



Our Ref: 01512/2012 MS:KE.

20 July 2012

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

Dear Chairman

**COMMITTEE INQUIRY INTO HOW THE CORRUPTION AND CRIME COMMISSION HANDLES ALLEGATIONS OF POLICE MISCONDUCT AND NOTIFICATIONS OF REVIEWABLE POLICE ACTION**

I refer to your letter of 24 May 2012 regarding the inquiry by the Joint Standing Committee on the Corruption and Crime Commission ("the Committee") into how the Corruption and Crime Commission ("the Commission") handles allegations of Police misconduct and notifications of reviewable police action.

I note the Committee will inquire into and report on three particular areas. These are:

- how the Commission deals with allegations and notifications of Western Australia Police (WAPOL) misconduct;
- the impact of the Commission's practices in this regard on the capacity of WAPOL to deal effectively and appropriately with WAPOL misconduct; and
- how the Commission's practices in this regard compare to Police oversight bodies in other jurisdictions.

With respect to the three areas the subject of your inquiry I can advise you that, first and foremost, the Commission deals with issues of WAPOL misconduct in accordance with the *Corruption and Crime Commission Act 2003* ("the CCC Act"). The Commission's processes, procedures and practices in this regard accord with, and are informed by, the recommendations and findings of the *Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct By Any Western Australian Police Officer* (the Kennedy Royal Commission) and current research, literature and industry practice.

The Commission's approach can be characterised as one whereby the Commissioner of Police is appropriately and effectively held to account by the

Commission for issues of police behaviour, conduct and discipline. The Commission achieves accountability by two principal means. First, by conducting investigations into allegations of police misconduct under sections 32 or 33 of the CCC Act and secondly, by way of the Commission's various oversight activities. These activities include inquiries conducted under sections 22 and 41 of the CCC Act, the conduct of specific research focussed on corruption risks associated with police and corruption prevention initiatives.

In addition to causing the Commissioner of Police to have ultimate responsibility for matters of police misconduct, including responsibility for investigating particular incidents of suspected misconduct, the Commission's approach has brought about significant changes to WAPOL systems, policies and procedures of WAPOL and has caused long-term, sustained organisational and cultural change within WAPOL.

Comparisons with other jurisdictions' approaches to, and outputs arising from, oversight of police require care. By way of simple example, at the end of the 2010-2011 financial year the Office of Police Integrity (OPI) had a staff of 146 with an annual budget of \$22 million to oversight 15,500 sworn and unsworn members of the Victorian Police Force. While its legislative scheme differs markedly from that of Western Australia, the resources available to it are very similar to those available to the Commission for dealing with a jurisdiction of 149,000 public officers.

To the extent that it is possible to make relevant and meaningful comparison between the Commission's oversight of WAPOL and that of other similar bodies in other jurisdictions, the Commission's practices compare favourably.

Enclosed for your information are more detailed submissions concerning the three areas to be considered by the Committee. I thank you for the opportunity and trust that these submissions will be of use to the Committee.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Roger Macknay', with a large, stylized flourish at the end.

Roger Macknay QC  
**COMMISSIONER**

Encl.

# **SUBMISSIONS TO THE INQUIRY BY THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION INTO HOW THE CORRUPTION AND CRIME COMMISSION HANDLES ALLEGATIONS OF POLICE MISCONDUCT AND NOTIFICATIONS OF REVIEWABLE POLICE ACTION**

## **Introduction**

A point accepted generally and by the Corruption and Crime Commission (“the Commission”) is that policing, by its very nature, brings with it the increased opportunity for misconduct and the transgression of imposed standards by individuals who exercise the exceptional authority and extraordinary discretion given to them for the purpose of policing. In western democratic societies, police officers are empowered by the government and the community to maintain public order, quell civil disobedience and enforce the law. In this context, they may lawfully impose upon people’s basic civil liberties and have what has been described as “the monopoly on the legitimate use of physical force”, including deadly force. Frontline police officers in particular deal with issues of crime and anti-social behaviour which is often the result of, and driven by, complex social factors, not easily resolved by police intervention. In doing their jobs police officers are frequently required to respond swiftly to rapidly changing and frequently dangerous events. They are expected, and required, to exercise considerable initiative. This, combined with the wide range of discretionary powers available to police, can create circumstances in which the appropriateness of the police response to a particular situation is challenged.

Along with these inherent complexities it is recognised that the delivery of effective policing services in Australian jurisdictions, generally, is a difficult and challenging undertaking. With respect to Western Australia, there are some additional and unique policing challenges posed by the physical, geographical and cultural environment. Western Australia is the world’s largest single police jurisdiction, covering 2.5 million square kilometres with a population of 2.5 million people. To meet the demand for a disparate range of policing services Western Australia Police (WAPOL) has approximately 8,620 sworn and unsworn employees located across three police regions, 14 police districts and 157 police stations. The Western Australian jurisdiction extends to physically isolated, remote and regional centres, many of which are expanding rapidly. It also includes engaging with a variety of culturally and linguistically diverse communities as well as disenfranchised and vulnerable populations. For these reasons WAPOL is, necessarily, a complex and large organisation, particularly when compared with other Australian policing jurisdictions.

