



Joint Standing Committee on the Corruption and Crime Commission

Improving the working relationship between the Corruption and Crime Commission and Western Australia Police

**Report No. 18
March 2015**

Parliament of Western Australia

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Joint Standing Committee on the Corruption and Crime Commission

Improving the working relationship between the Corruption and Crime Commission and Western Australia Police

Report No. 18

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 26 March 2015

Chairman's Foreword

The Joint Standing Committee initiated this Inquiry following concerns that the relationship between the Corruption and Crime Commission (CCC) and the WA Police (WAPOL) was not functioning as well as it might.

A series of matters were raised with the Committee by these two agencies since the commencement of the 39th Parliament which indicated that the working relationship was under some strain. These tensions relate to significant differences between WAPOL and the CCC over a diverse range of operational issues such as:

- the investigation by the CCC into a complaint made regarding the Commissioner of Police in October 2011;
- whether the CCC may include findings of fact in its reports over investigations involving police officers;
- limits on the CCC's access to WAPOL's IAPRO database and delays in CCC investigations;
- the lack of use of the CCC Act's exceptional powers by WAPOL;
- the use of section 42 notices by the CCC;
- CCC investigation of allegations of excessive use of force by police; and
- WAPOL investigations into criminal allegations against CCC staff.

The CCC and WAPOL provided a joint submission to the Committee in which they suggested that their "wide ranging and complex interactions can, from time-to-time, create tension" and that "tension between agencies that work in an investigative and review context is to be expected and is perfectly normal."

Whilst it is correct to describe tension in such relationships as "normal" and "to be expected", nevertheless the Committee's Inquiry sought to determine whether the expected tension could be described as "healthy" or "unhealthy".

The Committee met with the police forces and their respective oversight bodies in a number of similar interstate and overseas jurisdictions to ascertain and identify what constitutes an acceptable level of tension between agencies such as the CCC and WAPOL. The common message received by the Committee was that regular communication between the two agencies allows a level of 'healthy' tension to exist while not impeding their effectiveness. More specifically, a key measure of how effective the working relationship was between police and their oversight bodies was

the level of communication, especially informal communication, between the two respective Commissioners.

The Australian Federal Police and the police forces in Victoria and NSW schedule regular meetings between their Commissioners and the Commissioners or Chairs of their respective oversight agencies. Similarly, the police in Ireland, Northern Ireland and England also schedule regular meetings between the two Commissioners, and have more regular meeting of senior staff from the two agencies.

While other jurisdictions report that it is essential for an effective relationship that the Commissioners meet regularly, this has not been the case in Western Australia. Despite the expectation for such meetings in the current Memorandum of Understanding (MOU) between WAPOL and the CCC, the Committee was told that there had been no formal or informal meetings held between the Police Commissioner and the Corruption and Crime Commissioner for a five year period between 2009 and 2014. The Committee has also found that the MOU signed in 2009 by WAPOL and the CCC has not been amended since then. Negotiations underway since October 2014 on agreed amendments have not yet been concluded.

The Committee has made recommendations to WAPOL and the CCC on both the matters of communication and the MOU. It hopes that with the appointment of a new Corruption and Crime Commissioner the two agencies will institute a schedule of meetings to build their relationship and ensure that tensions between the two agencies do not affect the effectiveness of their working together to combat corruption and crime in Western Australia.

I would like to take this opportunity to thank all of the people in interstate and overseas jurisdictions who interrupted their own busy schedules to brief the Committee in a very open fashion on the operation of the agencies. I would also like to thank the former CCC Commissioner, Hon Roger Macknay QC; the Acting CCC Commissioners, Mr Neil Douglas and Mr Christopher Shanahan SC, and the WAPOL Commissioner, Dr Karl O'Callaghan APM, and their staff for assisting the Committee to complete this inquiry.

I would also like to thank my fellow Committee Members whose engagement with the Inquiry I very much appreciated; the Committee's Deputy Chairman, the Member for Albany, Mr Peter Watson MLA; the Member for Forrestfield, Mr Nathan Morton MLA, and the Member for the South West, Hon Adele Farina MLC. The Committee members were ably supported by the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan.

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

HON NICK GOIRAN, MLC
CHAIRMAN

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Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Minister representing the Attorney General 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

Finding 1

Page 6

Western Australia's anti-corruption framework is more comprehensive than that in Ireland, Northern Ireland and England as it includes a dedicated Parliamentary Inspector and Joint Standing Committee to oversight the activities of the Corruption and Crime Commission.

Finding 2

Page 8

The police oversight agencies in Ireland, Northern Ireland and the United Kingdom have an agreement with each other that allows them to call on senior staff and investigators from these other agencies to assist with their own inquiries to ensure public confidence in the outcomes of their inquiries.

Recommendation 1

Page 8

The Corruption and Crime Commission (CCC) should enter into dialogue with similar interstate oversight agencies to ascertain the viability of entering into an agreement to second their staff when an internal investigation of CCC staff is required.

Finding 3

Page 9

The Memorandum of Understanding between WA Police and the Corruption and Crime Commission has not been amended since it was signed in August 2009.

Recommendation 2

Page 9

An amended Memorandum of Understanding between WA Police and the Corruption and Crime Commission should be finalised by 30 June 2015.

Finding 4

Page 15

Lack of clarity about the power of the Corruption and Crime Commission to make findings of fact has been a source of tension between WA Police and the Commission.

Recommendation 3

Page 15

The Attorney General re-consider recommendation 4 in the Joint Standing Committee's Report No. 2, as supported by Ms Gail Archer SC, WA Police and the Corruption and Crime Commission (CCC) "That the CCC Act should be amended to make it clear that the CCC may include findings of fact in its reports", as is the case in interstate and international jurisdictions.

Finding 5

Page 18

The use of WA Police's IAPro database by the Corruption and Crime Commission is no longer a source of tension between these agencies.

Finding 6**Page 19**

The current definition of ‘organised crime’ in the *Corruption and Crime Commission Act 2003* (CCC Act) is a source of tension between WA Police (WAPOL) and the Corruption and Crime Commission as it frustrates WAPOL from accessing the ‘exceptional powers’ under Part 4 of the CCC Act.

Recommendation 4**Page 19**

The Attorney General should expedite an amendment to the *Corruption and Crime Commission Act 2003* to amend the definition of ‘organised crime’.

Finding 7**Page 22**

The Corruption and Crime Commission’s use of section 42 notices is an area of tension with WA Police.

Recommendation 5**Page 23**

The Corruption and Crime Commission and WA Police amend their Memorandum of Understanding to include an improved understanding of the use of section 42 notices.

Finding 8**Page 27**

The number of allegations about police officers and the manner of investigation by the Corruption and Crime Commission has been an area of tension between the two agencies.

Finding 9**Page 28**

Referrals by the Parliamentary Inspector to WA Police of criminal allegations about Corruption and Crime Commission staff has been a recent source of tension.

Finding 10**Page 31**

The Australian Federal Police and the police forces in Victoria and NSW schedule regular meetings between their Commissioners and the Chairs of their respective oversight agencies. More frequent operational meetings are also held by senior staff from the police and their oversight agencies. These meetings are an important factor in allowing these agencies to resolve any important differences they may have with each other.

Finding 11**Page 32**

In a similar fashion to those Australian jurisdictions it visited, the Committee found that the police in Ireland, Northern Ireland and England schedule regular meetings between their Commissioners and the Chairs of their respective oversight agencies. More frequent operational meetings are also held by senior staff from the police and their oversight agencies. These meetings are an important factor in allowing these agencies to resolve any important differences they may have with each other.

Finding 12**Page 33**

There were no meetings of the Joint Agency Steering Committee for a five year period between 2009 and 2014 despite the expectation for such meetings in a Memorandum of Understanding between the two agencies.

Finding 13**Page 34**

Regular meetings of the Joint Agency Steering Committee involving the Police Commissioner and the two CCC Acting Commissioners have not been held.

Recommendation 6**Page 34**

The Commissioner of the Corruption and Crime Commission and the WA Police Commissioner should ensure that future meetings of the Joint Agency Steering Committee are held at least quarterly and the minutes of the meetings are rapidly produced and distributed to members of the Committee.

Recommendation 7**Page 34**

The Commissioner of the Corruption and Crime Commission and the WA Police Commissioner should institute a schedule of formal meetings to build their relationship and ensure that tensions between the two agencies do not affect the effectiveness of their working together to combat corruption and crime in Western Australia.

Chapter 1

Overview of the Inquiry

...the Commission has a statutory function to oversee the way WA Police deals with misconduct allegations and reviewable police action. WA Police accepts that such oversight is appropriate and a necessary means of promoting public confidence in the police. Joint CCC-WAPOL Submission.

Introduction

The Joint Standing Committee initiated its *Inquiry into improving the working relationship between the Corruption and Crime Commission and the Western Australia Police* on 24 October 2013 following concerns that the relationship between the Corruption and Crime Commission (CCC) and the WA Police (WAPOL) was not functioning as well as it might.

Tensions between agencies that work in concert on some matters, yet have differing priorities, are to be expected and the Committee determined to see if the level of tension between these two agencies was influencing the operational effectiveness of the CCC, where the Committee's oversight responsibilities rest.

As is the case with many agencies who formally interact regularly with each other, the CCC and the WA Police have a Memorandum of Understanding (MOU) that governs matters such as the exchange of, and access to, information. Appendix Six includes the current version of this MOU. There was no single issue that was the catalyst for the Committee to embark on this inquiry but rather a series of matters that have been raised with the Committee by these two agencies since the commencement of the 39th Parliament. These are discussed in greater detail in Chapter 2.

Evidence gathering: local hearings

The Committee requested a submission to its Inquiry from both the Corruption and Crime Commission and the WA Police (WAPOL). The two agencies agreed instead to provide a single joint submission to the Inquiry. This can be found at Appendix Five. The Parliamentary Inspector of the CCC (PICCC) was also invited by the Committee to make a submission to this Inquiry.¹

The joint submission from the CCC and WAPOL proposed that after 10 years of operation, the relationship between the two agencies is effective and they "investigate

1 Submission No. 3 from Hon Michael Murray, QC, Parliamentary Inspector of the Corruption and Crime Commission, 26 February 2015.

Chapter 1

each other, conduct cooperative investigations, engage in joint investigations, disseminate intelligence to each other, share resources, exchange information and work cooperatively on inter-agency committees and working groups.”²

Following receipt of the joint submission, the Committee held separate closed hearings with both WA Police and the CCC in relation to the Inquiry. The Committee also discussed at these hearings the matters of possible misconduct at the CCC then being investigated by WAPOL at the request of the PICCC. These matters are not discussed in this report but will be the subject of a separate report to Parliament by the PICCC to be tabled later in 2015.

