime Commission	Office of the Parliamentary Inspector of the Corruption and Crime Commission
8	Ms Alice Barter	Managing Solicitor, Civil Law and Human Rights Unit	Aboriginal Legal Service of Western Australia
8A	Ms Alice Barter	Managing Solicitor, Civil Law and Human Rights Unit	Aboriginal Legal Service of Western Australia
9	Mr Col Blanch	Acting Commissioner of Police	Western Australia Police Force
9A	Mr Chris Dawson APM	Commissioner of Police	Western Australia Police Force
10	Not disclosed	Private citizen	Not applicable
11	Mr Harry Arnott	President	WA Police Union
12	Not disclosed	Private citizen	Not applicable
13	Not disclosed	Private citizen	Not applicable
14	Not disclosed	Private citizen	Not applicable
15	Not disclosed	Private citizen	Not applicable



## Appendix Three

### Hearings

Date	Name	Position	Organisation
1 July 2020	Mr Chris Dawson APM	Commissioner of Police	Western Australia Police Force
	Mr Colin Blanch	Deputy Commissioner of Police	
	Mr Christopher Markham	Capability Advisor, Use of Force, Operational Skills Faculty	
	Mr Valdo Sorgiovanni	Acting Assistant Commissioner, Professional Standards	
	Mr Craig Donaldson	Assistant Commissioner, Professional Development Portfolio	
1 July 2020	Mr Dennis Eggington	Chief Executive Officer	Aboriginal Legal Service of Western Australia
	Mr Peter Collins	Director of Legal Services	
	Ms Alice Barter	Managing Solicitor, Civil Law and Human Rights Unit	
1 July 2020	Mr Harry Arnott	President	WA Police Union
	Mr Michael Kelly	Senior Vice President	
	Mr Matthew Payne	Research Officer	
1 July 2020	Mr Ray Warnes	Chief Executive	Corruption and Crime Commission
	Mr David Ellis	Acting Commissioner	



## Appendix Four

### Acronyms

ALSWA	Aboriginal Legal Service of Western Australia
ANZPAA	Australia New Zealand Policing Advisory Agency
ASD	Assessment and Strategy Directorate
CCC	Corruption and Crime Commission
CCC QLD	Queensland Crime and Corruption Commission
CCM Act	<i>Corruption, Crime and Misconduct Act 2003</i>
DEMS	Digital Evidence Management System
IAPro	Internal Affairs Professional
IAU	Internal Affairs Unit
IBAC	Independent Broad-based Anti-corruption Commission
IOPC	Independent Office for Police Conduct
LECC	Law Enforcement Conduct Commission
MIM	Managerial Intervention Model
OMA	Offender Management Area
PCIU	Police Conduct Investigation Unit
PICCC	Parliamentary Inspector of the Corruption and Crime Commission
RAP	Reconciliation Action Plan





## Appendix Five

### Sanctions

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#### **Types of sanctions against officers found to have used excessive force**

A variety of options are available to the WA Police Force in terms of applying sanctions to officers found to have used excessive force. These range in terms of gravity from an informal conduct report, through to criminal charges, and are detailed below.

#### **Minor Conduct Report (informal process)**

Allegations that are considered to be minor, and to constitute low risk misconduct or unprofessional behaviour, can be resolved by managers and supervisors via a 'minor conduct report.' If a manager accepts that on the balance of probabilities the allegation is sustained, the officer can be engaged to alter their behaviour through a developmental discussion. The outcome is reviewed by the PCIU and can be reassessed if the PCIU considers the sanction is inappropriate.<sup>236</sup>

#### **Managerial intervention model (formal process)**

The managerial intervention model (MIM) is used for allegations of misconduct or unprofessional behaviour that are considered to be medium to high risk. Where allegations are sustained, the investigating officer may recommend a formal managerial sanction. These include:

- Verbal guidance – similar to a developmental discussion, the agreed managerial outcome is formally recorded in IAPro and the subject officer's employee management file.
- Managerial notice – a written notice served in person by the district or divisional superintendent, identifying the severity and importance of the sustained allegations. The employee is notified that repeated behaviours may result in more severe managerial interventions, disciplinary or dismissal proceedings. Opportunities to alter the employee's behaviours are identified (for example training, courses or increased supervision).
- Assistant Commissioner's warning notice – the highest sanction in the MIM. The portfolio head (Assistant Commissioner) or Assistant Commissioner Professional Standards, meets with the employee and identifies the severity of the sustained allegations. The outcome is generally accompanied by performance developmental planning and formalised benchmarks that must be met within given timeframes. The employee is advised that failure to align their behaviours to the WA Police Values and Code of Conduct, or other relevant policy may result in disciplinary or dismissal processes.<sup>237</sup>

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<sup>236</sup> Submission 9, WA Police Force, p. 14.