The unique nature of WAPOL, coupled with the nature of policing itself, requires a sophisticated and long-term view of the question of oversight of police by the Commission. The Commission’s activities are concerned with, and produce, two types of change within WAPOL. First, focus is given to the policies, procedures and practices of WAPOL in order to reduce the risk of misconduct occurring and going undetected and/or unreported. This focus relates broadly to how police officers perform their work. The second aspect relates to the organisational culture that provides a context to their work. Whereas the first deals with more tangible and immediate outcomes, the task of producing enduring and meaningful changes in police culture is a far more complex and long-term undertaking.

This submission deals with the inquiry by the Joint Standing Committee on the Corruption and Crime Commission (“the Committee”) into how the Commission handles allegations of police misconduct and notifications of reviewable police action in three parts.

## **PART 1**

### ***How the Corruption and Crime Commission deals with allegations and notifications of WAPOL misconduct***

#### **Background**

The principle that underlies the Commission’s handling of allegations of police misconduct and notifications of reviewable police action is that the Commissioner of Police is, and must be, responsible for dealing with issues of police misconduct. This principle is founded on the recommendations of the *Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct By Any Western Australian Police Officer* (“the Kennedy Royal Commission”). The Kennedy Royal Commission *Interim Report* of December 2002 recommended that the Commission be established as an oversight body in an arrangement where “the Commissioner of Police should retain the primary responsibility for managing the discipline of the Police Services”.<sup>1</sup> In the *Interim Report* it is stated that:

*... it is generally accepted that Commissioners of Police should bear the primary responsibility for the maintenance of discipline within their police services. That responsibility carries with it the primary obligation to investigate misconduct. Appropriately, police services investigate complaints about police conduct and conduct investigations for the purposes of identifying and profiling high risk areas and officers. Consistent with that approach, the role of an external oversight agency is the oversight of those operations within the police service. Such oversight involves the scrutiny of the processes adopted by the police service in general, and individual investigations in particular. It also involves the external agency carrying out its own investigations into particular areas or officers. To enable such a system to operate, it is necessary to have a process whereby the Commissioner of Police advises the external agency of its internal operations, the complaints received and the progress and the outcome of its investigations into them. The external agency could then discharge its function by identifying the conduct it wishes to investigate and by otherwise maintaining supervision of the investigations carried out by the police service. Such a system would preserve the primary responsibility of the Commissioner of Police to maintain discipline in the police service, but also puts in place a mechanism whereby the external agency can ensure that this responsibility is being properly discharged.*<sup>2</sup>

---

<sup>1</sup> *Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct By Western Australian Police Officers, Interim Report*, December 2002, pp.44-45.

<sup>2</sup> *Ibid*, pp.66-67.

This principle was subsequently enshrined in section 7(B) of the CCC Act which states how the two purposes of the Act are to be achieved. In section 7(B)(3) it is stated that:

*The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.*

## **Overview of the Commission's Approach**

There are two main ways the Commission holds the Commissioner of Police to account for issues of police misconduct and gives effect to the Kennedy Royal Commission recommendations. First, after having conducted its own preliminary inquiries, the Commission may direct the Commissioner of Police to conduct an investigation into specific allegations determined by the Commission. The investigative activities undertaken are oversighted by the Commission at a number of key stages and/or come to form part of its organisational audit processes known as Systems-Based Evaluations.<sup>3</sup>

The second main way the Commission may hold the Commissioner of Police to account for issues of police misconduct is by conducting an investigation itself under either section 32 or section 33 of the CCC Act. Generally speaking, what distinguishes an investigation conducted by the Commission under these sections of the CCC Act from an investigation conducted by the Commissioner of Police is largely the relative complexity of the investigation. In circumstances where the matters are serious and complex, and/or require particular technical expertise, or the particular powers are only available to the Commission, the investigative activities in their entirety will be undertaken by the Commission. In matters which are less complex (though they may still be serious) and which do not require the particular investigative expertise or powers of the Commission, the bulk of the investigative activities will be conducted by WAPOL at the discretion of the Commission. A recent, partial exception to this principle is matters involving allegations of excessive use of force.

With respect to all matters it deals with a significant portion of the Commission's operational efforts are expended on issues of police misconduct and these efforts are considerable. In the 2011-2012 financial year the Commission dealt with 1,500 allegations concerning police misconduct. This accounted for 35 per cent of all allegations received by the Commission concerning Western Australian public authorities. Twenty-six per cent of the allegations received in relation to WAPOL were reviewable police actions. In the 2011-2012 financial year the Commission conducted 33 investigations under section 33 of the CCC Act into allegations of police misconduct. This represented 38 per cent of all section 33 investigations conducted by the Commission, including investigations concerned with allegations of excessive use of force. Furthermore, 14 investigations were conducted under

---

<sup>3</sup> The Corruption and Crime Commission's Systems-Based Evaluations (SBEs) examine the management of allegations of misconduct and reviewable police action by police districts and organisational units. The SBE process can be understood as an audit and allows the Commission to assess the capacity of individual organisational units and districts within Western Australia Police (WAPOL), as well as WAPOL generally, to deal with misconduct and reviewable police action. They provide a useful "health check" of the police organisation and culture.

section 32 of the CCC Act into alleged police misconduct. With respect to the Commission's overall operational effort, more than a quarter of that effort was focussed on dealing with issues of police misconduct

In order to cause the Commissioner of Police to take responsibility for misconduct, the Commission prefers to provide direction to and closely oversight the way in which WAPOL conducts its investigative activities; but it will not hesitate to investigate itself particular matters when the circumstances merit such action.