WAPOL and CCC joint submission to this Inquiry

In their joint submission to the JSCCC’s inquiry (see Appendix Five), the CCC and WAPOL both agreed that:

*...the Commission has a statutory function to oversee the way WA Police deals with misconduct allegations and reviewable police action. WA Police accepts that such oversight is appropriate and a necessary means of promoting public confidence in the police.*³

Later in their submission the two organisations suggested that their “wide ranging and complex interactions can, from time-to-time, create tension” and that “tension between agencies that work in an investigative and review context is to be expected and is perfectly normal.”⁴

Despite this statement in the joint submission, the Police Commissioner, Dr Karl O’Callaghan, in giving evidence to the Committee about it said that in the past 12 months the CCC had inhibited its communication so that it “has interfered with the ability for us to communicate frankly and openly on a whole range of issues around organised crime.” He said that this new situation was exemplified by the problems that WAPOL had in dealing with the CCC “in regard to the anti-fortification notice on the Le matter in Carabooda” and in the joint CCC/WAPOL “Operation Ulysses, which was looking at what was going on in the [State’s] prisons.”⁵

This experience had led the Police Commissioner to change his mind about the two agencies working together to deal with organised crime. In October 2010 the Committee reported to Parliament that the CCC and WAPOL had participated in a working group to examine the possibility of expanding the jurisdiction of the CCC to conduct organised crime investigations in cooperation with the WA Police. A proposed

2 Submission No. 2 from Corruption and Crime Commission and WA Police, 8 August 2014, p1.

3 Ibid.

4 Ibid.

5 Dr Karl O’Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 17 September 2014, p2.

model was submitted to the State Government. Dr O’Callaghan confirmed to the Committee that a key feature of the proposed model was the formation of a Reference Group to be chaired by him and the CCC Commissioner.⁶ He, however, now told the Committee:

I want to be put on record as saying that I think the Corruption and Crime Commission has to stick to police integrity and public sector corruption, and organised crime has to sit somewhere else, because I do not see the two things working hand in hand.⁷

The recent development of specialist police oversight agencies

At the heart of this so-called ‘normal’ tension is the fact that the CCC was established in 2004 with special investigatory powers after the Kennedy Royal Commission was established to enquire into allegations of serious misconduct and corruption within WAPOL.⁸ The CCC replaced the Anti-Corruption Commission which had previously had responsibility for police oversight.⁹

Historically, police have had their own internal integrity systems. In Western Australia, WAPOL has an Internal Affairs Unit. Since the 1970s much of the external oversight role of police conduct in Australia has been, and in some jurisdictions is still, undertaken by Ombudsmen. Larger Australian jurisdictions established new police oversight bodies following Royal Commissions or inquiries into their police forces at about the same time as the CCC was formed. For example:

- The Criminal Justice Commission in Queensland was established following the Fitzgerald Inquiry’s report in 1989. It later merged with the Crime Commission to form the Crime and Misconduct Commission (CMC). In late 2013 new legislation required the CMC to focus on serious misconduct and organised crime and the agency was renamed the Crime and Corruption Commission.¹⁰

6 Joint Standing Committee on the Corruption and Crime Commission, *How the Corruption and Crime Commission can best work together with the Western Australian police Force to combat organised crime*, 9 September 2010, p37. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/00A697A1AC8EB562482578310040D2A1/\\$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+to+combat+organised+crime.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/00A697A1AC8EB562482578310040D2A1/$file/Report+How+the+CCC+can+best+work+with+the+WA+Police+to+combat+organised+crime.pdf). Accessed on 9 March 2015.

7 Dr Karl O’Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 17 September 2014, p2.

8 *Royal Commission Into Whether There Has Been Any Corrupt Or Criminal Conduct By Western Australian Police Officers*, December 2002, p6. Available at: [www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commission+into+whether+there+has+been+any+corrupt+or+criminal+conduct+by+Western+Australian+police+officers+interim+report/\\$FILE/WA+Police.pdf](http://www.parliament.wa.gov.au/intranet/libpages.nsf/WebFiles/Royal+Commission+into+whether+there+has+been+any+corrupt+or+criminal+conduct+by+Western+Australian+police+officers+interim+report/$FILE/WA+Police.pdf). Accessed on 13 March 2015.

9 Ms Louise Porter and Mr Tim Prenzler, *Police Integrity Management in Australia: Global Lessons for Combating Police Misconduct*, CRC Press, Florida, 2012, p195.

10 Ibid, p107.

Chapter 1

- The Office of Police Integrity in Victoria was established in 2004 and given equivalent powers to a Royal Commission following ‘gangland wars’ in Melbourne. The Independent Broad-based Anti-corruption Commission (IBAC) replaced the OPI in 2013 following the establishment of new anti-corruption legislation.¹¹
- The Police Integrity Commission (PIC) in NSW was established in 1996 and took over the oversight of police misconduct from the Ombudsman following the Wood Royal Commission into the NSW Police.¹²

Briefings in interstate jurisdictions

The Committee also sought a submission from police oversight agencies in other Australian jurisdictions and received a submission from Mr Stephen O’Bryan QC, Commissioner, Independent Broad-based Anti-corruption Commission (Victoria).¹³

A number of briefings were also held in Sydney, Canberra and Melbourne where the Committee met with the police force in each of those jurisdictions along with their respective oversight bodies.

The Committee was told in NSW that some of the tension between the NSW Police Force and the Police Integrity Commission (PIC) was due to many earlier programs that had reduced the level of serious misconduct and corruption identified in the Wood Royal Commission. Deputy Commissioner Hudson said that “the pool of corruption is quite shallow now in New South Wales, so the Police Integrity Commission has to look at lower level-type matters”. This created tension as PIC investigations into these lower levels offences sometimes led to recommendations that were severe and “I think that is when the friction has started to become more evident between the agencies.”¹⁴

In Canberra the Committee was told that for the Australian Federal Police the key to managing tensions between it and its two oversight agencies, the Federal Ombudsman and the Australian Commission for Law Enforcement Integrity (ACLEI), “has got to be dialogue”. The AFP’s Commissioner Shane Connelly told the Committee:

For our processes, the dialogue starts at case officer-to-case officer level. For example, if we are working with ACLEI on a corruption matter and there is tension within the team, then I expect my team leaders or sergeants to deal with the ACLEI team leaders and try to resolve it.

11 Ibid, p167.

12 Ibid, p53.

13 Submission No. 3 from Mr Stephen O’Bryan, QC, Commissioner, Independent Broad-based Anti-corruption Commission, 7 May 2014.

14 Mr David Hudson, Deputy Commissioner, New South Wales Police Force, *Briefing*, 27 May 2014.

If that cannot be resolved, then it gets escalated to Dave [Commander David Mclean, Manager, Professional Standards] who has a similar level officer within ACLEI, or within the Ombudsman's office who, again, we can seek to resolve it. If it does not get resolved, then it goes to me and probably [Integrity Commissioner] Philip Moss in the case of ACLEI; and sometimes there are positive conversations about the "Where to?" between Philip and the [AFP] Commissioner in the case of ACLEI; or the Commonwealth Ombudsman and the Commissioner in the case of the Ombudsman's office.¹⁵

Briefings in overseas jurisdictions

Following the briefings within Australia, the Committee sought to identify best practice approaches in jurisdictions that also provide independent accountability in police oversight. The Committee gained approval to gather evidence from agencies based in Dublin, Belfast and London in November 2014. The Committee determined that the United Kingdom and Ireland offer the best opportunities for comparison to Western Australia as they both have similar parliamentary systems to our own and have an independent external oversight body assessing police corruption and misconduct.

The Independent Police Complaints Commission (IPCC)¹⁶ in London has oversight of 43 police forces in England and Wales. The Committee was interested to learn how tensions are managed between the IPCC and the Metropolitan Police Force in London. In Dublin, the Garda Síochána Ombudsman Commission (GSOC)¹⁷ operates under a detailed Memorandum of Understanding with the Irish police force that is provided for in the legislation that established it. This MOU allows for disputes between staff at GSOC and the Garda to be escalated to Commissioner level for resolution, which had occurred about twice in the previous year.

In Ireland, there is also a designated senior staff member at the Ministry of Justice who assists GSOC and Garda resolve disputes. This had been required 'once or twice' in the previous six months.¹⁸ The Police Ombudsman of Northern Ireland (PONI)¹⁹ has a strong communication protocol with the Police Service of Northern Ireland. More information about the police services and their oversight agencies in these three jurisdictions is contained in Appendix 7.

15 Assistant Commissioner Shane Connelly, National Manager, Human Resources, Australian Federal Police, *Briefing*, 28 May 2014.

16 Independent Police Complaints Commission, *About Us*, nd. Available at: www.ipcc.gov.uk/. Accessed on 11 February 2015.

17 Garda Síochána Ombudsman Commission, *What is GSOC?*, 2015. Available at: www.gardaombudsman.ie/. Accessed on 11 February 2015.

18 Mr Tony O'Loughlin, Chief Superintendent Internal Affairs, An Garda Síochána, *Briefing*, 4 November 2014.

19 Police Ombudsman of Northern Ireland, *Latest News*, nd. Available at: www.policeombudsman.org/. Accessed on 11 February 2015.

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The Committee was told in all three jurisdictions that there had been severe tensions between the police forces and their oversight agencies. In Northern Ireland under a previous Chief Constable the Police Ombudsman (PONI) had difficulties securing intelligence and the Ombudsman embarked upon a legal route to secure access to the required police information files. The Committee was told that the relationship between police and their oversight agency needs to be reasonably adversarial, but that this does not automatically mean that it had to be a difficult or unsuccessful relationship.²⁰

The Committee found that two important differences between these three overseas jurisdictions and Western Australia is that none of them have the equivalent of either the Joint Standing Committee or the Parliamentary Inspector as part of their corruption oversight regime. For example, in Northern Ireland the Police Ombudsman is funded through the Department of Justice and the Department is overseen by the Justice Committee of the Legislative Assembly. But the Committee does not have direct oversight of PONI's operations.²¹ Similarly, the GSOC in Ireland has three committees that have an interest in their work, the Public Accounts, Justice and Oversight Petitions and Finance Committees, but none has a mandated role as has the JSCCC in WA.²²

Finding 1

Western Australia's anti-corruption framework is more comprehensive than that in Ireland, Northern Ireland and England as it includes a dedicated Parliamentary Inspector and Joint Standing Committee to oversight the activities of the Corruption and Crime Commission.

The Committee found that there were common approaches to police oversight in all three overseas jurisdictions that it visited. All three police oversight agencies:

- have been **established by legislation**;
- **only oversight their police forces** while other public service agencies are oversighted by an Ombudsman²³;
- are **chaired by non-judges**: Dr Macguire at PONI was a management consultant, Dame Owers at IPCC was a history graduate with a long history of managing non-profit organisations such as Christian Aid, and Mr O'Brien at

20 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

21 Dr Michael Maguire, Police Ombudsman for Northern Ireland, *Briefing*, 5 November 2014.

22 Mr Simon O'Brien, Chairman, Garda Síochána Ombudsman Commission, *Briefing*, 4 November 2014.

23 Ireland has five Ombudsmen- see *Other Ombudsman Offices (Republic of Ireland)*, nd. Available at: www.ombudsman.gov.ie/en/make-a-complaint/other-ombudsmans-offices-in-ireland/#OtherOmbudsmanIreland . Accessed on 11 February 2015.

GSOC was an ex-British policeman (the other two GSOC Commissioners had been a senior public servant and a journalist²⁴);

- have a **Memorandum of Understanding** with their police forces;
- have a Memorandum of Understanding with **oversight agencies in other jurisdictions** so that staff can be co-opted for serious and complex inquiries that are unable to be handled by the oversight agencies' own investigators; and
- conduct **regular meetings with the Police Commissioner** and other senior police officers.

Memorandum of Understanding with their police forces

All of the three police oversight agencies had formal MOUs with their police forces. The largest and most formal was the MOU between GSOC and the An Garda Síochána in the Republic of Ireland. The latest version of this MOU was signed in 2013 and is 65 pages long.²⁵ The requirement for a MOU is mandated in the *Garda Síochána Act 2005*.²⁶ The MOU between PONI and PSNI is 20 pages in length (the MOU between the CCC and WAPOL is 8 pages).

Memorandum of Understanding with oversight agencies in other jurisdictions

The Committee was told in its briefings of the importance of an agreement between the IPCC, GSOC, PONI and Police Complaints Commissioner for Scotland (PCCS) that allows each police oversight agency to make special requests to each other for an independent review of a 'critical incident' that might affect public confidence in their respective organisations. A copy of this MOU is attached in Appendix 8.²⁷

Dr Michael Maguire, the Police Ombudsman for Northern Ireland, told the Committee that this MOU allowed the oversight agencies to support each other, for example, when serious allegations might have been made against a senior member of his staff.

24 Garda Síochána Ombudsman Commission, *About*, 2015. Available at: www.gardaombudsman.ie/about/about.html. Accessed on 11 February 2015.

25 An Garda Síochána, *Memorandum of Understanding, Protocols and Agreement on Operational Matters Between the Garda Síochána Ombudsman Commission and An Garda Síochána*, September 2013. Available at: www.garda.ie/Documents/User/Memorandum%20of%20Protocols%20with%20GSOC%20and%20Agreement%20on%20Operational%20Matters.pdf. Accessed on 11 February 2015.

26 *Garda Síochána Act 2005*, nd. Available at: www.irishstatutebook.ie/2005/en/act/pub/0020/print.html#sec108. Accessed on 11 February 2015.