<sup>237</sup> *ibid.*

### **Disciplinary process under section 23 of the *Police Act 1892***

Officers may be referred to the discipline process under section 23 of the *Police Act 1892* if managerial interventions are 'insufficient to remedy the harm to community trust, agency reputation or the proper discipline of the WA Police Force.'<sup>238</sup> The Integrity Review Panel (IRP), which is part of the Professional Standards unit, reviews all referrals to the section 23 process, which must be justified with supporting evidence. A referral to the section 23 process may be made when:

- the seriousness of the allegations is such that managerial interventions are inappropriate
- the antecedents or recalcitrant attitude of the subject officer may warrant proceedings
- the matter exceeds the appropriateness of managerial interventions but falls short of loss of confidence proceedings
- there is a need for deterrence warranted by the alleged facts.<sup>239</sup>

Some of the sanctions available under section 23 discipline charges include dismissal, a fine not exceeding three per cent of the officer's salary, reprimand, salary increment withheld, demotion, or suspension.<sup>240</sup>

### **Loss of confidence provisions**

Under section 33(L) of the *Police Act 1892*, the Police Commissioner may initiate loss of confidence proceedings against a member of the WA Police Force. This includes commissioned and non-commissioned officers, constables, Aboriginal police liaison officers and police auxiliary officers.

The Police Commissioner may initiate such a process if they lack confidence in the member's suitability to continue as a member, having regard to one or more of the following grounds:

- integrity
- honesty
- competence
- performance
- conduct.<sup>241</sup>

A loss of confidence is not linked to a member's guilt or innocence, but rather to the Police Commissioner's managerial prerogative as to whether he/she can maintain confidence in a person's suitability to remain as a member of the WA Police Force.<sup>242</sup>

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238 *ibid.*

239 *ibid.*

240 Submission 9A, WA Police Force, p. 4.

241 Submission 9, WA Police Force, p. 14.

242 *ibid.*, p. 15.

## Criminal charges

In some instances, an allegation of excessive use of force may result in an investigation into criminal conduct by an employee of the WA Police Force. In this circumstance, the 'criminal investigation is conducted in the same manner as all criminal investigations' and is conducted 'in accordance with the WA Police Force Investigation Doctrine and the guidelines published by Investigative Standards.'<sup>243</sup>

Criminal charges are determined through the court system, and sanctions are applied as part of that process. The WA Police Force advised the Committee that where criminal charges are laid against an officer, 'the managerial component of that investigation is put on hold in fairness to the subject officer.'<sup>244</sup> Under WA Police Force policy, an officer can be compelled 'to speak, which will then impact his defence when it goes to court.'<sup>245</sup> Once criminal proceedings have been concluded, further disciplinary or dismissal procedures may be applied by the WA Police Force.<sup>246</sup>

Over time, the approach taken by the WA Police Force regarding sanctions has changed. According to the WA Police Force, 'disciplinary proceedings were reinvigorated in 2017; prior to that an emphasis was placed on the WA Police Force Managerial Intervention Model.'<sup>247</sup> The WA Police Force acknowledges that the discipline process 'provides a clearer, more accountable framework for police, especially in instances where [it] has been used as an alternative to criminal proceedings.'<sup>248</sup>

The WA Police Union advised the Committee that it prefers use of the section 23 mechanism, rather than criminal charges through the court system, for dealing with offences relating to excessive use of force.<sup>249</sup> The WA Police Union considers that this will ensure matters are 'dealt with in a timely manner and that aggrieved persons receive satisfaction in relation to their complaints.'<sup>250</sup> It was acknowledged that instances that involved 'an element of criminality (i.e. significant bodily harm)' could not be dealt with by this process.<sup>251</sup>

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<sup>243</sup> *ibid.*

<sup>244</sup> Mr Valdo Sorgiovanni, Acting Assistant Commissioner, Professional Standards, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 17.