The decision about how allegations of misconduct will be dealt with, including those involving police misconduct, occurs after an inquiry conducted under section 22 of the CCC Act. This process is rigorous and can be understood as a preliminary investigation/inquiry insofar as there is a gathering and assessment of evidence. The extent of this process and what it involves is commensurate with the nature and circumstances of the matter. If the Commission decides to direct the Commissioner of Police to conduct an investigation, then it may closely monitor the progress of that investigation. The outcomes are subject to an inquiry process under section 41 of the CCC Act prior to the Commission accepting the matter as finalised.

The Commission provides key inputs at the beginning, throughout and at the conclusion of the investigative process. For ease, these have sometimes been referred to as the assessment, monitoring and review stage. However, the simplicity of these terms belies the nature of what occurs during these stages and the rigour involved. The Commission accepts, however, that some of these processes are not necessarily well understood or appreciated. This has perhaps contributed to a misappreciation about the degree to which the Commission holds WAPOL to account for police misconduct.

### **Section 32 and 33 Investigations**

Matters investigated by the Commission under sections 32 and 33 of the CCC Act ("section 32 and 33 investigations") are typically more serious and complex requiring the Commission's considerable technical expertise and capacity and/or investigative powers not available to WAPOL. The Commission has conducted 33 section 33 investigations in the 2011-2012 year representing 38 per cent of its total investigative effort. Typically, the number of section 33 investigations varies from year to year depending on the investigative complexity and resource intensiveness of the particular matters involved.

Although there is an argument that any matter involving an allegation of misconduct by a police officer is "serious" by virtue of the discretionary authority and trust placed in them by the government and community, which the Commission understands, it does not follow that by virtue of this appropriate investigative outcomes can only be reached by the Commission investigating all such allegations under sections 32 or 33 of the CCC Act. In the Commission's view, the intent of the CCC Act, as stated in its purpose and functions, is to cause appropriate action to be taken and to provide appropriate oversight of it. An alternative, and in the longer term more effective, approach to investigating matters itself can be achieved through the range of the Commission's oversight activities, which include inquiries conducted under sections 22 and 41 of the CCC Act.

## **Section 22 and 41 Inquiries**

Investigations undertaken by the Commissioner of Police are subject to appropriate inquiries by the Commission. These inquiries are conducted under sections 22 and 41 of the CCC Act.

### **(a) Section 22 Inquiries**

Upon receipt of information suggesting possible misconduct by a police officer, including reviewable police actions<sup>4</sup>, the Commission conducts an inquiry pursuant to section 22 of the CCC Act ("section 22 inquiries"). The purpose of this action includes determining whether the allegations fall within the jurisdiction of the Commission, the seriousness of the allegations involved and the relative complexity of the matter from a practical investigative point of view.

When the Commission's inquiries determine that the matter is to be investigated further the decision about whether the investigation is to be conducted by the Commission or the Commissioner of Police is guided by certain criteria. Those include: the seriousness and complexity of the matter; whether the particular expertise or powers of the Commission are required; the seniority of the police officer to whom the matter relates; whether serious misconduct (as defined by section 3 of the CCC Act) has or may have occurred; and whether there is any reason why the Commissioner of Police is unable to, or should not, conduct the investigation.

The availability of Commission resources is, as a matter of course, factored into the decision-making process. In this regard it is important to note that the Commission can, and does, draw on and utilise the outcomes of investigations whether they be conducted by WAPOL or the Commission. Often it is more efficient and effective to utilise the resources of WAPOL so that Commission resources are available for more complex (but no less serious matters) in which particular technical expertise and/or specific statutory powers are required.

### **(b) Monitoring Police Investigations**

Once a matter has been referred to the Commissioner of Police for investigation the Commission may monitor its progress through a number of activities. In addition to individual Commission case officers assigned to monitor particular matters that have been referred to the Commissioner of Police for investigation, the Commission's internal governance arrangements and processes ensure appropriate attention is given to their progress.

The Commission's monitoring includes, but is not limited to:

- examining WAPOL investigation files;
- the provision of regular reports by WAPOL to the Commission specifying the actions taken and the timeframes involved;
- regular formal and informal status updates to the Commission;
- monitoring the time taken by WAPOL to complete the investigative tasks; and

---

<sup>4</sup> "Reviewable police action" is defined by section 3 of the *Corruption and Crime Commission Act 2003*. The Commissioner of Police is required to notify the Corruption and Crime Commission of such action by a police officer.

- where necessary, regular meetings with the Superintendent in charge of the WAPOL Internal Affairs Unit (IAU), by whom verbal briefings are provided.

Should the Commission consider at any stage of an investigation that the Commissioner of Police should no longer have responsibility for the investigation, or that the expertise and powers of the Commission are needed in order for an appropriate investigative outcome to be achieved, the Commission may direct WAPOL to discontinue its investigation. It is not uncommon for the Commission to take this action. In such cases the Commission assumes responsibility for the investigation in its entirety.

### **(c) Section 41 Inquiries**

At the completion of an investigation referred to the Commissioner of Police the Commission may conduct an inquiry as to the adequacy and appropriateness of the investigation under section 41 of the CCC Act ("section 41 inquiries"). This stage is important not only for finalising the particular matter and providing independent assurance as to its adequacy, but also in terms of the Commission's overall intelligence, profiling and analytical activities. The information and outcomes gathered during inquiries inform future Commission activities and operations.