27 Section 109 of the *Garda Síochána Act 2005* also allows for a judicial inquiry into the conduct of designated officers of GSOC to be established by the Minister for Justice.

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The external body would do an independent investigation and then provide their recommendations to him based on what they found.²⁸

The police forces also have MOUs with other oversight agencies as well. In Northern Ireland, for example, the Committee was told that the police force utilise the IPCC in London to investigate police shootings as the PSNI does not have the necessarily expertise in its command of the police firearms operations.²⁹

Finding 2

The police oversight agencies in Ireland, Northern Ireland and the United Kingdom have an agreement with each other that allows them to call on senior staff and investigators from these other agencies to assist with their own inquiries to ensure public confidence in the outcomes of their inquiries.

Recommendation 1

The Corruption and Crime Commission (CCC) should enter into dialogue with similar interstate oversight agencies to ascertain the viability of entering into an agreement to second their staff when an internal investigation of CCC staff is required.

WAPOL and CCC MOU

In August 2009, the then-CCC Commissioner, Hon Len Roberts-Smith RFD QC, and the WAPOL Commissioner, Dr Karl O'Callaghan, signed a Memorandum of Understanding (MOU) between the two organisations to provide a framework for their cooperation, access to data and interagency communication.³⁰ WAPOL has provided to the Committee some proposed amendments it would like to negotiate with the CCC, especially around the use of section 42 notices imposed on WAPOL by the CCC. The MOU is contained in Appendix Six below with the proposed WAPOL amendments marked in red.

At a meeting of senior officers from both WAPOL and the CCC on 5 February 2015 the CCC said that the MOU was still being drafted and it should be provided to WAPOL by the end of February 2015. This MOU has not yet been redrafted.³¹

The Committee has also obtained a copy of the Memorandum of Understandings between the AFP and ACLEI and between the Irish Garda and the Garda Ombudsman

28 Dr Michael Maguire, Police Ombudsman for Northern Ireland, *Briefing*, 5 November 2014.

29 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

30 Ms Andrea Hancock, Chief of Staff, Assistant Director (Executive Services), WA Police, Email, 7 October 2014.

31 Ms Andrea Hancock, Chief of Staff, Assistant Director (Executive Services), WA Police, Email, 9 March 2015.

Commission.³² The WAPOL-CCC MOU is similar in style to the 12-page AFP-ACLEI one but simpler than the more detailed 64-page Irish MOU.

Finding 3

The Memorandum of Understanding between WA Police and the Corruption and Crime Commission has not been amended since it was signed in August 2009.

Recommendation 2

An amended Memorandum of Understanding between WA Police and the Corruption and Crime Commission should be finalised by 30 June 2015.

32 An Garda Síochána, *Memorandum of Understanding, Protocols and Agreement on Operational Matters Between the Garda Síochána Ombudsman Commission and An Garda Síochána*, September 2013. Available at: www.garda.ie/Documents/User/Memorandum%20of%20Protocols%20with%20GSOC%20and%20Agreement%20on%20Operational%20Matters.pdf. Accessed on 11 February 2015.

Chapter 2

Examples of tensions between WAPOL and the CCC

Tension between agencies that work in an investigative and review context is to be expected and is perfectly normal. Joint CCC-WAPOL Submission.

Introduction

The Joint Standing Committee has been aware of deep tensions between WAPOL and the CCC since commencing its work in the 39th Parliament. The JSCCCC of the 38th Parliament also tabled a number of reports that dealt with the effectiveness of the CCC-WAPOL working relationship and differences between them:

- Report 10 - *How the Corruption and Crime Commission Can Best Work Together with the Western Australian Police Force to Combat Organised Crime* (09/09/2010);
- Report 15 - *Corruption Risks of Controlled Operations and Informants* (16/06/2011);
- Report 18 - *Parliamentary Inspector's Report Concerning the Procedures Adopted by the Corruption and Crime Commission when Dealing with Complaints of the Excessive Use of Force by Police* (08/09/2011);
- Report 20 - *Closed Hearing with Gail Archer SC and Further Analysis of Proposed Reforms to the Corruption and Crime Commission Act 2003* (29/09/2011);
- Report 26 - *Revocation of Exceptional Powers* (29/03/2012);
- Report 28 - *Proceeds of Crime and Unexplained Wealth: A Role For The Corruption and Crime Commission?* (28/06/2012);
- Report 29 - *Guarding the Guardians* (16/08/2012); and
- Report 32- *How The Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct* (15/11/2012).³³

This chapter outlines some of the serious matters of tension and conflict between WAPOL and the CCC over the past three years that led the current Committee to undertake this inquiry.

33 See www.parliament.wa.gov.au/parliament/commit.nsf/all/78B69BF22D3E097348257831003B04A3?opendocument&tab=tab3. Accessed on 27 February 2015.

Complaint to the CCC in regard to the Police Commissioner

In October 2011 two complaints were made to the CCC about the conduct of the Police Commissioner. The CCC found that Dr O’Callaghan had not committed any misconduct and the Premier tabled its report in Parliament in August 2012.

In June 2013 the Committee tabled its Report No. 3 *Acting Parliamentary Inspector's report on a complaint by the Commissioner of Police against the CCC* after receiving a report from Acting Parliamentary Inspector Craig Colvin, SC. Mr Colvin’s report detailed his investigation into a complaint made by the Commissioner of Police, Dr Karl O’Callaghan APM, in regard to the way in which the CCC had investigated a complaint about his use of his WA Police credit card. Mr Colvin reported that his investigation:

- a. has not disclosed evidence of misconduct on the part of the CCC or any officer of the CCC; and
- b. establishes that the procedures adopted by the CCC in carrying out its functions under the [CCC] Act in relation to the investigation of the use by Dr O’Callaghan of his Government purchasing card were appropriate.³⁴

Findings of fact

The Joint Standing Committee’s Report No. 2, *How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct*, was tabled on 20 June 2013. The Report’s recommendation 4 was “That the CCC Act should be amended to make it clear that the Corruption and Crime Commission may include findings of fact in its reports.” The Attorney General, Hon Michael Mischin MLC, replied in detail to the Committee on the report’s recommendations on 30 July 2013.³⁵

The Attorney General did not support the Committee’s recommendation in regard to the CCC being able to make findings of fact, as is done by ICAC in NSW. Section 114A(2) of the ICAC Act enables disciplinary action to be taken against public officials by their employer based on ICAC’s findings of fact, and these agencies are not required to further investigate whether that conduct occurred. These provisions enable the disciplinary processes for public servants in NSW to be expedited. The Committee, however, heard that NSW Police do not accept findings and recommendations from the Police Integrity Commission (PIC) in relation to its own police officers who have been

34 Joint Standing Committees on the Corruption and Crime Commission, *Acting Parliamentary Inspector's report on a complaint by the Commissioner of Police against the CCC*, 27 June 2013, p1. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/42406E824A459BE848257B9600239AB1/\\$file/Report+Number+3+JSCCC.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/42406E824A459BE848257B9600239AB1/$file/Report+Number+3+JSCCC.pdf). Accessed on 27 February 2015.

35 Hon Michael Mischin MLC, Attorney General, Letter, 30 July 2013, p3.

found guilty of a wrongdoing, but now undertakes its own second investigation of all matters investigated by the PIC.³⁶

The Committee wrote to the CCC Commissioner, Mr Roger Macknay QC, and the Police Commissioner, Dr Karl O’Callaghan APM, on 11 December 2013 seeking information on WAPOL’s and the CCC’s past use of sections 44, 94(5), 145, and 208(4)(b) of the *Corruption and Crime Commission Act 2003* to allow for evidence gathered by the CCC to be used in disciplinary proceedings in ‘defined circumstances’. Specifically, the Committee wanted to know their view as to whether these existing sections of the Act negate the need for any future amendments which would allow the CCC to include findings of fact in its reports.

The Committee provided WAPOL and the CCC with additional information about how this recommendation had been developed. This recommendation in Report 32 was proposed following evidence it had collected from the Commission for Public Complaints Against the RCMP (CPC).³⁷ The CPC has the ability to make findings of fact and its reported findings can be directly drawn upon in Royal Canadian Mounted Police disciplinary hearings.

Additionally, Report 32 highlighted that in her statutory review of the CCC Act in February 2008, Ms Gail Archer SC said in regard to section 18 that “[w]hile it is probably implicit in that power that the CCC may make findings of fact, it would be preferable if the situation was made clear.” She recommended “that the Act be amended to make it clear that the CCC may include findings of fact in its reports.”³⁸

Finally, during a public hearing with the JSCCCC 38th on 24 October 2012, WA Police Assistant Commissioner Staltari supported such a change to the CCC Act and clearly described the difficulties WAPOL faced with the current arrangement. These difficulties included the cost of duplicating the inquiries already undertaken by the CCC on complaints of misconduct against police officers. The Assistant Commissioner clearly described the difficulties WAPOL faced with the current legislation:

The reality of it is that the sections of the CCC Act make it quite specific that we cannot use those materials. If the Act were amended to say that when the Corruption and Crime Commission do an investigation

36 Mr David Hudson, Deputy Commissioner, New South Wales Police Force, *Briefing*, 27 May 2014.

37 See here for more information about the CPC: www.cpc-cpp.gc.ca/cnt/www/index-eng.aspx. Accessed on 7 February 2014.

38 Ms Gail Archer SC, *Review of the Corruption & Crime Commission Act 2003*, Perth, February 2008, p198.

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*and do not want to pursue it and say “here”, we can then use those materials without having to duplicate what they have already done.*³⁹

Assistant Commissioner Staltari addressed the time-consuming and duplication costs in the existing arrangement and provided a specific instance in agreeing on the urgent imperative to amend the CCC Act:

*Yes, amend the Act so that— I am probably reluctant to raise this, but the Mal Shervill and Dave Caporn issue⁴⁰; they [the CCC] did an inquiry and made findings of misconduct. The [WAPOL] Commissioner cannot do anything with that. What does a finding of misconduct mean? It means a finding of misconduct. The Commissioner cannot act on that finding of misconduct. The Commissioner then has to go away, do his own investigation, and take action. Well, what a waste of time all that is.*⁴¹

CCC response

In the CCC’s response, then-Commissioner Macknay QC repeated his support for an amendment to the CCC Act to make it clear that the Commission is able to make findings of fact in its reports, which he had previously expressed to the Committee. The Commissioner concluded that if the CCC was able to make findings of fact that were utilised by public sector agencies and WAPOL then this would “likely to be effective in expediting any subsequent disciplinary process.”⁴²

WAPOL response

In its initial response to the Committee’s enquiry, however, WAPOL’s position seemed to changed from the one that had been provided by Assistant Commissioner Staltari just over 12 months previously. Acting Commissioner Brown said “WA Police do not support the amendment to the Act enabling finding of fact by the CCC.”⁴³

After a letter from the Committee seeking a clarification to this change in position, Commissioner O’Callaghan provided a second response three months later to the Committee in which he asked that the first letter from Acting Commissioner Brown be

39 Assistant Commissioner Dominic Staltari, Professional Standards, WA Police, *Transcript of Evidence*, 24 October 2012, p12.

40 Mr Andrew Mallard’s wrongful conviction for murder was the subject of a CCC inquiry into whether police and others had engaged in misconduct. Assistant Commissioners Shervill and Caporn were forced to step down from their positions in the wake of the CCC’s findings. Available at: www.watoday.com.au/wa-news/mal-shervill-resigns-20090630-d3mw.html#ixzz2rlmzlnZj. Accessed on 29 January 2014.

41 Ibid.

42 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 18 December 2013, p1.