<sup>245</sup> *ibid.*

<sup>246</sup> Submission 9, WA Police Force, p. 15.

<sup>247</sup> *ibid.*, p. 20.

<sup>248</sup> *ibid.*

<sup>249</sup> Submission 11, WA Police Union, p. 30.

<sup>250</sup> *ibid.*

<sup>251</sup> *ibid.*

## **Types of sanctions applied between 2013 and 2019**

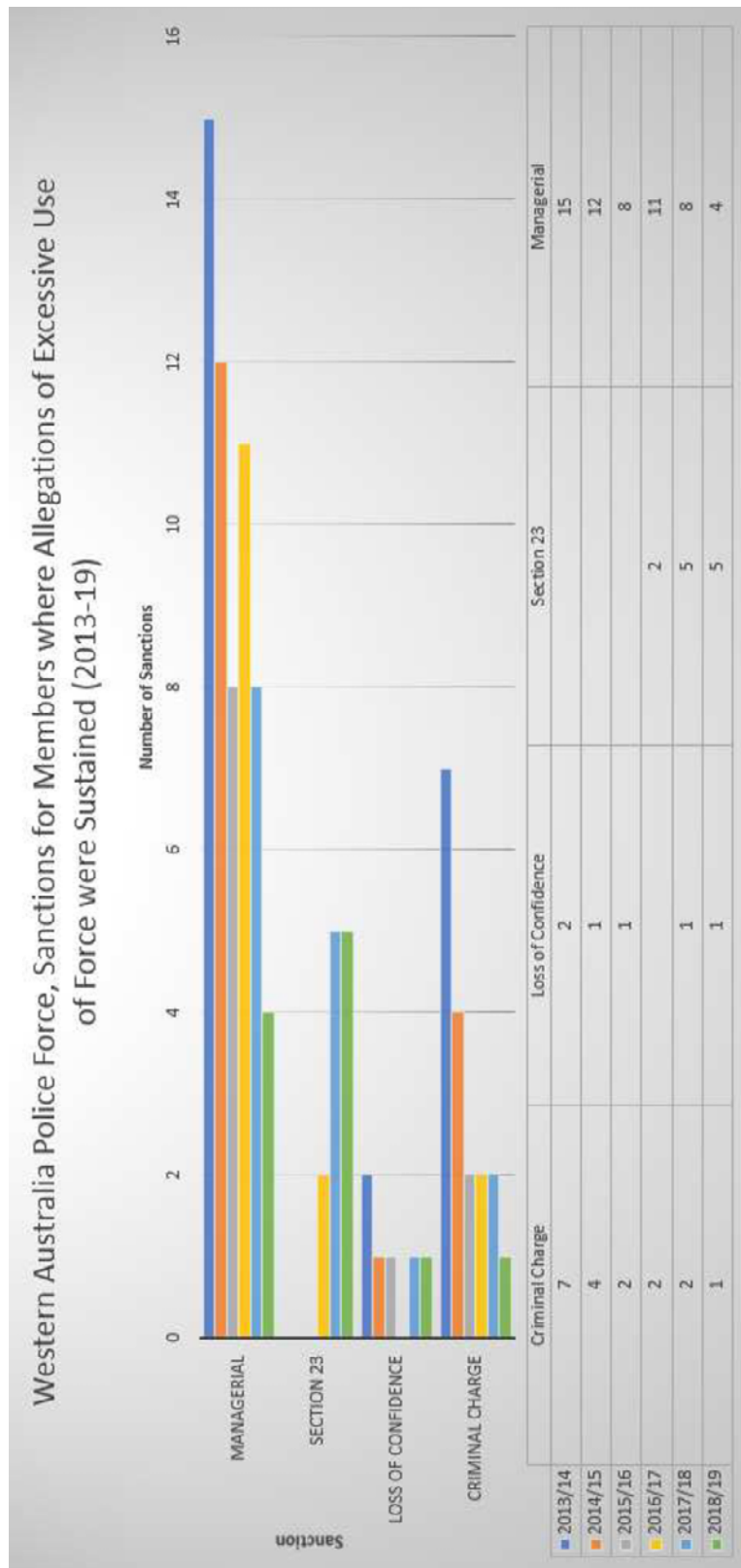
Between 2013 and 2019, there were 88 officers sanctioned for excessive use of force. The figure on the following page details these.