Section 41 inquiries address the following considerations:

- whether all the relevant issues and lines of inquiry have been addressed, which includes the specific allegations identified for investigation and any issues or further matters identified during the investigation;
- whether all reasonable available evidence and information has been obtained and analysed;
- whether any complainant(s) and all relevant witnesses have been interviewed;
- whether the evidence has been considered in an objective way, free from bias or influence;
- what other action (such as disciplinary action) has been taken and the appropriateness of such action;
- whether all relevant policies and procedures have been considered;
- whether any systemic issues have been identified and how they have been dealt with;
- what recommendations have been made to improve shortcomings in processes or practices revealed during the course of investigations; and
- whether any recommendations made have been implemented.

The Commission routinely conducts very comprehensive inquiries during which it often identifies areas where further inquiry is needed. This may be undertaken by the Commission or the Commissioner of Police depending on the circumstances.

As a result of the section 41 inquiry process, the Commission may take the following action. It may:

- refer particular issues back to the Commissioner of Police for additional action if shortcomings have been identified in the way in which the matter has been dealt with;
- make further enquiries and/or interview witnesses;
- gather additional evidence;



- refer the matter for possible further investigation by the Commission under sections 32 or 33 of the CCC Act;
- refer systemic issues arising from the review for consideration by the Commission's research and/or prevention arms; and/or
- finalise inquiries and advise the Commissioner of Police of the Commission's opinion as to the appropriateness of the manner in which the investigation was managed and the outcomes reached.

### **Subsequent Activities**

Many of the Commission's activities are proactive, that is, non-allegation driven undertakings. The data and outcomes collected for all "closed" investigations and inquiries are used for sector profiling, case studies, research and education and corruption prevention activities. The Commission has a considerable store of data and intelligence concerning WAPOL and police officers, much of which has been gathered from routine preliminary inquiries and monitoring and review inquiries.

### **Police Use of Force Matters**

Since Commissioner Roger Macknay QC commenced as Commissioner, he has caused a number of changes to be made to the procedures the Commission adopts in dealing with allegations of excessive use of force by police. Furthermore the Commission's Corruption Prevention and Education Directorate has been reorganised to allow a greater emphasis to be placed on the oversight and capacity development of WAPOL, as well as allowing for more police-related research to be conducted. Since this reorganisation, it has been estimated that the percentage of overall effort directed toward WAPOL misconduct matters has increased by around 100 per cent.

### **Capacity Development**

Section 7(A) of the CCC Act defines the Commission's two main purposes. One of these is:

*to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.*

To give effect to this purpose with respect to WAPOL, the Commission assists the Commissioner of Police in developing and enhancing WAPOL's capacity to prevent, identify and deal with misconduct. This is achieved through a number of Commission oversight activities already identified, namely section 32 and 33 investigations, section 22 and 41 inquiries, research and projects related to police and other oversight activities.

- The Commission recently established a dedicated Police Capacity Development Team that deals with WAPOL-related matters. This includes consideration of all allegations of excessive use of force, the conduct of police SBEs and the identification and conduct of specific projects and research. The Commission is also undertaking a number of projects and research related to WAPOL and policing more generally.
- Among the Commission's current projects is an investigation into WAPOL's Briefcase system, this is, the system for recording and progressing charges against alleged offenders. This investigation stems from the identification of

system-wide failures to progress around 9,000 charges. Of concern to the Commission are the issues of systems failure, neglect of duty, failure in supervision and potential misconduct by individual officers. The Commission's investigation includes, but is not limited to, the adequacy of WAPOL's response to the issues.

- In partnership with a number of universities and academics the Commission is also conducting specific research focussed on corruption risks associated with policing and use of force reporting. Such research contributes to and allows for an informed, evidence-based approach to dealing with issues of policing and police misconduct. It will inform future operations, targeted investigations, and prevention and education activities.

## **Conclusion**

Directing the Commissioner of Police to conduct many of the routine investigations into police misconduct, which do not involve a particular degree of complexity or require the specific technical expertise or powers of the Commission, achieves a number of things.

- (a) It makes the Commissioner of Police ultimately responsible for issues of police misconduct and holds him to account for this responsibility.
- (b) It allows the same investigative outcomes to be reached without Commission resources being expended on routine cases.
- (c) It ensures that the Commission's technical expertise and considerable invasive powers are not "misdirected" toward matters that are serious but are not so complex as to warrant that degree of Commission involvement.
- (d) It allows investigative outcomes to be strategically used to inform the Commission's targeted operations and activities and research program as they relate to police corruption and misconduct.

In many respects the true extent and nature of what is involved in the Commission's section 22 and section 41 inquiries and other oversight activities, as they relate to police misconduct, is not always fully appreciated. This has contributed to a misconception within some sections of the community that the Commission does not effectively deal with or investigate matters of police misconduct. This is simply not the case. Although the Commission for the most part will not conduct the bulk of investigative tasks involved in all of the misconduct matters that come to its attention, this should not be mistaken for failing to investigate or inquire into issues of police misconduct.

## **PART 2**

### ***The impact of Corruption and Crime Commission practices on the capacity of the WAPOL to deal effectively and appropriately with police misconduct***

#### **Background**

The Commission assesses the capacity of the Commissioner of Police and WAPOL to deal effectively and appropriately with misconduct in two ways. The first is in regard to WAPOL's ability to effectively investigate and regulate itself, that is, its internal mechanism for dealing with issues of misconduct, including internal

investigations into specific allegations of misconduct. The second is the ability of its organisational systems and cultures to withstand and resist misconduct generally.