43 Mr Stephen Brown APM, Acting Commissioner, WA Police, Letter, 9 January 2014, p2.

set aside. In his later response, the Commissioner of Police said that he conditionally supports a change to the CCC Act and explained that:

Unfortunately, the provisions of the CCC Act does [sic] not place an obligation on the CCC to provide all the information, evidence and materials to WA Police when a matter is referred for investigation and Section 18 of the Act does not provide such a requirement for the CCC to do so. Following a recent investigation by the CCC in Derby, which also involved an examination under Section 137 of the Act, the CCC declined to provide all relevant materials, making the comment in a letter that sufficient materials had been released. As a result, WA Police is now placed at a disadvantage in effectively dealing with the subject officer and in having to apply additional investigative effort to uncover evidence and materials that may have already been discovered by the CCC. Additionally in this regard, the CCC did not investigate alleged criminal conduct with respective lines of inquiry neither pursued nor attempted. The matter is now the subject of a criminal investigation by the IAU.

WA Police supports legislative change to allow the CCC to make findings of fact, but only to the extent where such findings are relied on to form the basis for CCC recommendations and misconduct findings, however not to be binding on any other party or agency. On production of all investigation materials by the CCC, agencies need to retain the autonomy to managerially deal with officers, considering in context all the facts in issue, the extent and nature of conduct and an officer's conduct history, with outcomes premised on the civil proof (on the balance of probability) to ensure the best outcome is achieved. The CCC is not best placed to do this. A change in legislation will prevent the CCC simply relying on mere opinion and conjecture to base recommendations and findings, accordingly raising accountability.⁴⁴

Finding 4

Lack of clarity about the power of the Corruption and Crime Commission to make findings of fact has been a source of tension between WA Police and the Commission.

Recommendation 3

The Attorney General re-consider recommendation 4 in the Joint Standing Committee's Report No. 2, as supported by Ms Gail Archer SC, WA Police and the Corruption and

44 Dr Karl O'Callaghan APM, Commissioner, WA Police, Letter, 12 March 2014, p3.

Crime Commission (CCC) “That the CCC Act should be amended to make it clear that the CCC may include findings of fact in its reports”, as is the case in interstate and international jurisdictions.

CCC access to WAPOL’s IAPro database and delays in investigations

Between August 2013 and June 2014 the Committee tabled three reports it had received from the Parliamentary Inspector, Hon Michael Murray QC, on 13 CCC investigations that had taken at least 15 months to complete.⁴⁵ An unfortunate aspect of the PICCC’s investigation was that both the CCC and WA Police were given draft copies of his report and in their responses both blamed the other agency for delays in completing investigations. One of the central issues of the disagreement between WAPOL and the CCC was the remote electronic access granted by WAPOL to the CCC in 2007 to its complaint and investigation management system called IAPro.

In its Report No. 5, the Committee reported to Parliament that the PICCC had found that his correspondence with WAPOL and the CCC “demonstrates that the two agencies are at odds over core aspects of the electronic reporting, internal investigation and oversight of misconduct within the Police.” The PICCC concluded his report:

*I am unlikely to reconcile these differences by these means, given the nature of the issues involved, the perspectives of them taken by the Commission and by the Police, and the underlying tension which seems to exist between the parties over this issue.*⁴⁶

The Committee also heard from both the Australian Federal Police (AFP) and the Metropolitan Police Service in London that any perceived slowness in oversight agencies beginning and concluding inquiries into police actions can heighten tensions between the two agencies. The AFP’s Assistant Commissioner Shane Connelly told the Committee:

...I think we need to do some work in terms of timeliness. That is not a criticism of us or ACLEI [Australian Commission for Law Enforcement Integrity] or anyone, but there is a time where we need to act quickly to eliminate corruption or potential corruption, If we have a referral of corruption that the level of corruption requires that it go to ACLEI,

45 See JSCCCC reports 4, 5 and 13 at www.parliament.wa.gov.au/jscccc/rep5.

46 Joint Standing Committee on the Corruption and Crime Commission, *The timeliness of misconduct investigations undertaken or overseen by the CCC: Supplementary report*, September 2013, p4. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/486EF002755C94A248257BEA002084F0/\\$file/Report+5--+CCC+Timeliness+final-Sept+2013.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/486EF002755C94A248257BEA002084F0/$file/Report+5--+CCC+Timeliness+final-Sept+2013.pdf). Accessed on 27 February 2015.

we would like to be able to commence investigations and work with ACLEI to speed through that process or to get even to a point where we can hand them people they need to interview, witnesses— all those things.

*This can be really important, particularly around physical assaults and the nature of those sorts of matters. With witnesses, if the incident recorded occurs later at night on a Friday night in the city and it involves police misusing their powers, we need to get to those witnesses very quickly and we need to assist ACLEI or the Ombudsman in ensuring that we have done that.*⁴⁷

Given the differences identified by the PICCC between WAPOL and the CCC after more than four years of working together using the IPro system, the Committee recommended that:

*...the Commissioner of Police and the CCC Commissioner personally intervene to overcome unresolved tensions between the WAPOL and CCC officers using the IPro database system and assist these agencies put in place more efficient communication protocols by 1 March 2014.*⁴⁸

The then-Commissioner Hon Roger Macknay wrote subsequently to the Committee to say that he had met with the Police Commissioner and Deputy Commissioner Dawson to discuss the Commission's access to IPro on 27 September 2013. At that meeting the Police Commissioner O'Callaghan agreed to arrange extended access by the Commission to IPro. Superintendent Adams of WAPOL's Internal Affairs Unit later wrote to the Commission to confirm the offer made by Commissioner O'Callaghan. The CCC accepted the offer and WAPOL has since provided the extended access. Additionally, as a result of these discussions the CCC has implemented new processes to ensure that effective communication is maintained with WAPOL in relation to internal investigations conducted by WAPOL. For example, each month the CCC sends a list of all WAPOL matters it is monitoring to WAPOL's Internal Affairs Unit and Police Complaints.⁴⁹

At a closed hearing with WAPOL in September 2014 to discuss its joint submission to this Inquiry, Assistant Commissioner Staltari confirmed to the Committee that the CCC:

47 Assistant Commissioner Shane Connelly, National Manager, Human Resources, Australian Federal Police, *Briefing*, 28 May 2014.

48 Ibid, p7.

49 Hon Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 20 March 2014.

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*have got extended access through IAPro now. They have got access to all the files that the Internal Affairs Unit do, because they do all the investigations live in IAPro. But then you have got all the other investigations that go out to districts and divisions. They are not done live in IAPro. There is a notification of the complaint in IAPro and then there is a conclusion of the investigation that goes into IAPro. For that functionality to occur we need to roll out IAPro across the agency.*⁵⁰

Finding 5

The use of WA Police's IAPro database by the Corruption and Crime Commission is no longer a source of tension between these agencies.

Use of CCC Act's exceptional powers by WAPOL

On 10 April 2014 the Committee tabled its Report No. 10, *WA Police's use of Part 4 'exceptional powers' in the Corruption and Crime Commission Act 2003*. In its 2012-13 Annual Report, the CCC noted that in the previous year it had received no applications from WAPOL for an "exceptional powers finding and nil applications for a fortification warning notice." The CCC's Report confirmed in regard to the non-use of these powers by WAPOL that "[a]s a result one of the two main purposes of the CCC Act, to combat and reduce the incidence of organised crime, was not achieved."⁵¹

The Committee found during this inquiry that WAPOL were applying to the Australian Crime Commission (ACC) instead of the CCC for powers to undertake coercive hearings with suspected organised crime participants. The most important reason for this was that both the CCC and WAPOL submitted that legislative change was needed to the definition of 'organised crime' in the *Corruption and Crime Commission Act 2003*. The present definition is unduly restrictive and prevents the WA Police from accessing the 'exceptional powers' under Part 4 of the *Corruption and Crime Commission Act 2003*.⁵²

Such an amendment to the CCC Act has been recommended to the State Government by a number of previous reports, the first of which was Report 31 of the Joint Standing Committee of the 37th Parliament, *Inquiry into Legislative Amendments to the*

50 Mr Dominic Staltari, Assistant Commissioner, Professional Standards, WA Police, *Transcript of Evidence*, 17 September 2014.

51 Corruption and Crime Commission, *Annual Report 2012-2013*, 27 September 2013, pp xvii & 25. Available at:

www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/Corruption%20and%20Crime%20Commission%20Annual%20Report%202012-2013.pdf. Accessed on 11 March 2014.

52 Joint Standing Committee on the Corruption and Crime Commission, *WA Police's use of Part 4 'exceptional powers' in the Corruption and Crime Commission Act 2003*, 10 April 2014, p4. Available at:

[www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/2C6EE74D72B5438D48257CB5002222A1/\\$file/Report+10-+Exceptional+Powers-final-+April+2014.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/2C6EE74D72B5438D48257CB5002222A1/$file/Report+10-+Exceptional+Powers-final-+April+2014.pdf).

Accessed on 5 March 2015.

Corruption and Crime Commission Act 2003 - The Role of the Corruption and Crime Commission in Investigating Serious and Organised Crime in Western Australia, which was tabled in November 2007. In addition, an amendment to the definition of organised crime was recommended in the statutory review of the CCC Act undertaken by Ms Gail Archer SC in February 2008. The second recommendation of the JSCCC in the 38th Parliament Report 10, *How the Corruption and Crime Commission can best work together with the Western Australian Police Force to combat organised crime* also recommended an amendment to the definition of organised crime in the CCC Act.

In responding to the Committee's Report 10, the Attorney General, Hon Michael Mischin MLC, noted the recommendation to amend the definition of 'organised crime' and said he "will give consideration to the inclusion of an amendment to broaden the scope of the definition of organised crime within a package of amendments to be put to Cabinet in the near future."⁵³

Finding 6

The current definition of 'organised crime' in the *Corruption and Crime Commission Act 2003* (CCC Act) is a source of tension between WA Police (WAPOL) and the Corruption and Crime Commission as it frustrates WAPOL from accessing the 'exceptional powers' under Part 4 of the CCC Act.

Recommendation 4

The Attorney General should expedite an amendment to the *Corruption and Crime Commission Act 2003* to amend the definition of 'organised crime'.

Use of section 42 notices by the CCC

Section 42(2) of the CCC Act allows the CCC to direct authorities, such as WAPOL, from continuing their investigations into misconduct matters to allow the CCC to undertake an enquiry into them:

42 . Commission may direct appropriate authority not to take action

(1) In this section —

misconduct matter means an allegation, complaint, information or matter involving misconduct specified in a notice given under subsection (2).

(2) The Commission may, by written notice, direct an appropriate authority —

53 Hon Michael Mischin MLC, Attorney General, Letter, 22 July 2014.

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- (a) not to commence investigation of a misconduct matter or, if an investigation of the matter has already commenced, to discontinue the investigation; and*
- (b) to take all reasonable steps to ensure that an investigation of a misconduct matter is not conducted by an officer of the appropriate authority.*
- (3) The appropriate authority must comply with a direction given to it under subsection (2).*
- (4) The notice absolves the appropriate authority and its officers from any duty with respect to the misconduct matter so far as it relates to investigation of the matter or to the bringing of an offender concerned before the courts to be dealt with according to law.*
- (5) Subsection (2)(b) does not apply to a person who is an officer of the Commission.*
- (6) Subsection (2) does not prevent an investigation of the misconduct matter that is conducted in accordance with arrangements made between the Commission and the appropriate authority.*
- (7) Despite subsection (2), an investigation of the misconduct matter by the appropriate authority may be commenced or resumed if the Commission notifies the appropriate authority that the Commission has revoked the direction given to it under subsection (2).⁵⁴*

The use of this section of the Act is the main focus of WAPOL's proposed amendments to the MOU with the CCC in Appendix Six. Assistant Commissioner Staltari also gave detailed evidence to the Committee of WAPOL's concerns about the current use of this section of the Act by the CCC:

...they are more concerned with making a point in a report rather than dealing with unprofessional conduct. I would go as far as to say that we are far better placed to deal with unprofessional conduct in WA Police than the Corruption and Crime Commission. In my view, we are far more effective at it; we are decisive; we take action at the earliest opportunity. We deal with our people both criminally and we deal with them decisively managerially, and we do that at the earliest opportunity. We do not wait until the criminal matters are dealt with

54 AustLII, *Corruption and Crime Commission Act 2003 - Sect 42*, nd. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/s42.html. Accessed on 1 October 2014.