The WA Police Force provided the following notes to accompany this information:

- 88 officers received 94 sanctions (the number of sanctions exceeds the number of officers as some officers received more than one sanction).
- With reference to the officers nominated for loss of confidence proceedings:
  - in 2013-2014 – both officers resigned prior to the process being finalised
  - in 2014-2015 – the officer was dismissed from WA Police Force
  - in 2015-2016 – the officer was referred to the managerial intervention model
  - in 2017-2018 – the officer resigned prior to the process being finalised
  - in 2018-2019 – the officer was referred to the section 23 disciplinary process.<sup>252</sup>

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252 Submission 9, WA Police Force, Attachment 6.

Sanctions where allegations of excessive use of force were sustained (2013-2019)<sup>253</sup>

253 Submission 9, WA Police Force, Attachment 6.



## Appendix Six

### The accountability framework—key players and their roles

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Oversight of the WA Police Force takes place in a framework where responsibilities for reviewing, investigating and responding to potential police misconduct are dispersed across a range of actors. Below is an overview of the framework which outlines how key actors engage with the public and one another, to provide a system that responds to concerns about excessive use of force by members of the WA Police Force.

There are four key players.

#### 1. WA Police Force

Although the CCC provides oversight of the WA Police Force handling of misconduct allegations, the Police Commissioner—as the responsible authority of the agency—is ultimately responsible for misconduct that occurs within the organisation.<sup>254</sup>

Beyond the initial notification of an allegation of excessive use of force, there is an interface between the WA Police Force and CCC in the course of action that is taken in response to an allegation. This takes place through liaison between WA Police Force and CCC staff members. In addition, the CCC has access to the police system ‘IAPro’, which provides authorised CCC staff members with the ability to review use of force reports, allegations of misconduct and investigations into misconduct.<sup>255</sup>

The WA Police Force is guided by internal policies that determine how use of force reports and allegations of excessive use of force are managed. This policy aligns with the Australia New Zealand Policing Advisory Agency (ANZPAA) principles. The graphic on the following page sets out these principles.<sup>256</sup>

The policy includes a model which is:

used by police to consider the force needed to reduce a threat and gain control of a person in a conflict situation. The model assists police to arrive at the most appropriate use of force with a view to reducing the risk of injury to any person.<sup>257</sup>

This is known as the Situational Tactical Options Model.<sup>258</sup>

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254 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 10.

255 ‘IAPro’ refers to ‘Internal Affairs Professional’. IAPro is a system which complements the WA Police Force use-of-force and complaint management system. Submission 9, WA Police Force, p. 3 and p. 13; and Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 14.

256 See ANZPAA, *Use of Force Principles*, 2018, accessed 29 June 2020, <<http://www.anzpaa.org.au/publications/general>>.

257 Submission 9, WA Police Force, p. 7.

258 For more detail on this model see Submission 9, WA Police Force, p. 7.

Australia New Zealand

# Use of Force Principles

**ANZPAA**  
Australia New Zealand  
Policing Advisory Agency

## PURPOSE:

These Principles provide guidance for jurisdictions in the development and application of policies and procedures, and promote cross-jurisdictional co-operation for continuous improvement in the area of operational safety.

## DEFINITION:

Use of force by police officers includes any situation where police use physical force or other techniques, including a weapon, instrument or implement, in the lawful execution of their duty.

## KEY PRINCIPLES:

- The authority to use force is derived from the law.
- Police should only use force that is reasonable, necessary, proportionate and appropriate to the circumstances.
  - Police should use no more force than is reasonably necessary for the safe and effective performance of their duties.
  - Individual police are accountable and responsible for their use of force and must be able to justify their actions at law.

## UNDERPINNING PRINCIPLES:

### Police organisations should:

- use a situational model to guide police in the use of force
- provide police with regular skill, knowledge development and equipment to safely and effectively respond to potential use of force incidents
- make support services available to police involved in use of force incidents
- emphasise the importance of effective communication and conflict resolution skills
- provide guidance to police to manage risks associated with the use of force
- maintain governance structures to report, record, monitor and evaluate the use of force to improve public and police safety.