The Commission has brought about change in these two areas by two principal means. First, it has made and overseen specific recommendations for change. These recommendations are contained in Commission reports made to the Parliament of Western Australia or the Committee or a Minister under the CCC Act. Second, the Commission has effected and brought about change to WAPOL's organisational systems and cultures. It has done this for the purpose of improving WAPOL's ability to prevent, identify and deal with misconduct, and includes overseeing WAPOL's implementation of the recommendations of the Kennedy Royal Commission.

Since the Commission's establishment in 2004 there has been discernible improvement in WAPOL's capacity to prevent, identify and deal with misconduct. Without the Commission's oversight many of these improvements would not have occurred.

The following section of this submission considers the two ways the effectiveness of the Commission's oversight can be assessed.

### **WAPOL'S Internal Misconduct Management Mechanism**

Before considering the changes made to WAPOL's internal misconduct management mechanism as a result of the Commission's activities it is useful to explain how this mechanism functions.

The mechanism itself consists of a number of interventions. This is because there is a spectrum of behaviours and conduct that can be understood as "inappropriate", some of which potentially lead to misconduct. The goal of organisations such as WAPOL should be to identify and deal with those behaviours before they manifest as, or result in, misconduct and corruption. Consequently, WAPOL's disciplinary/internal investigation system works in conjunction with the wider system for managing performance and conduct.

WAPOL's internal investigations into allegations of misconduct typically focus on more serious allegations such as discharge of firearms, excessive use of force or deaths in custody. They are conducted by the IAU and in police districts. Internal investigations conducted in police districts are oversighted and subject to quality control processes<sup>5</sup> by the Police Complaints Administration Centre (PCAC). Both IAU and PCAC are part of the Professional Standards Portfolio.

WAPOL uses a range of management interventions to deal with low-level performance/conduct issues, allegations of less serious misconduct and police reviewable action, such as breaches of policy and complaints about service delivery. These interventions may include: Local Complaints Resolution; Desktop Resolution; and Short Format Investigations.

---

<sup>5</sup> The "quality control process" refers to the process by which Western Australia Police review internal investigations to ensure that, in relation to a matter, all the allegations have been identified and dealt with appropriately, all the evidence has been gathered and considered, and that the investigation outcomes are appropriate.

## **Reforms Made to WAPOL's Internal Misconduct Management Mechanism**

As a result of the Commission's activities and influence a number of reforms have been made to WAPOL's internal misconduct management mechanism. Some of these were a direct result of recommendations made by the Commission and the Kennedy Royal Commission. Others were generated from within WAPOL, reflecting the increased maturity of WAPOL's misconduct mechanism and the organisation's attitude toward issues of conduct and integrity generally.

Reforms include the following.

- **IAU Investigations** – as a result of the Commission's influence, changes have been made to the IAU Charter requiring that particular cases, previously able to be investigated in police districts, are now investigated by IAU as a matter of course. These include matters involving:
  - high-level use of force i.e. persistent Taser use, use of serious force after surrender, or discharge of a firearm;
  - deaths in custody;
  - deaths in police presence;
  - shootings involving deaths;
  - discharge of firearms;
  - emergency driving resulting in death; and
  - deaths in which police involvement was a contributing factor.

Furthermore, PCAC review the quality of all investigations conducted by IAU to ensure that the matters have been investigated fully and properly, and that the outcomes reached are appropriate.

These changes have brought increased centralised management and mandatory investigation of particular matters by IAU. This has resulted in improved processes and higher quality outcomes.

- **PCAC oversight and review** - following recommendations made by the Commission PCAC have a far greater and more effective oversight and review role within WAPOL. This includes overseeing all investigations conducted at the district level and reviewing them upon completion. Enhanced oversight has improved the general timeliness and quality of investigations conducted by WAPOL. It has also contributed to improved transparency and accountability with respect to internal investigations.

Greater and more effective communication has also been achieved between the PCAC and police districts. This has allowed for more effective oversight and assurance of internal investigations by District Governance Officers located within district offices, in collaboration with PCAC.

- **Local Complaints Resolution, Short Format Investigations and Desktop Resolution** – as a result of the Commission's oversight and influence, a number of changes have been made to WAPOL's management of those

matters which do not involve more serious misconduct allegations. These changes include:

- the development of an internal investigations manual;
- the development of shortened format for investigation reports;
- improvements to the Desktop Resolution process; and
- improvements to the handling of allegations of a “minor” nature.

These changes have brought increased consistency, accountability and transparency to the management of disciplinary and conduct matters. They have also enabled more timely and appropriate responses to complaints to be made.

- **Criminal Versus Disciplinary Matters** - with the oversight and input of the Commission, WAPOL has amended its procedures to better deal with disciplinary/internal investigations in which criminal conduct is alleged. When criminal conduct is alleged the criminal aspects to the matter are investigated as crimes, separately to the other conduct.

Related to this overall approach internal investigations that involve allegations of unauthorised access to and the release of confidential information now address the issue of the potential criminality of the conduct.

- **Loss of Confidence** - following the recommendations of the Kennedy Royal Commission, provisions were introduced allowing “loss of confidence action” to be taken by the Commissioner of Police when officers are identified, through an internal investigation, as having engaged in misconduct. Such action enables the termination of an officer’s employment. Since 2004, loss of confidence action has been taken against 198 officers. The employment of forty-nine officers has subsequently been terminated as a result of this action or disciplinary action (see below).

The introduction, and appropriate use of, the loss of confidence provisions has provided an important tool for the Commissioner of Police, allowing him to respond to misconduct swiftly and effectively.