*before we consider them managerially. We take that decision early on. If the conduct is sufficiently serious, we will engage a loss of confidence; otherwise, we will deal with it through a managerial notice or an Assistant Commissioner's warning notice, transfer, or anything like that.*⁵⁵

Figures provided by WAPOL show an increase in the past year of section 42 notices served on it by the CCC, as shown in Table 1 below.⁵⁶ During 2013-14 the CCC assessed 7,260 allegations of misconduct and reviewable police action, conducted 145 preliminary investigations and assessments pursuant to section 32 of the CCC Act, and 23 investigations pursuant to section 33 of the CCC Act concerning WA Police.⁵⁷

Table 1- Section 42 noticed served on WAPOL by the CCC (1 July 2009 to 30 June 2014)

Year	Section 42 notices served
2009-10	3
2010-11	6
2011-12	5
2012-13	5
2013-14	10

The complaints that WAPOL have about the use of section 42 notices are based on four factors:

1. the CCC often take longer than 12 months to finalise their enquiries;
2. WAPOL are unable to immediately employ risk-mitigation strategies for staff accused of serious misconduct while the CCC enquiry is underway;
3. the CCC Act does not include actual criteria for when a section 42 action is appropriate and when it is not appropriate; and
4. the CCC does not provide WAPOL with all of the evidence they have collected on a matter if they do not proceed with a prosecution.

Assistant Commissioner Staltari gave the Committee an example of the impact of the CCC's long investigation times during their investigations at the WAPOL's Perth Watch House:

⁵⁵ Mr Dominic Staltari, Assistant Commissioner, Professional Standards, WA Police, *Transcript of Evidence*, 17 September 2014, p3.

⁵⁶ Ms Andrea Hancock, Chief of Staff, Assistant Director (Executive Services), WA Police, Email, 7 October 2014.

⁵⁷ Corruption and Crime Commission, *Annual Report 2013-14*, Perth, 27 September 2013, pxxi & pxxi, Available at: www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/CCC%20Annual%20Report%202013-2014%20Complete.pdf. Accessed on 14 October 2014.

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As in recent matters, albeit the report is still in draft, they examined an allegation in the Perth Watch House. They charged the person—a sergeant—with assault some 14 or 16 months after the event, and now they have given it back to us, saying, “Here, you deal managerially with these issues.” In the draft report at least, they make a number of misconduct findings against a number of officers who worked in the watch house.

Ordinarily, if we have identified those allegations or, indeed, the unprofessional conduct that they identified, we would have employed risk-mitigation strategies immediately, because otherwise you have got these people working in the watch house for 16 months, whereas the first thing that we do when we take on an investigation is we consider the risk factors straight-up. We stand down people, we move people and we stand people aside. That is the first thing we do, because we do not want business to be affected. The Commission has absolutely no comprehension of that. Like in the Perth watch house matter, 16 months later they are telling us, albeit, as I said, in draft form, that there are potential misconduct findings. These people have been allowed to continue in the Perth watch house for 16 months.⁵⁸

The Assistant Commissioner also gave evidence of the need for WAPOL’s ‘double handling’ in the evidence gathering process in allegations that the CCC do not proceed with:

There was a matter where the Corruption and Crime Commission dealt with this particular matter for a number of months, and then gave it back to us and said, “We’ve looked at it, now you go and investigate it.” It was rather a complex matter, and they had done a whole lot of work but they would not give us all the materials. We asked them for the materials, rather than us having to go back over old ground with witness statements but they declined to give them to us...⁵⁹

Finding 7

The Corruption and Crime Commission’s use of section 42 notices is an area of tension with WA Police.

58 Mr Dominic Staltari, Assistant Commissioner, Professional Standards, WA Police, *Transcript of Evidence*, 17 September 2014, p3.

59 Ibid, p6.

Recommendation 5

The Corruption and Crime Commission and WA Police amend their Memorandum of Understanding to include an improved understanding of the use of section 42 notices.

CCC investigation of allegations of excessive use of force by police

The CCC in recent years has increased its focus on allegations of the use of excessive force by WAPOL officers. As a result of a CCC investigation into an incident in March 2013 in the Broome lockup the WA Police Union (WAPU) has advised its officers not to participate in voluntary interviews with the CCC. The JSCCCC reported to Parliament on this matter in 2014.⁶⁰ During the Committee's inquiry into police voluntary interviews with the CCC, WAPU expressed their view strongly to the Committee that the CCC had increased its oversight of WAPOL:

*The union also believes the CCC is implementing its own mandate to increase the scrutiny on police, and the number of investigations it is carrying out has increased dramatically over the last 18 months. It has clearly gone from an oversight body to an interventionist organisation. In May, the number of complaints I referred to earlier from my members and staff about the CCC and its investigators' bullying tactics escalated.*⁶¹

The Police Commissioner, Dr Karl O'Callaghan, had a similar assessment to that of the union that some actions by the CCC had caused tension with police officers, and told the Committee that "I think you would probably hear the same from a number of other investigations which are unrelated to Broome, so **it is not an isolated case** [emphasis added]." In terms of the Commission's investigations into the Broome incidents, Dr O'Callaghan said:

I believe that there definitely are concerns amongst the police officers at Broome about the way they have been treated by the Corruption and Crime Commission. I think part of that goes to what you might regard as indiscreet ways of going about their business. It is very public, everyone can see and there is no real privacy about it. ... I do not believe that there was really any preliminary need for the CCC to get involved in that. It was potentially a straight-up assault; there was nothing corrupt about it. But they had a view that they wanted to look at issues which might be systemic, which is fine. I still do not believe

60 Joint Standing Committee on the Corruption and Crime Commission, *Corruption and Crime Commission voluntary interviews with WA police officers*, WA Parliament, Perth, 21 August 2014. Available at:

[www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/A017D4338C57680E48257D3A001B4FF3/\\$file/Report+16-WAPU+interviews+Final.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/A017D4338C57680E48257D3A001B4FF3/$file/Report+16-WAPU+interviews+Final.pdf)

61 Mr George Tilbury, President, WA Police Union, *Transcript of Evidence*, 4 December 2013, p2.

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*they should have been involved in it because exactly this sort of thing happens in those circumstances. It ups the profile of the whole thing and officers who should be afforded some protection or some privacy are not because of the way the business is done. So I do have a concern about it, yes.*⁶²

The view of Mr Roger Macknay QC, the then-Commissioner of the CCC, on the relationship between WAPOL and CCC was that:

*The vast majority of investigations are necessarily carried out by WA Police. The conventional wisdom is, and that found expression in the Kennedy Royal Commission report, that it is essential that a body be primarily responsible to investigate its own affairs and not be overseen by an outside body for the health of that body. We endeavour to honour that principle in the way we go about things.*⁶³

In the CCC's 2011-12 Annual Report, the then-Commissioner said that since he had commenced he had made a number of changes to the CCC's procedures in dealing with allegations of excessive use of force by police, and that the Commission's:

*... Corruption Prevention Directorate was reorganised to allow a greater emphasis to be placed on the oversight and capacity development of WAPOL. Since this reorganisation, it is estimated that the percentage of overall effort directed toward WAPOL misconduct matters has increased by around 100%.*⁶⁴

During the Committee's inquiry into the issue of police voluntary interviews with the CCC, the then-Commissioner, Mr Macknay QC, agreed that the CCC had given a new strategic priority to investigating police use of force incidents:

*We created certain priorities. Although not at the top end of misconduct, pursuant to that strategic purpose we might decide to have a look at a particular matter because we have formed the view that we need to be more active in a particular area because by being more active in a particular area, we will create a deterrence to further conduct of that kind. **Use of force is clearly the most outstanding example.** [emphasis added]*

62 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 21 October 2013, p11.

63 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 9 September 2013, p15.

64 Corruption and Crime Commission, *Annual Report 2011-12*, Perth, 27 September 2012, p xv, Available at:

www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/Corruption%20and%20Crime%20Commission%20%20Annual%20Report%202011-2012.pdf. Accessed on 1 October 2014

*... it is a matter of record that the Commission was the subject of some criticism as to the number of matters it investigated itself. Over the last 21 months or so the Commission has taken on a significant number of matters itself. Again, the matters it takes on certainly would tend to be more serious ones, but issues of whether or not it is likely to be a fruitful exercise of course are also relevant. If one knows there is an absence of potential evidential material there, although it is a relatively serious matter, it is going to be a fruitless exercise. Obviously that is a discretionary matter which would have an impact on a decision made to investigate, whereas if there are six independent witnesses, that would promote the idea of an independent investigation.*⁶⁵

In its 2012-13 Annual Report, the CCC reported that it had investigated 49 use-of-force incidents in 2012–13 compared with 11 cases in 2010–11.⁶⁶ This emphasis on police use-of-force incidents was supported by the Committee's Chairman, Hon Nick Goiran MLC, given the Committee's past reports on this matter:

*I just make that note to underscore what you have said, Commissioner, and that it is an area that was of concern to this Committee in the past. It was certainly an area of concern for the former-Parliamentary Inspector so, if anything, I congratulate you on your leadership on this issue and in addressing an area of concern. I also note in your opening remarks that you indicated that the Commission is now proactively identifying use-of-force incidents, which is perhaps then taking things to a higher level than perhaps was even indicated in the past. That is outstanding and the Commission should be congratulated on responding appropriately in this area.*⁶⁷

Allegations about the activities of police officers have traditionally made up the majority of complaints to the CCC about possible misconduct, as shown in Table 2 below. However they have declined, both in number and proportion, in the last reporting period. All figures are from the CCC's annual reports.⁶⁸

65 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 9 September 2013, p9.

66 Corruption and Crime Commission, *Annual Report 2012-13*, Perth, 27 September 2013, pxiii, Available at: www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/Corruption%20and%20Crime%20Commission%20Annual%20Report%202012-2013.pdf. Accessed on 30 September 2014.

67 Hon Nick Goiran, MLC, Chairman, Joint Standing Committee on the Corruption and Crime Commission, *Transcript of Evidence*, 23 October 2013, p3.

68 Corruption and Crime Commission, *Annual Reports*, 2015. Available at: www.ccc.wa.gov.au/Publications/Reports/Pages/AnnualReports.aspx. Accessed on 13 March 2015.

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Table 2- Allegations of WAPOL misconduct compared to total allegations to CCC (2011-14)

	WAPOL allegations	Total allegations	Proportion
2011-12	3,083	5,912	52%
2012-13 [#]	3,087	6,148	50.2%
2013-14	2,830	7,260	39%

[#] Figures for 2012-13 are skewed by the inclusion of 1,583 misconduct allegations of the use of the WAPOL Briefcase IT system.

The CCC's 2013-14 Annual Report notes that 'assault - physical/excessive use of force' was the second most prevalent category of allegation assessed during the period. There was an increase in the number of these allegations from 703 in 2012-13 to 1,154 in 2013-2014, an increase of 64%.⁶⁹ In regards to this increase, the Commission says:

This increase is in part due to processes introduced and trialled within the Commission during the reporting period to support the Commission's interest in, and focus on, WA Police, in particular in relation to use of force allegations. Notwithstanding this increase, it is not unusual for "assault - physical/excessive use of force" to be one of the most prevalent allegation categories dealt with by the Commission in relation to WA Police. This is primarily because of the statutory reporting requirements for WA Police to notify the Commission of reviewable police action in addition to allegations of misconduct and the nature of policing itself which necessarily involves use of force.⁷⁰

Complaints against WAPOL staff to the CCC appear to be at a higher rate than in other Australian jurisdictions. This also might be a factor in raising tensions between the two agencies. Table 3 below compares the rates of complaints against police in WA to police complaints in Victoria, NSW and Queensland. The figures for the PIC in NSW are from its 2013 annual report.

69 Corruption and Crime Commission, *Annual Report 2013-14*, Perth, 27 September 2013, pp12-13, Available at: www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/CCC%20Annual%20Report%202013-2014%20Complete.pdf. Accessed on 30 September 2014.