**DISCLAIMER:** This Document is not a substitute for users obtaining independent advice specific to their needs, nor a substitute for any jurisdictionally appropriate policies, procedures, protocols or guidelines and it is not intended to take precedence over such documents. All users of this Document should assess the relevance and suitability of the information in this Document to their specific circumstances.

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### **Training on use of force**

WA Police Force officers are trained in the use of force. This occurs on entry to the WA Police Force and there are annual critical skills refresher training courses offered also. Specialist training is provided where necessary.<sup>259</sup>

In recent years the WA Police Force advises that it has:

reviewed and improved use of force training (including use of TASER), introduced training that aligned with principles supported by ANZPAA and the Australia New Zealand Counter Terrorism Committee (ANZCTC), engaged tertiary institutions to review and comment on the validity of police use of force training and made changes to ... training that align with many of their findings.<sup>260</sup>

The Committee did note a pertinent concern expressed by the WA Police Union that workload and potential under-resourcing of areas within the WA Police Force may be interfering with ongoing refresher training. This could include training on the use of the body-worn cameras, de-escalation, or cultural awareness.<sup>261</sup>

### **WA Police Force structures that support internal investigations into misconduct allegations**

The Professional Standards portfolio within the WA Police Force conducts internal investigations and manages allegations of misconduct. It includes the PCIU and IAU.

#### ***Police Conduct Investigation Unit***

All allegations of police misconduct, including allegations of excessive use of force, are received by the PCIU. The PCIU is responsible for:

- receiving and managing public complaints about members of the WA Police Force
- recording, assessing and allocating minor complaints and other incidents requiring internal investigations
- providing support and guidance to metropolitan and regional WA business units to enable them to quality assure investigations into alleged police misconduct
- providing a practical reporting interface between the WA Police Force and the CCC.<sup>262</sup>

The PCIU undertakes risk assessments of allegations and triages matters to business areas for subsequent investigation based upon risk.<sup>263</sup> The more serious matters are referred to the IAU for review and investigation.<sup>264</sup>

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259 Submission 9, WA Police Force, covering letter.

260 *ibid.*

261 Mr Harry Arnott, President, WA Police Union, *Transcript of Evidence*, 1 July 2020, p. 6.

262 Submission 9, WA Police Force, p. 12.

263 *ibid.*, pp. 12-13.

264 Submission 9A, WA Police Force, p. 3.

### ***Internal Affairs Unit***

The IAU is responsible for identifying and investigating alleged corruption in the WA Police Force.<sup>265</sup> The IAU investigates high risk misconduct allegations and is responsible for oversight and investigation of alleged criminality involving WA Police Force members.<sup>266</sup> The Committee was told that:

Where the outcome is likely to be more serious and it is going to be a disciplinary finding or loss of confidence under the commissioner or criminal charges, that will be undertaken by the internal affairs unit.<sup>267</sup>

The CCC told the Committee that it is satisfied with the operations of the IAU and that its investigative practices are very good.<sup>268</sup> However, the quality and independence of investigations undertaken at a district level is less consistent.

## **2. Corruption and Crime Commission**

The CCC is an investigative body, responsible for improving the integrity of, and reducing the incidence of misconduct in, the WA Police Force as well as the broader public sector.<sup>269</sup>

The term ‘oversight’ refers in a general sense to the work of the CCC carried out under the provisions of the CCM Act.<sup>270</sup> A Memorandum of Understanding (MoU) exists between the CCC and WA Police Force which complements the CCM Act and governs the relationship between the bodies in managing allegations of misconduct.<sup>271</sup> The MoU covers the workings between the CCC and WA Police Force including key aspects such as information sharing and investigative responsibilities.<sup>272</sup>

The CCC receives allegations concerning excessive use of force from sources including the WA Police Force and members of the public.<sup>273</sup> Upon receipt of an allegation, the CCC assesses the allegation and makes a decision about the level of oversight it will have over a matter.<sup>274</sup>

The CCC carries out oversight of the WA Police Force in various ways. It can monitor WA Police Force investigation outcomes and it can also review investigation actions undertaken

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265 Submission 9, WA Police Force, p. 12.

266 *ibid.*

267 Mr Valdo Sorgiovanni, Acting Assistant Commissioner, Professional Standards, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 12.

268 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 3 and p.10.