- **Disciplinary and Managerial Action** - with greater understanding of the relationships and possible connections between performance and general conduct issues and incidents of misconduct and corruption, WAPOL has made changes to its approach toward disciplinary and managerial action. The organisation is increasingly responding to problematic behaviour before it manifests as misconduct or corruption using disciplinary provisions or managerial options.

Additionally, there is greater organisational preparedness by WAPOL to take disciplinary action where necessary. Since 2004, 199 disciplinary charges have been preferred against 127 officers. Additionally, 5,670 managerial actions have been taken against 3,126 officers.<sup>6</sup>

---

<sup>6</sup> “Managerial action” covers a range of actions including counselling, training, close supervision and the implementation of employee action plans.

The significance of the reforms made in the key areas identified above is that they have brought:

- greater transparency and accountability to internal investigations;
- increased centralised oversight and review of internal investigations;
- improved investigative practices;
- better management of matters involving criminal conduct;
- effective early intervention in conduct and behaviour issues before they manifest as misconduct;
- improved timeliness in the management of investigations and complaints resolution; and
- greater organisational focus on issues of misconduct and professional standards.

### **WAPOL's Misconduct and Corruption Resistance**

As a result of the Commission's oversight, improvements have occurred in WAPOL's overall ability to resist misconduct and corruption. WAPOL has made the following major changes.

- **Early Intervention Program** - this program was recommended by the Kennedy Royal Commission, with its implementation overseen by the Commission. The program monitors a number of behavioural and environmental indicators to identify those officers most at risk of engaging in corruption or misconduct.
- **Integrity Testing Program** - in conjunction with its early intervention program, WAPOL introduced an integrity testing program in order to target officers most at risk of engaging in corruption or misconduct. The program continues to be an effective risk management tool enabling officers prone to engaging in corrupt conduct to be detected and removed if necessary.
- **Random Drug and Alcohol Testing** - recommendations made by the Kennedy Royal Commission included recommendations for random drug and alcohol testing. Following continued encouragement<sup>7</sup> by the Commission, WAPOL has recently introduced such a program.
- **Property Management Framework** - as a result of a joint WAPOL and Commission investigation, and recommendations made by the Commission, WAPOL made significant changes to its systems and procedures for property management, movement and recording.<sup>8</sup> The misconduct and corruption risks associated with property management were significantly reduced as a result of these changes.

---

<sup>7</sup> See "Two Years Out": A Report of the First Two Years of the Western Australia Police Reform Program, (tabled in the Parliament of Western Australia ("the Parliament") on 3 August 2006).

<sup>8</sup> See the *Western Australia Police Property Management Practices: Report of a Joint Inquiry By Western Australia Police and the Corruption and Crime Commission*, (tabled in the Parliament on 19 December 2005) and *Western Australia Police Property Management Practices: Report on the Progress of Recommendations Contained in the 2005 Joint Inquiry By Western Australia Police and the Corruption and Crime Commission* (tabled in the Parliament on 4 December 2009).

- **Improved Taser Weapon Use** - the Commission's investigative and research activities<sup>9</sup> concerning Taser use, conducted over a considerable period, brought about change to WAPOL's procedures, policies and practices for Taser weapon use. They also contributed to an important cultural shift in terms of how the organisation and its people regard use of force generally. This is reflected in the reduction in Taser weapon use generally and the degree to which such use of force is now subjected to review and scrutiny by the organisation.

These initiatives have contributed to WAPOL's misconduct and corruption resistance by:

- enabling WAPOL to detect and remove officers engaging in misconduct or corrupt conduct at an early stage;
- enabling WAPOL to deal with issues of general conduct and professionalism before they manifest in acts of corruption or misconduct;
- reducing the extent to which police organisational systems and cultures are exposed to specific and general misconduct risks; and
- placing a high organisational and cultural emphasis on issues of good conduct and professionalism.

## **PART 3**

### ***How the practices of the Corruption and Crime Commission' compare to police oversight bodies in other jurisdictions***

#### **Background**

Australian police oversight bodies have the same broad approach, and share a similar philosophical starting point, with respect to police misconduct, that is, that Commissioners of Police have ultimate and primary responsibility for issues of police behaviour, conduct and discipline. The purpose and functions of police oversight bodies, therefore, is to appropriately and effectively hold Commissioners of Police to account for this responsibility. The manner in which this is achieved by the various oversight bodies is, at a broad level, common. However, because of differences in the origins, operating environments, roles and statutory arrangements of police oversight bodies, meaningful comparison is difficult. A cautious approach to comparing the practices of police oversight bodies is needed. However, to the extent that useful comparisons can be made, the Commission's practices and outputs compare favourably.