70 Ibid, p13.

Table 3- Comparison of WAPOL staff and misconduct allegations levels to Victoria, NSW and Queensland (for the period 2013-14)

State	Police staff ⁷¹	Allegations to oversight agency	Rate of allegations per staff	Police allegations as proportion of total allegations
WA Police	7,841	2,830	0.36	39% ⁷²
Queensland Police Service	15,038	4,398	0.29	51%
NSW Police Force (PIC)	20,286	1,178	0.06	_ ⁷³
NSW Police (Ombudsman)	20,286	3,287	0.16	38%
Victoria Police	17,426	3,551	0.20	73%

Complaints about police misconduct can also be made to the Ombudsman in each State. In Western Australia, in the period 2013-14, the Ombudsman received 110 complaints in regard to police behaviour, investigations and traffic matters (from a total of 1,010 complaints).⁷⁴ These figures indicate that the CCC receives the majority of complaints and alleged police misconduct in WA. This is not the case, however, in other jurisdictions. The NSW Ombudsman received 3,287 formal complaints (about 38% of its total complaints) in 2012-13⁷⁵ about NSW Police Force while the Police Integrity Commission received 1,178 complaints.

Finding 8

The number of allegations about police officers and the manner of investigation by the Corruption and Crime Commission has been an area of tension between the two agencies.

The Committee intends to maintain a watching brief in this area, as tensions are inevitable and a part of a healthy oversight regime. Nevertheless, this is an important area of dialogue for the Police Commissioner and the new CCC Commissioner.

71 Includes both uniformed and other police staff.

72 In the previous two years, allegations about WAPOL staff to CCC amounted to more than 50% of the total allegations investigated by the CCC- see Table 3 above.

73 The PIC only oversees the NSW Police Force.

74 Ombudsman Western Australia, *Ombudsman Western Australia Annual Report 2013-14*, 25 September 2014, p203. Available at: www.ombudsman.wa.gov.au/Publications/Documents/annualreports/2014/AR-1314-Appendix1.pdf. Accessed on 16 October 2014.

75 NSW Ombudsman, *Annual Report 2012 - 2013*, 30 October 2013, p11. Available at: www.ombo.nsw.gov.au/_data/assets/pdf_file/0015/12921/Full-Annual-Report-2012-2013.pdf. Accessed on 16 October 2014.

WAPOL investigation of possible misconduct by CCC staff

The most recent example of a high level of tension between the CCC and WAPOL occurred during WAPOL's enquiries in early 2014 into possible misconduct by CCC staff at the request of the PICCC. The PICCC will shortly report to Parliament on this matter but the Committee provides this issue as another example where this tension affected the operations of these two agencies. The PICCC referred these matters to WAPOL under section 196 of the CCC Act on 3 December 2013. The Committee held a closed hearing with the PICCC on 4 March 2014 when it became aware that the CCC Commissioner had threatened to seek injunctive relief in the Supreme Court from a WAPOL summons issued as part of their investigation.

In his 2013-14 Annual Report, the PICCC explained that the CCC disagreed with his decision to refer some allegations to the Police for investigation where his preliminary investigation established a reasonable suspicion of criminal conduct by some CCC officers. The CCC preferred that the investigations should have been performed by the PICCC using seconded WAPOL officers to assist him. Further, the PICCC reported that:

Tensions subsequently arose between the Commission and the Police when the Commission suggested to them and to my Office that the secrecy provisions of the Act prevented it from releasing documents to the Police which the Police thought were relevant to their investigation. The Commission adopted the same position in relation to requests from the Police to interview its officers as suspects or witnesses in respect of possible criminality within the Commission. The Commission's position changed in time, but the Police investigation was undoubtedly delayed.⁷⁶

In his Annual Report, the PICCC also said that during the WAPOL investigation, the CCC officially raised concerns with him about the way in which a police officer questioned a Commission officer. The PICCC found that the police officer's conduct did not amount to misconduct.⁷⁷

Finding 9

Referrals by the Parliamentary Inspector to WA Police of criminal allegations about Corruption and Crime Commission staff has been a recent source of tension.

The Committee will not make a recommendation about this matter until it has received a report on it from the PICCC.

76 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2013-2014*, 2014, p6. Available at: www.piccc.wa.gov.au/files/PICCC_Annual_Report_2013_2014.pdf. Accessed on 3 March 2015.

77 Ibid.

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The importance of communications between Commissioners

... the time to communicate is not during a crisis, and that you have to build a relationship with someone so that when you do have a crisis, you have someone you can talk to. Mr David Hudson, Deputy Commissioner, NSW Police Force.

Introduction

A recent book on Australia's police integrity management structure noted that communication was one of two key themes emerging from research into strategies employed in different Australian jurisdictions to mitigate misconduct.⁷⁸ This was also a common message received by the Committee in briefings it held with police and their oversight bodies in six interstate and overseas jurisdictions. A key measure of how effective the working relationship was between police and their oversight bodies was the level of communication between the two Commissioners, and their willingness to communicate informally together.

Evidence from interstate jurisdictions

In NSW for example, Deputy Commissioner David Hudson said that the Police Commissioner meets with the Commissioner of the Police Integrity Commission (PIC) on a regular basis, either every two months or quarterly. The agendas for these meetings, and with the Ombudsman, were a mixture of things— "tactical issues that are burning at that time with individual investigations, but also some strategic things about directions, the relationships with the organisations and how they are progressing." Deputy Commissioner Hudson explained that the Commissioner had established for his staff that communication with PIC and other police agencies:

...that the time to communicate is not during a crisis, and that you have to build a relationship with someone so that when you do have a crisis, you have someone you can talk to. He is adamant that not only he has those relationships but also others under him. I personally have a relationship with my counterparts at the Police Integrity Commission and the New South Wales Ombudsman's office, so that if issues arise—

⁷⁸ Ms Louise Porter and Mr Tim Prenzler, *Police Integrity Management in Australia: Global Lessons for Combating Police Misconduct*, CRC Press, Florida, 2012, pp234-235.

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*there are issues that arise frequently— we try to resolve them before they escalate, to everyone’s satisfaction.*⁷⁹

All of the other jurisdictions had a regular roster of meetings between their Commissioners, except for the Australian Commission for Law Enforcement Integrity (ACLEI) and the Australian Federal Police (AFP). The Integrity Commissioner, Mr Philip Moss, said that while ACLEI had a MOU with the AFP, “we don’t look at that in chapter and verse to see what it says; it’s more a question of just being something to formalise an understanding and a working partnership.” In terms of his relationship with both the AFP Commissioners he had worked with, Mr Mick Keelty and Mr Tony Negus, Mr Moss said it had developed to a high level so that:

*...I don’t have routine meetings with them; I just pick up the phone. If I’ve got an issue I just pick up the phone and they’ll put me through to him [Mr Negus], wherever he is. He’s in London at the moment. I am assuming they’d put me through, so it’s like that, and he will always receive a call from me.*⁸⁰

In Victoria, the Police Commissioner did not have a documented protocol with the Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC), but the IBAC Commissioner had spent a lot of time developing a relationship with the Police’s Chief Commissioner. The Committee was told that IBAC and Victoria Police senior staff meet regularly and that the two Commissioners meet monthly, if they can, and they have also established appropriate protocols between themselves in regard to correspondence, how it will work and at what level it will come into Victoria Police. The Commissioners ensure that senior staff of each agency talk to each other.⁸¹

Below the Commissioners’ level, senior staff from IBAC and Victoria Police meet every two weeks but they “talk more often than that, but we talk as much as we can.” There is also a capacity, where staff at this level do not agree, that the issue can be escalated to the Commissioner level. This is a very important process which is rarely used:

*There has been in my experience, I think, only on two occasions where I have met with my Chief Commissioner and the Commissioner for IBAC and other senior executives from IBAC when I have been in the room.*⁸²

Victoria Police also has a clear written Memorandum of Understanding in regard to IBAC’s access to their systems, how they will use the data, and that the current Chief

79 Mr David Hudson, Deputy Commissioner, NSW Police Force, *Briefing*, 27 May 2014, p2.

80 Mr Philip Moss, Integrity Commissioner, Australian Commission for Law Enforcement Integrity, *Briefing*, 28 May 2014, p24.

81 Mr Stephen Leane, Assistant Commissioner Professional Standards, Victoria Police, *Briefing*, 29 May 2014, p4.

82 *Ibid*, p6.

Commissioner has taken a policy position that “we have a completely open door to IBAC and the IBAC Commissioner, but they have come back to it in a very responsible way.”⁸³ The relationship between police and their oversight bodies is more complex in Victoria than in most Australian jurisdictions as the police operations are overseen not only by IBAC but by the Victorian Ombudsman, the Commissioner for Law Enforcement Data Security, a Public Interest Monitor and the Chief Examiner.⁸⁴

In a similar fashion, the Committee was told that the dialogue between the AFP and ACLEI, or the AFP and the Ombudsman, started at the case officer level and if an issue cannot be resolved, then it gets escalated to the AFP’s Manager of Professional Standards. If it remains unresolved then it moves to the level involving the AFP’s National Manager of Human Resources and ACLEI’s Commissioner.⁸⁵

Finding 10

The Australian Federal Police and the police forces in Victoria and NSW schedule regular meetings between their Commissioners and the Chairs of their respective oversight agencies. More frequent operational meetings are also held by senior staff from the police and their oversight agencies. These meetings are an important factor in allowing these agencies to resolve any important differences they may have with each other.

Evidence from overseas jurisdictions

While each of the three police oversight agencies which provided information to the Committee in Ireland and the UK had a formal system of communication with senior police, the PONI had the most structured. Dr Michael Maguire described a four-level structure of communications with Northern Ireland’s police. He said that the ‘gold’ level of communications were his meetings he held with the Chief Constable on a ‘needs’ basis. These meetings have a formal agenda but are not minuted. At the ‘silver’ level there are regular meetings between PONI’s Director of Current Investigations and his equivalent in policing standards on operational issues. The ‘bronze’ level meetings focus on individual cases and individual functions. For example, PONI’s Deputy Senior Investigation Officers, have some functional responsibilities and the DSIO for forensics would meet with his police counterpart.⁸⁶

Mr Simon O’Brien, then-Chairman of GSOC in Ireland, told the Committee that he met with the Garda Commissioner one-to-one nearly every three months. Some of those meetings were formal and some informal but none were minuted. Mr O’Brien now

83 Ibid, p4.

84 Mr Robin Brett, Inspector, Victorian Inspectorate, *Briefing*, 30 May 2014, pp2-5.

85 Assistant Commissioner Shane Connelly, National Manager, Human Resources, Australian Federal Police, *Briefing*, 28 May 2014, p3.

86 Mr Adrian McAllister, Executive Officer, Police Ombudsman for Northern Ireland, *Briefing*, 5 November 2014

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thinks that it would have been beneficial if the meetings had been more formal and been minuted. Below this level, Mr O'Brien said that his Director of Investigations would meet with either the Garda's Assistant Commissioner or Deputy Commissioner level officer or another appropriate member of their command team, such as the officer in charge of human resources (because many of the issues needing to be resolved were HR ones), on a more frequent basis.⁸⁷ The Chief Superintendent of the Garda's internal affairs unit told the Committee he generally met with his GSOC counterpart monthly on a formal basis, and every week on an informal basis.⁸⁸

Finding 11

In a similar fashion to those Australian jurisdictions it visited, the Committee found that the police in Ireland, Northern Ireland and England schedule regular meetings between their Commissioners and the Chairs of their respective oversight agencies. More frequent operational meetings are also held by senior staff from the police and their oversight agencies. These meetings are an important factor in allowing these agencies to resolve any important differences they may have with each other.

The situation in Western Australia

While other jurisdictions report that it is essential for an effective relationship that the Commissioners meet regularly, this has not been the case in Western Australia. The Police Commissioner told the Committee that the Commissioners had only agreed to have regular meetings just before Commissioner Macknay left the CCC in April 2014, and they had not met before then since 2009:

*I think there was dialogue probably a little bit more than a year ago now that the two organisations had not met for about five years. Roger Macknay re-implemented that on sort of a quarterly basis, and that was fine. Once he retired, the new [Acting] Commissioners have not chosen to keep that going. That is something that would be useful.*⁸⁹

The need to hold meetings of the CCC and WAPOL Commissioners at least every six months is outlined in the existing MOU between the CCC and WAPOL signed in August 2007. These meetings of the Commissioners and their senior staff are described as the Joint Agency Steering Committee (JASC) and one of its purpose is "the swift resolution of problems that may arise" (see Appendix 6).