269 Submission 6, Corruption and Crime Commission, p. 1.

270 The CCC also has oversight of the WA Police Force in relation to compliance with Part 2 of the *Criminal Investigation (Covert Powers) Act 2012*.

271 Mr Chris Dawson, Commissioner, WA Police Force, *Transcript of Evidence*, 1 July 2020, p. 3.

272 Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 2.

273 Submission 6, Corruption and Crime Commission, p. 2.

274 Every allegation must be assessed, as provided by section 32(1), *Corruption, Crime and Misconduct Act 2003*.

throughout the investigative process.<sup>275</sup> The CCC can also conduct its own investigations, either cooperatively with, or independently of, the WA Police Force.

Action is taken by the CCC in line with one of the following functions open to the CCC under the CCM Act:

- independently investigate
- investigate or take action in cooperation with the WA Police Force
- refer back to WA Police for investigation, and:
  - monitor for outcome
  - monitor for review
- take no action.

The CCC undertakes very few of its own investigations into allegations of excessive use of force by WA Police Force officers, or indeed any police misconduct allegations. This is consistent with its practice across the wider public sector. Most investigations into serious misconduct are conducted by the home agency where the misconduct occurred, depending upon the capacity of that agency to conduct an adequate investigation.

When an allegation is referred back to the WA Police Force for it to deal with internally, the CCC's monitor and review functions are undertaken through:

- monitoring the actions taken for the outcome only, pursuant to section 40 of the CCM Act
- review of the action taken, pursuant to section 41 of the CCM Act
- active oversight, pursuant to sections 40 and 41 of the CCM Act.<sup>276</sup>

### **Actions taken by the Corruption and Crime Commission in relation to allegations**

#### ***No action taken***

Most allegations of excessive use of force are deemed by the CCC as not requiring any action. Until 2019-2020 this constituted around half the allegations received – around 47 per cent in the 2018-2019 reporting period. Sometimes these have an outcome recorded where no further action was taken because the allegation was already dealt with by the WA Police Force and the outcome formed part of the notification.

During 2019-2020 there was a sharp increase in allegations which required no action and a corresponding decrease in the number of allegations assessed as requiring active oversight by the CCC.

#### ***Monitor for outcome***

Under sections 33(1)(c) and 40 of the CCM Act, the CCC may refer an allegation to a public authority for action, with an obligation that the agency provides a detailed report back to

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<sup>275</sup> *Corruption, Crime and Misconduct Act 2003*, s. 40 and s. 41.

<sup>276</sup> Submission 6, Corruption and Crime Commission, p. 9.

the CCC, usually on completion. The sorts of matters referred in this way are generally less serious. However, more serious matters may be referred if the CCC is confident that the matter will be appropriately addressed.<sup>277</sup>

Most allegations requiring action are referred back to the WA Police Force to investigate and report an outcome – around 37 per cent of excessive use of force allegations.

Factors considered when deciding whether the outcome is adequate include: ‘timeliness; planning and preparation; whether the agency's outcome was open to be made; and, the agency's commitment to ongoing training and risk mitigation.’<sup>278</sup>

If the outcome reported to the CCC is deemed inadequate, the CCC may increase its oversight of the matter and change to an ‘active oversight’ approach which combines the functions under sections 40 and 41 of the CCM Act.<sup>279</sup>

Based on information provided to the Committee by the CCC, it appears that the CCC’s oversight team rarely, if ever, identifies inadequacies as a result of a monitor for outcome approach that persuade it to increase the level of oversight over a matter.<sup>280</sup>

### ***Monitor for review***

The CCC can exercise its power through monitoring and review. Section 41 of the CCM Act empowers the CCC to conduct a full review of the way in which the public authority (in this case, the WA Police Force) has dealt with the allegations.

This is not an investigation, a fact which is sometimes not well understood by complainants.<sup>281</sup> The CCC advises that such a review assesses whether the actions undertaken in relation to the matter were adequate. It also looks at whether the conclusions reached, and any relevant disciplinary response, were open to be made based upon the available evidence. The CCC contends that this function provides visibility across an organisation (or indeed, the whole public sector) and provides some confidence in the way WA Police Force (or any other agency) is addressing allegations of serious misconduct.<sup>282</sup>

With a monitor for review approach pursuant to section 41 of the CCM Act, the CCC has access to, and can review, all the evidence that the WA Police Force investigator(s) have available to them. The CCC’s oversight team can provide observations and identify areas of concern. However, it ‘cannot interfere with, or instruct the WA Police Force on how it should conduct its investigation.’<sup>283</sup>

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<sup>277</sup> *ibid.*, p. 11.