In 2009 the Commonwealth Parliamentary Joint Committee on the Commission for Law Enforcement Integrity ("the Commonwealth Committee") *Inquiry into Law Enforcement Integrity Models* reported on its examination into various state-based

---

<sup>9</sup> These are detailed in the report on *The Use of Taser® Weapons by Western Australia Police* (tabled in the Parliament of Western Australia ("the Parliament") on 4 October 2010). See also, *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser® Weapons by Officers of the Western Australia Police and the Department of Corrective Services* (tabled in the Parliament on 16 April 2012).

police oversight integrity models.<sup>10</sup> The inquiry noted some of the similarities between the Commonwealth body, the Australian Commission for Law Enforcement Integrity (ACLEI) and those of New South Wales, Queensland, Victoria and Western Australia. It noted that the four states have external law enforcement integrity agencies in place and, that like ACLEI, operate according to an inquisitorial investigative system.<sup>11</sup> Importantly the Commonwealth Committee reported that, while sharing some fundamental features with respect to misconduct, prevention and education, and organised crime, “these agencies vary in terms of function and breadth of jurisdiction”.<sup>12</sup>

Of note, the Commonwealth Committee reported on the distinction emerging between anti-corruption agencies, like the Commission, and complaint management agencies which fundamentally inform the practices of agencies. The Commonwealth Committee was told that:

*Complaint management agencies are generally process focussed. They are about ensuring that each individual has meaningful recourse to the misapplication of authority. Management systems in the subject agency may improve on account of an effective complaints management process, but this is a secondary issue to ensuring that a worthwhile complaint process is in place and operating effectively.*

*Anti-corruption agencies are more outcomes focussed. They are about impacting on the standards of integrity of designated agencies. Their actions may be based on complaints made to them, but these are a resource for them, not their raison d'être. They are not required to deal with all complaint matters/information sources equally. Rather, they steer their resources to where they can maximise their impact on integrity standards.*<sup>13</sup>

The purpose of the next section of this submission is to provide some comparison between the Commission, and the jurisdiction of Western Australia, and other state-based integrity and police oversight bodies. A considerable issue in this regard is the problematic use of terms. There is no common language between bodies providing a basis for comparison of practices. Furthermore, how the various bodies report on their practices and outputs differ.

By way of simple example, the New South Wales Ombudsman reports annually on the number of formal and informal complaints made about police. For 2010-2011, this figure was 5,000. However, this figure appears to include informal enquiries or contact with the agency, rather than what the Commission might term “complaints”. Of the figure provided by the New South Wales Ombudsman only 60 per cent were “directly assessed” by the Ombudsman.

With respect to annual report figures provided by the Queensland Crime and Misconduct Commission for the 2010-2011 financial year, the agency reported on the

---

<sup>10</sup> Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity report on the *Inquiry into Law Enforcement Integrity Models* (tabled in the Commonwealth Parliament, February 2009).

<sup>11</sup> *Ibid*, p.9.

<sup>12</sup> *Ibid*.

<sup>13</sup> *Ibid*, p.8.



number of allegations of police misconduct investigated, which was 280 allegations, not the number of investigations conducted into allegations of police misconduct, which was 96. This example demonstrates that caution is needed in trying to use terms such as “complaints”, “allegations” or “matters” interchangeably or assuming that they refer to the same thing. Similar problems are encountered with terms like “closely reviewed”, “oversighted”, “case reviewed” and “reviewed but not subject to oversight” which are variously used by oversight bodies.

The Commission works closely with Australian oversight bodies generally, liaising and exchanging ideas and exploring alternative approaches. For this reason the Commission is aware of the similar practices between bodies, particularly with respect to corruption prevention and education, research and capacity development activities. Arenas such as the Australian Anti-Corruption Commissions Forum and the Australian Public Sector Anti-Corruption Conference provide useful opportunities for this exchange. However, there is insufficient published data enabling a useful comparison to be made between the Commission’s police capacity development and research programs and those of other jurisdictions.

### Western Australia

In the 2011-2012 financial year the Commission received 1,007 notifications or reports containing 1,500 allegations of police misconduct. This accounted for 35 per cent of all allegations received by the Commission concerning Western Australian Public Authorities. Twenty-six per cent of the WAPOL-related allegations were reviewable police actions.

The following table provides a breakdown of the eight highest categories of allegations of police misconduct:

<b>Allegation Category<sup>14</sup></b>	<b>Percentage of Total Allegations Concerning WAPOL</b>
Assault – Physical/Excessive Use of Force	15
Neglect of Duty	13
Unprofessional Conduct – Demeanour/Attitude/Language	11
Breach of Code of Conduct/Policy/Procedures	11
Failure to Act	6
Misuse of Computer System/Email/Internet etc.	5
Bullying/Intimidation/Harassment	5
Breach of Confidentiality/Misuse of Information/Improper Disclosure	4

**Table 1: 2011-2012 Police Misconduct Allegations By Category**

In the 2011-2012 financial year the Commission undertook:

<sup>14</sup> This table provides figures for the eight highest categories of allegations which amount to 70 per cent of all allegations of police misconduct.

- 33 section 33 investigations into police misconduct, which constituted 38 per cent of all section 33 investigations conducted by the Commission;
- 14 section 32 investigations into police misconduct;
- section 22 inquiries in relation to 1,500 allegations of alleged police misconduct; and
- section 41 inquiries in relation to 316 cases of police misconduct.

The Commission has an establishment of 154 staff to oversight approximately 149,000 public officers. Of those, 8,620 are sworn and unsworn WAPOL employees. WAPOL employees represent around six per cent of the total public sector. However, WAPOL misconduct constitutes 38 per cent of the Commission's section 33 investigations and 40 per cent of the effort of the Corruption Prevention and Education Directorate. In all, this employee group, which represents six per cent of the sector, receives around a quarter of the Commission's total operational effort.

## Comparison of Australian Oversight Bodies

The below table contains data for Australian oversight bodies. The data for the Commission relates to the 2011-2012 financial year and the data for all other bodies is taken from 2010-2011 Annual Reports.