87 Mr Simon O'Brien, Chairman, Garda Síochána Ombudsman Commission, *Briefing*, 4 November 2014.

88 Mr Tony O'Loughlin, Chief Superintendent Internal Affairs, An Garda Síochána, *Briefing*, 4 November 2014.

89 Dr Karl O'Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 17 September 2014, p9.

Finding 12

There were no meetings of the Joint Agency Steering Committee for a five year period between 2009 and 2014 despite the expectation for such meetings in a Memorandum of Understanding between the two agencies.

The Police Commissioner told the Committee that those who attended the JASC were:

*... the Commissioner, the Executive Director and one or two of their senior investigators—so, people who are running one of the divisions. I would attend with my Deputy Commissioners and the head of Professional Standards. So it is about an eight or nine-person meeting, and it happens only four times a year, so it is not too onerous.*⁹⁰

There have been two JASC meetings since they have been reconvened in 2014, but “there have been no minutes from the last meeting. The Corruption and Crime Commission prepare the minutes and if they have prepared them, they certainly have not distributed them.”⁹¹ The Police Commissioner told the Committee he would try to continue the JASC meetings, “I am happy to do that. In fairness, it would require both [Acting] Commissioners to attend and not one or the other. You cannot have them saying, “Well, the other guy does not know about this.”⁹²

Dr O’Callaghan gave an example of the loss of effectiveness of the situation in mid-2014 when the CCC was still without a fulltime Commissioner:

*I had a meeting with one [Acting] Commissioner, and they do a rotation as you know, and we turned up on the Friday and he says, “We can’t deal with this because the next Commissioner is coming in on the Monday and he has no idea about this.” This business about dealing with two Commissioners has been absolutely untenable.*⁹³

This highlights the problem with the position of CCC Commissioner being vacant for an extended period.

Below the JASC level, there are monthly Operational Liaison Group meetings of senior staff from WAPOL and the CCC, which have been held since 24 February 2011.⁹⁴ The Committee was told by WAPOL that initially the CCC was reticent about participating in

90 Ibid, p10.

91 Mr Dominic Staltari, Assistant Commissioner, Professional Standards, WA Police, *Transcript of Evidence*, 17 September 2014, p11.

92 Dr Karl O’Callaghan, Commissioner, WA Police, *Transcript of Evidence*, 17 September 2014, p11.

93 Ibid, p6.

94 Dr Karl O’Callaghan, Commissioner, WA Police, Letter, 26 September 2014.

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these meetings but “[a] decision was made by the Corruption and Crime Commission that we should have these liaison meetings, and I welcomed it.”⁹⁵

Finding 13

Regular meetings of the Joint Agency Steering Committee involving the Police Commissioner and the two CCC Acting Commissioners have not been held.

Recommendation 6

The Commissioner of the Corruption and Crime Commission and the WA Police Commissioner should ensure that future meetings of the Joint Agency Steering Committee are held at least quarterly and the minutes of the meetings are rapidly produced and distributed to members of the Committee.

Media outlets in early February 2015 reported that the Chief Justice was preparing a list of preferred candidates to be appointed as the new Corruption and Crime Commissioner for the Premier’s consideration.⁹⁶ Such an appointment nearly 12 months since the resignation of Mr Macknay QC would allow the CCC and WAPOL senior staff to reset their relationship. This could include the development of a closer formal and informal relationship between the two Commissioners, as the Committee has found occurs in other jurisdictions.

The Committee was told in Victoria that the establishment in 2011 of the Independent Broad-Based Anti-Corruption Commission allowed its new Commissioner to spend a lot of time in monthly meetings developing a relationship with Victoria Police’s Chief Commissioner.⁹⁷ Similarly in Northern Ireland, the Committee was told that the appointment of a new Chief Constable helped repair the relationship between the Police Ombudsman and the police service. The relationship had deteriorated to such an extent that the Ombudsman had embarked upon legal action against the previous Chief Constable to secure access to some police information files.⁹⁸

Recommendation 7

The Commissioner of the Corruption and Crime Commission and the WA Police Commissioner should institute a schedule of formal meetings to build their relationship and ensure that tensions between the two agencies do not affect the effectiveness of their working together to combat corruption and crime in Western Australia.

95 Mr Dominic Staltari, Assistant Commissioner, Professional Standards, WA Police, *Transcript of Evidence*, 17 September 2014, p11.

96 Yahoo! News 7, *McKechnie likely for CCC role*, 6 February 2015. Available at: <https://au.news.yahoo.com/thewest/a/26210223/mckechnie-likely-for-ccc-role/>. Accessed on 5 March 2015.

97 Assistant Commissioner Stephen Leane, Professional Standards, Victoria Police, *Briefing*, 29 May 2014.

98 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

Appendix One

Inquiry Terms of Reference

The Committee identify:

- i. the current areas of tension between the Western Australia Police and the Corruption and Crime Commission which impact on their operational effectiveness; and
- ii. best practices in police oversight based on those that combine independence for policing operational functions and appropriate accountability, transparency and oversight of their operations.

Appendix Two

Submissions received

No.	Name	Position	Organisation
1	Mr Stephen O'Bryan, QC	Commissioner	Independent Broad-based Anti-corruption Commission (Victoria)
2	Mr Christopher Shanahan, SC	Acting Commissioner	Corruption and Crime Commission
	Mr Neil Douglas		
	Dr Karl O'Callaghan, APM	Commissioner	WA Police
3	Hon Michael Murray, QC	Parliamentary Inspector	Parliamentary Inspector of the Corruption and Crime Commission

Appendix Three

Briefings

Date	Name	Position	Organisation
27 May 2014 Sydney	Mr Gary Kirkpatrick	Acting Director, Operations	Police Integrity Commission
	Mr Allan Kearney	Director, Prevention and Information	
	Ms Michelle O’Brien	Solicitor	
	Mr David Hudson	Deputy Commissioner	New South Wales Police Force
28 May 2014 Canberra	Commander David McLean	Manager, Professional Standards	Australian Federal Police
	Assistant Commissioner Shane Connelly	National Manager, Human Resources	
	Mr Philip Moss	Integrity Commissioner	Australian Commission for Law Enforcement Integrity
	Ms Sarah Marshall	Acting Executive Director Operations	
	Mr Tony Alderman	Acting Executive Director Secretariat	
	Mr Nick Sellars	Acting Executive Director	
	Ms Marie Gomes	Acting Director Strategic Support	
	Ms Madeleine Manning	Policy/Legal Officer	
29 May 2014 Melbourne	Assistant Commissioner Stephen Leane	Assistant Commissioner, Professional Standards	Victoria Police
30 May 2014 Melbourne	Mr Robin Brett QC	Inspector	Victorian Inspectorate
	Mr Neal Jedwab	Chief Operations Officer	
4 November 2014 Dublin	Mr Simon O’Brien	Chairman	Garda Síochána Ombudsman Commission
	Ms Carmel Foley	Commissioner	
	Mr Kieran FitzGerald		

	Assistant Commissioner Dónall Ó Cualáin	Acting Deputy Commissioner Strategy & Change Management	An Garda Síochána
	Chief Superintendent Anthony McLoughlin	Internal Affairs Section	
	Sergeant Stephen Brady	Internal Affairs Section	
5 November 2014 Belfast	Dr Michael Maguire	Ombudsman	Police Ombudsman of Northern Ireland
	Mr Adrian McAllister	Executive Officer	
6 November 2014	Mr George Clarke	Chief Superintendent	Police Service of Northern Ireland
7 November 2014 London	Dame Anne Owers, DBE	Chair	Independent Police Complaints Commission
	Mr Nick Hawkins	Chief Operating Officer	
	Ms Thea Walton	Head of Oversight	
	Mr Steve Oakley	Head of Policy and Public Affairs	
	Mr Martin Hewitt	Assistant Commissioner for Professionalism	Metropolitan Police Service (New Scotland Yard)

Appendix Four

Closed hearings

Date	Name	Position	Organisation
17 September 2014	Dr Karl O'Callaghan, APM	Commissioner	WA Police
	Mr Gary Budge	Assistant Commissioner (Metro)	
	Mr Dominic Staltari	Assistant Commissioner (Professional Standards)	
	Mr Allan Adams	Detective Superintendent, Internal Affairs Unit	
15 October 2014	Mr Neil Douglas	Acting Commissioner	Corruption and Crime Commission
	Ms Peta Mabbs	Acting Chief Executive	
	Mr Paul O'Connor	Director, Legal Services	
	Mr David Robinson	Acting Director, Operations	

Appendix Five

Joint CCC-WAPOL submission



JOINT SUBMISSION TO THE INQUIRY BY THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION INTO IMPROVING THE WORKING RELATIONSHIP BETWEEN THE COMMISSION AND THE WESTERN AUSTRALIA POLICE

The Western Australia Police (WA Police) and the Corruption and Crime Commission ("the Commission") note the inquiry by the Joint Standing Committee on the Corruption and Crime Commission ("the Committee") into improving the working relationship between the Commission and WA Police and accordingly make this joint submission addressing five points.

First, the Commission has a statutory function to oversee the way WA Police deals with misconduct allegations and reviewable police action. WA Police accepts that such oversight is appropriate and a necessary means of promoting public confidence in the police.

Secondly, the relationship between the two agencies, while complex and multifaceted, is effective. They frequently and regularly engage each other on numerous issues at multiple levels of their respective agencies. Among other things, they investigate each other, conduct cooperative investigations, engage in joint investigations, disseminate intelligence to each other, share resources, exchange information and work cooperatively on inter-agency committees and working groups.

Thirdly, these wide ranging and complex interactions can, from time-to-time, create tension between the two agencies. The extent and level of that tension depends on the context of the particular issue. Tension between agencies that work in an investigative and review context is to be expected and is perfectly normal. This is highlighted on those occasions when the Commission deals with intricate and difficult matters that have the potential to cause WA Police discomfit. Any resulting tension usually dissipates rapidly and does not have long-term ramifications for the overall effectiveness of the relationship.

Fourthly, while heightened pressure may occur in one part of the relationship at any point in time, the wide range of other activities continue unaffected.

Last, in light of the overall effectiveness of the now mature relationship between the agencies it is the opinion of both WA Police and the Commission that there appears to be little benefit in exploring areas of tension by means of a public inquiry. To ventilate sensitive aspects of the relationship in such a public forum risks the unnecessary creation of defensive positions and

misunderstandings, which may inadvertently promote unwarranted and unproductive tension and suspicion between the two agencies thus damaging rather than building a better working relationship.

Further, the effort spent raising issues, protecting positions and responding to the inevitable media inquiries will require considerable time and resources distracting the two agencies from their critical primary functions. This will especially be the case if the matters reported on publicly by the media focus on what are perceived as the more sensational aspects of the complex relationship between the two agencies. The end result is more likely to be the diminution, not the promotion of public confidence in both agencies.

However, the Commission and WA Police would each welcome the opportunity to give evidence before an in-camera or closed hearing of the Committee.

We welcome the continued focus of the Committee on the effectiveness of our agencies and thank it for the opportunity to make this joint submission.



Mr Christopher Shanahan, SC
ACTING COMMISSIONER

Date: 5th August 2014



Dr Karl O'Callaghan, APM
COMMISSIONER OF POLICE

Date: 8 August 2014





Mr Neil Douglas
ACTING COMMISSIONER

Date: 8th August 2014

Appendix Six

Current CCC-WAPOL MOU and proposed WAPOL amendments



Appendix 2

Memorandum of Understanding

BETWEEN:

THE CORRUPTION AND CRIME COMMISSION

AND

THE WESTERN AUSTRALIA POLICE

INTRODUCTION

This is a Memorandum of Understanding ("MOU") between the Corruption and Crime Commission and the Western Australia Police.

This MOU is entered into in a spirit of a co-operative endeavour by both parties in recognition of the need to deal effectively and efficiently with corrupt and, criminal misconduct by public officers, and organised crime in the State of Western Australia.