<sup>278</sup> *ibid.*, p. 9.

<sup>279</sup> Mr Ray Warnes, Chief Executive, Corruption and Crime Commission, *Transcript of Evidence*, 1 July 2020, p. 4.

<sup>280</sup> Mr Ray Warnes, Corruption and Crime Commission, Letter, 22 July 2020, Attachment 3, p. 12.

<sup>281</sup> *ibid.*, p. 7.

<sup>282</sup> Submission 6, Corruption and Crime Commission, p. 10.

<sup>283</sup> *ibid.*

Since 2015 the CCC has referred 46 excessive use of force allegations back to the WA Police Force for monitor and review. This constitutes just under four per cent of allegations assessed by the CCC during this time.

***Investigate independently of, or cooperatively with, the WA Police Force***

The CCC can conduct investigations independently of, or in cooperation with, the WA Police Force. It can draw on extensive powers available to it under the CCM Act to conduct these investigations. The CCC advises that investigations into allegations of excessive use of force generally involve use of the following powers:

- Notices to produce to the WA Police Force to obtain material such as use of force reports, internal investigation reports and CCTV footage from lock ups and other WA Police Force premises.
- Notices to produce to witnesses and subject officers to obtain documents and other things relevant to the investigation.
- Interviews and/or examinations of witnesses and subject officers.
- Reporting on the outcome of the investigation, which is usually tabled in Parliament if it contains opinions of serious misconduct and/or recommendations.<sup>284</sup>

Between 2016-2017 and 2018-2019 the CCC conducted four investigations (three independent and one cooperative) that arose out of excessive use of force allegations against WA Police Force officers. Collectively the four investigations contained 12 allegations. Three of these investigations were the subject of reports tabled in Parliament.<sup>285</sup> Since July 2015 the CCC has independently or cooperatively investigated around two per cent of police excessive use of force allegations.

### **3. Parliamentary Inspector of the Corruption and Crime Commission**

The police accountability model in WA is strengthened by having a mechanism to review action taken by the CCC. If an individual is dissatisfied with how the CCC has handled a matter, they can make a complaint to the Parliamentary Inspector of the Corruption and Crime Commission (PICCC).

When determining whether a complaint is properly assessed by the CCC, the PICCC may review the subject matter of the complaint. However, the PICCC does not perform an appellate role, and does not revisit the original findings of the CCC. Rather, the PICCC's role is to assess whether the complaint has been appropriately dealt with by the CCC.<sup>286</sup>

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<sup>284</sup> *ibid.*, pp. 8-9.

<sup>285</sup> Corruption and Crime Commission, *Report into a taser incident on 31 March 2017 at Fremantle*, Western Australia, 21 March 2018; Corruption and Crime Commission, *Review of police response to an incident in High Street Mall Fremantle on 3 September 2017*, Western Australia, 7 February 2019; and Corruption and Crime Commission, *Report on an incident in the Fremantle Offender Management Area 1 January 2017*, Western Australia, 28 February 2019. See Submission 6, Corruption and Crime Commission, p. 8.

<sup>286</sup> Joint Standing Committee on the Corruption and Crime Commission, *Examination of the 2004-2005 Annual Report of the Parliamentary Inspector of the Corruption and Crime Commission*, April 2006, p. 2.

The PICCC plays a critical function in providing oversight of the CCC by assessing the effectiveness and appropriateness of the CCC's procedures, pursuant to the CCM Act. Further key aspects of the PICCC's role include making recommendations to the CCC and to Parliament as well as preparing and tabling reports in Parliament relating to the work of the CCC.<sup>287</sup>

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

The framework for overseeing allegations of police misconduct in WA incorporates oversight of the CCC by the Joint Standing Committee on the Corruption and Crime Commission (the Committee). The Committee is responsible for monitoring and reporting to Parliament on the exercise of the CCC and PICCC's functions.

While the Committee is able to look at any matter involving CCC or PICCC oversight it does not tend to investigate individual matters. It does refer matters to the CCC or PICCC.

The Committee also reports to the Parliament on systemic or high level matters, this report being one example of this function.