State	State Population '000	Oversight Agency	Jurisdiction	Over sight FTE	Police FTE	Allegations of Police Misconduct	No of Police Internal Investigations "Oversighted"	Investigations Oversighted as a Percentage of Allegations Received	No of Police Investigations Conducted by Oversight Agency
Western Australia	2,387.2	Corruption and Crime Commission	Police and wider public sector	154	8,620	1,500	316 <sup>3</sup>	21%	33
Queensland	4,513.0	Crime and Misconduct Commission	Police and wider public sector	337	15,149	6,430	205 <sup>4</sup>	3%	96 <sup>10</sup>
Tasmania	511.7	Tasmania Integrity Commission	Police and wider public sector	17	1,635	Data not available.	Data not available.	Data not available.	Data not available.
Victoria	5,574.5	Office of Police Integrity	Police only	146	15,555	651 <sup>1</sup>	156 <sup>5</sup>	24%	13
New South Wales	7,247.7	Police Integrity Commission	Police only	105	19,832	1,226 <sup>1</sup>	101 <sup>6</sup>	8%	9
		Ombudsman	Police and wider public sector	185		7,078	1,645 <sup>7</sup>	23%	Data not available
Commonwealth	370.7	Australian Commission for Law Enforcement Integrity	Police, Customs and Australian Crime Commission	26	6,898	53 <sup>2</sup>	Data not available.	Data not available.	Data not available.
		Ombudsman	Police and wider public sector	174		349 <sup>1</sup>	Data not available.	Data not available.	Data not available.
South Australia	1,645.0	Police Complaints Authority	Police only	12	5,707	1,250 <sup>1</sup>	105 <sup>8</sup>	8%	0

**Table 2: Comparison of Australian Police Oversight Bodies**

1. Reported in Annual Reports as "complaints", not "allegations".

2. Reported in Annual Report as "matters", not allegations.

3. Oversight via section 41 inquiries.

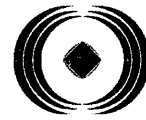
4. Reported as "case review".

5. Reported as "oversight".

6. Fifty-one reported as referred to police and subject to "oversight" and 50 reported as "reviewed but not subject to oversight".

7. Reported as "closely reviewed".

8. Reported as "reviewed".



CORRUPTION  
AND CRIME  
COMMISSION

Our Ref: 01512/2012 MS:KE

2 August 2012

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



Dear Chairman

**COMMITTEE INQUIRY INTO HOW THE CORRUPTION AND CRIME  
COMMISSION HANDLES ALLEGATIONS OF POLICE MISCONDUCT AND  
NOTIFICATIONS OF REVIEWABLE POLICE ACTION – AMENDMENT TO THE  
COMMISSION’S SUBMISSIONS**

I refer to submissions provided by the Corruption and Crime Commission (“the Commission”) dated 20 July 2012 regarding the inquiry by the Joint Standing Committee on the Corruption and Crime Commission (“the Committee”) into how the Commission handles allegations of police misconduct and notifications of reviewable police action.

It has come to my attention that an error was made in relation to a figure provided in Table 2 of the Commission’s submissions. Enclosed is an amended table with the relevant figure highlighted for the Committee’s information.

Yours faithfully

Mike Silverstone  
EXECUTIVE DIRECTOR

Encl.

## Comparison of Australian Oversight Bodies

The below table contains data for Australian oversight bodies. The data for the Commission relates to the 2011-2012 financial year and the data for all other bodies is taken from 2010-2011 Annual Reports.

State	State Population '000	Oversight Agency	Jurisdiction	Over sight FTE	Police FTE	Allegations of Police Misconduct	No of Police Internal Investigations "Oversighted"	Investigations Oversighted as a Percentage of Allegations Received	No of Police Investigations Conducted by Oversight Agency
Western Australia	2,387.2	Corruption and Crime Commission	Police and wider public sector	154	8,620	1,500	316 <sup>3</sup>	21%	33
Queensland	4,513.0	Crime and Misconduct Commission	Police and wider public sector	337	15,149	6,430	205 <sup>4</sup>	3%	96 <sup>10</sup>
Tasmania	511.7	Tasmania Integrity Commission	Police and wider public sector	17	1,635	Data not available.	Data not available.	Data not available.	Data not available.
Victoria	5,574.5	Office of Police Integrity	Police only	146	15,555	651 <sup>1</sup>	156 <sup>5</sup>	24%	13
New South Wales	7,247.7	Police Integrity Commission	Police only	105	19,832	1,226 <sup>1</sup>	101 <sup>6</sup>	8%	9
		Ombudsman	Police and wider public sector	185		7,078	1,645 <sup>7</sup>	23%	Data not available
Commonwealth	22,688.2	Australian Commission for Law Enforcement Integrity	Police, Customs and Australian Crime Commission	26	6,898	53 <sup>2</sup>	Data not available.	Data not available.	Data not available.
		Ombudsman	Police and wider public sector	174		349 <sup>1</sup>	Data not available.	Data not available.	Data not available.
South Australia	1,645.0	Police Complaints Authority	Police only	12	5,707	1,250 <sup>1</sup>	105 <sup>8</sup>	8%	0

**Table 2: Comparison of Australian Police Oversight Bodies**

1. Reported in Annual Reports as "complaints", not "allegations".
2. Reported in Annual Report as "matters", not allegations.
3. Oversight via section 41 inquiries.
4. Reported as "case review".
5. Reported as "oversight".
6. Fifty-one reported as referred to police and subject to "oversight" and 50 reported as "reviewed but not subject to oversight".
7. Reported as "closely reviewed".
8. Reported as "reviewed".