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<sup>287</sup> *Corruption, Crime and Misconduct Act 2003*, s. 195.

## Appendix Seven

### Improving confidence in the complaints process—examples from other jurisdictions

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#### Independent Office for Police Conduct

In England and Wales, the Independent Office for Police Conduct (IOPC) provides independent supervision of the police complaints system, independent appeals and independent investigation of the most serious cases.

The IOPC has a strong focus on improving public confidence and identifies how '[m]aintaining public confidence in policing by independent and effective scrutiny is vital to a society where we are policed by consent.'<sup>288</sup>

A key component of the IOPC's work in building public confidence revolves around its engagement with the public. The IOPC undertakes regular surveys of the public to assess the public's perceptions and awareness of the police, the police complaints system and the work of the IOPC. The IOPC collects data from survey results, which 'provides a detailed insight into the public's confidence in the police complaints system.'<sup>289</sup> These insights allow the IOPC to track levels of confidence and inform its operations.

#### IOPC public perception surveys

The IOPC identifies how questions asked through its public perception surveys have included and focussed on:

- awareness of the IOPC
- people's perception of the IOPC's impartiality
- how likely people are to make a complaint about the police
- their views about how the police deal with complaints
- what people would like to happen as a result of them making a complaint
- the barriers and challenges people think exist to making a complaint
- priority areas for the IOPC to identify learning for the police

Source: Independent Office for Police Conduct, *Public confidence and engagement*, accessed 26 August 2020, <<https://policeconduct.gov.uk/research-and-learning/statistics/public-confidence-and-engagement>>.

An example of how the IOPC utilises its research in this space to improve its operations relates to engagement with young people. The IOPC identified from research that young people have lower levels of confidence in the police complaints system, are less willing to complain and are less likely to have heard of the IOPC.<sup>290</sup> In response to these findings, the

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288 Independent Office for Police Conduct, *Making a difference: Impact report 2018/19*, London, August 2019, p. 3.

289 Independent Office for Police Conduct, *Public confidence and engagement*, accessed 26 August 2020, <<https://policeconduct.gov.uk/research-and-learning/statistics/public-confidence-and-engagement>>.

290 Independent Office for Police Conduct, *Making a difference: Impact report 2018/19*, London, August 2019, p. 29.

IOPC established a youth panel to explore how it could improve young people's confidence in the system.<sup>291</sup>

### **Office of the Police Ombudsman for Northern Ireland**

The Police Ombudsman undertakes independent investigations of complaints about the police in Northern Ireland.

Similarly to the IOPC, the Police Ombudsman places a strong focus on establishing and ensuring public confidence through engagement. The Police Ombudsman undertakes research into the effectiveness of police policies and practices and will use methods such as public surveys, focus groups and one-to-one interviews.

The Police Ombudsman also surveys police officers and complainants about their satisfaction with the service provided by the Police Ombudsman's Office. In an aim to ensure that it is effectively providing services to all sections of the local community, the Police Ombudsman analyses equality monitoring questionnaires filled in by complainants.<sup>292 293</sup>

The Police Ombudsman regularly publishes reports on survey results relating to the complaints system.

#### **Police Ombudsman public perception surveys**

The report *Public Awareness of the Police Complaints System in Northern Ireland* is a recent example of the Police Ombudsman's public perception surveying work. The report includes figures relating to the following areas broken down by gender, age group and religion:

- awareness of the Police Ombudsman for Northern Ireland
- perception of independence of the Police Ombudsman
- confidence that complaints are dealt with in an impartial way
- perception of being treated fairly if they made a complaint
- perception the Police Ombudsman helps ensure police do a good job

Source: Office of the Police Ombudsman for Northern Ireland, *Annual Survey Results: Public Awareness of the Police Complaints System in Northern Ireland, 2019*, Belfast, 17 June 2020, p. 3.

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291 *ibid.*

292 Office of the Police Ombudsman for Northern Ireland, *The Police Complaints System in Northern Ireland*, Belfast, p. 21.

293 Office of the Police Ombudsman for Northern Ireland, *The Police Complaints System in Northern Ireland*, accessed 3 September, < <https://www.policeombudsman.org/PONI/files/f2/f27a5142-0c57-4d30-af26-ea963dfa43a7.PDF>>.





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