Both parties agree that in order for the Western Australia Police to operate in a manner that resists corruption, both parties will collaboratively work towards:

- Improving the culture of policing;
- Enhancing the leadership, supervision and management;
- Ensuring investigative outcomes meet the highest standards of competency and thoroughness.
- Implementing and applying appropriate corruption prevention strategies to maintain the ethical health of Western Australia Police.

Nothing in this MOU is to be construed as having any effect or application on compliance with any statutory notices issued by the Corruption and Crime Commission on members of the Western Australia Police.

DEFINITIONS

In this MOU and any protocol or agreement established under the MOU, unless the contrary intention appears-

"CCC" means the Corruption and Crime Commission established under section 8 of the *Corruption and Crime Commission Act 2003* ("the CCC Act");

"Commissioner" means the person holding the Office of Commissioner established under the CCC Act 2003 or acting in that office for the reasons mentioned in subsections 14(1)(a), 14(1)(b) or 14(1)(c);

"COP" means the Commissioner of Police appointed under section 5 of the *Police Act 1892*;

"misconduct" has the meaning given by section 4 of the CCC Act 2003;

"officer of the Commission" means-

- (a) the Commissioner;
- (b) a person appointed under section 179 of the CCC Act 2003;
- (c) a person seconded or otherwise engaged under section 181 of the CCC Act 2003 ; or
- (d) a person engaged under section 182 of the CCC Act 2003.

"

"Member of the WA Police" shall have the same meaning as section 33K of the *Police Act 1892*, and includes:

- (a) a commissioned officer;
- (b) a non-commissioned officer;
- (c) a constable;
- (d) an Aboriginal police liaison officer; and
- (e) a police auxiliary officer.

"Police Staff Member" means an employee of WA Police, under the provisions of the *Public Sector Management Act*, who act in a specialist and/or administrative support role to the operations of WA Police.

"the parties" means the Commissioner on behalf of the Corruption and Crime Commission and the Commissioner of Police on behalf of the Western Australia Police.

"WA Police" means the Western Australia Police.

COMMENCEMENT

This MOU shall come into operation on the Date of Effect upon its execution by both parties.

AMENDMENT

This MOU may be amended by mutual agreement, in writing, between the Commissioner and the COP.

REVOCATION

This MOU may be revoked by either the Commissioner or the COP, by service of at least three months' notice in writing on the other party.

GENERAL

This MOU covers the following matters:

- the exchange of **investigative** information and intelligence;
- **circumstances where Section 42 notices will be utilised**
- **acceptance of risk when conducting investigations**
- access to WA Police databases;
- establishment of a "Joint Agency Steering Group"
- establishment of an "Operational Liaison Group"
- establishment of protocols; and
- appointment of liaison officers.

Dealings between the CCC and the WA Police are not restricted to matters or protocols contained in this MOU and a commonsense approach is to prevail in relation to interaction between the two organizations.

The following information management policies and practices will apply:

- The parties will comply with any caveats or conditions regarding use and disclosure of information provided under this MOU.
- The CCC undertakes that officers of the CCC will not use or disclose information obtained from the WA Police under this MOU except for the purpose for which the information was provided by the WA Police, or otherwise as required or authorised by law.
- The WA Police undertakes that WA Pol officers will not use or disclose information obtained from the CCC under this MOU except for the purpose for which the information was provided by the CCC, or otherwise as required or authorised by law.

EXCHANGE OF INVESTIGATIVE INFORMATION AND INTELLIGENCE

Subject to this MOU and all relevant legal restrictions, the CCC:

- (a) undertakes to provide the WA Police with general intelligence collected as a consequence of allegations dealt with by the CCC which relate to the functions of the WA Police; and
- (b) will ensure any information accessed that may be further developed or value added by the CCC is provided to the WA Police for assessment and inclusion in intelligence holdings.
- (c) when referring an investigation to WA Police after having investigated the matter themselves, the Commission will supply to WA Police all investigative materials collected.

Where this is not practical because of critical security or critical operational considerations, the CCC will ensure information is passed to the WA Police at the earliest opportunity.

Subject to this MOU and all relevant legal restrictions, the WA Police:

- (a) undertakes to provide the CCC with general intelligence collected as a consequence of its investigations and which relates to the CCC's prevention and education, misconduct and organised crime functions; and
- (b) will ensure any information accessed that may be further developed or value added by the WA Police is provided to the CCC for assessment and inclusion in CCC intelligence holdings.

Where this is not practical because of critical security or critical operational considerations, the WA Police will ensure information is passed to the CCC at the earliest opportunity.

CIRCUMSTANCES WHERE SECTION 42 NOTICES WILL BE UTILISED

It is accepted that WA Police have a far greater capability to investigate the conduct of its members than other Government authorities.

Well documented investigative standards that are regularly practiced by WA Police, places them in the best position to attend to the vast majority of incidents where the professional conduct of officers is questioned.

The use of Section 42 powers by the Corruption and Crime Commission has raised concerns in the past in respect to investigative response, timeliness of outcomes, management of risks and overall value to the broader community. To overcome these problems it is agreed that the Commission will only utilize its Section 42 Notice powers when:

- a) there are evident concerns about the ability of WA Police to act independently or,
- b) there are serious allegations of corruption by WA Police Officers or
- c) by agreement between WA Police and the CCC.

ACCEPTANCE OF RISK WHEN CONDUCTING INVESTIGATIONS.

It is accepted by both agencies that WA Police has responsibility for the mitigation of risks identified through Police Officer unprofessional conduct. WA Police has a range of managerial interventions that can be executed in a timely manner that will appropriately mitigate risk and contribute to the continued provision of quality Policing services to the community of Western Australia.

To allow these critical responsibilities to be appropriately managed by WA Police there must be regular communication between the two agencies during investigations involving WA Police Officers. Issues have arisen in the past, particularly when a Section 42 Notice is served on WA Police by the CCC,

precluding it contemporary information resulting in an increase of broader community risk and by extension potentially compromising the quality of Policing services within the State.

WA Police accept the receipt of risk related information could pose a threat to investigative integrity and must be managed with the utmost sensitivity. Both agencies agree that investigative integrity and community safety must be appropriately managed in all cases.

To ensure the needs of the broader community are met, particularly when Section 42 Notices are served on WA Police, both agencies agree to the following provisions:

- a) Both parties acknowledge and accept the need to ensure all reasonably foreseeable risks within individual investigative environments are appropriately managed.
- b) Risk related information must be managed sensitively by all parties to ensure investigative integrity is not compromised.
- c) Regular and thorough briefings will be undertaken between the Operations Manager, CCC and the Superintendent, Internal Affairs Unit in relation to the WA Police risk environment, relevant to all Section 42 Notice investigations.

ACCESS TO WA POLICE DATABASES

The COP agrees, subject to all relevant legal restrictions, to allow the CCC on- line access to all WA Police databases including, but not limited, to those maintained by the Professional Standards Portfolio and the State Intelligence Division with the exception of the current covert operations which exist in stand-alone databases.

Connection of these databases to the CCC will be through a secure 'firewall'. All costs of installing and maintaining any connection to the WA Police will be borne by the CCC. Where the WA Police is charged by a third party provider for

data accessed by the CCC through the WA Police database the actual costs charged to the WA Police for that data access will be reimbursed by the CCC.

The CCC undertakes to ensure that access by officers of the Commission to WA Police databases will only be made in relation to the functions of the CCC and conduct internal 'access' audits to maintain effective governance over computer access and use.

The CCC recognises the fact that access to WA Police databases is also subject to audit by the Professional Standards Portfolio. The COP agrees that the designated Member of WA Police or Police Staff member responsible for conducting those audits will sign a confidentiality agreement pursuant to s 83 CCC Act 2003.

JOINT AGENCY STEERING GROUP

The COP and the Commissioner agree to the establishment of a Joint Agency Steering Group. The primary focus of this Group will be to ensure continued collaboration and cooperation between the agencies, the development of existing strategies, the implementation of new strategies and the swift resolution of problems that may arise.

The Joint Agency Steering Group will comprise members nominated by their respective Commissioners and will meet as necessary. The Chair of the group will rotate between the Commissioner of Police and the Commissioner Corruption and Crime Commission.

The Joint Agency Steering Group will meet at as considered necessary and at least once every six month period at a venue agreed by the members.

REFORM, BENCHMARKING AND EVALUATION

The COP and the Commissioner agree to the collection and capture of information with a view towards making recommendations for reforms to the WA Police, and reporting on those reforms.

OPERATIONAL LIAISON GROUP

The COP and the Commissioner agree to the establishment of an Operational Liaison Group. The Group will focus upon operational and strategic issues affecting both agencies and act to facilitate cooperation and assistance, including the organisation of multi-agency operational teams/task forces. The Group will brief the Joint Agency Steering Group as necessary.

The Operational Liaison Group will comprise members nominated by their respective Commissioners and will meet as necessary at a venue agreed by the members.

ESTABLISHMENT OF PROTOCOLS

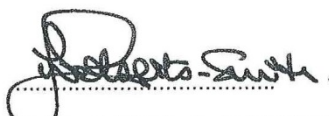
The relevant Director of the CCC and the Assistant or Deputy Commissioner with responsibility for the relevant portfolio may establish protocols for operational or administrative measures to complement this MOU.

Protocols are to be in writing and endorsed by the relevant Director of the CCC and the relevant Assistant or Deputy Commissioner. Once endorsed the protocols shall become attachments to this MOU.

EXECUTION

Both parties agree that the clauses set out in this document will govern the relationship between the two parties commencing from the Date of Effect shown below.

Date of Effect: 04 AUG 2009 ~~2009~~


The Hon L W Roberts-Smith RFD QC
Commissioner
Corruption and Crime Commission

Dated 04 Aug 2009


Karl O'Callaghan
Commissioner of Police
Western Australia Police

Dated 23-7-09

Appendix Seven

Summary of oversight arrangements in the international jurisdictions visited by the Committee

Introduction

In November 2014 the Committee travelled to Dublin, Belfast and London to receive briefings from the police and their oversight agencies in those three jurisdictions. Further information about each is provided below. A summary is provided in Table 4.

Table 4- Comparison between jurisdictions

	Ireland	Northern Ireland	London	Western Australia
Population	4.6 million	1.8 million	8.4 million	2.6 million
Police Numbers	15,400	9,700	31,000	6,190
Police Budget	\$2.09 billion	\$1.68 billion	\$7.1 billion	\$1.25 billion
Oversight Numbers	78 FTE	151FTE	500 FTE	151 FTE
Oversight Budget	\$11.75 million	\$18.8 million	\$80.7 million	\$32.2 million
Annual Allegations Against Police	5,299	6,089	11,542	2,800

Republic of Ireland

The Irish Free State was created in 1922 and effectively became a republic, with an elected president, under the constitution of 1937, in which it was named 'Ireland'. It was officially declared a republic in 1949. Similarly to the Australian parliamentary system, Ireland has two houses of Parliament: the Dáil is the lower house where the Prime Minister is nominated from and the upper house is the Seanad. Ireland's population in 2013 was approximately 4.6 million people (about twice that of Western Australia in an area about 3% the size of WA) with about 1.8 million living in its capital, Dublin.⁹⁹

⁹⁹ Wikipedia, *Ireland*. Available at: <http://en.wikipedia.org/wiki/Ireland>. Accessed on 16 February 2015.

Police force

The Irish police force is the An Garda Síochána (known as the Garda) was established in 1923 and in December 2014 it had 12,905 members as well as over 2,500 non-officer support staff, and another 1,300 student and reserve Gardaí. The Garda also has responsibility for Ireland's immigration bureau. Its 2015 budget estimate is €1.426 billion (or \$2.09 billion).¹⁰⁰ This compares to WAPOL's \$1.25 billion budget in 2013-14 and total staff of 6,190.¹⁰¹

The Committee was told that a new accountability framework was being rolled out across Irish police regions. The Garda internal affairs unit consisted of a Superintendent, two Sergeants, two other police and three civilians. For the first 10 months of 2014, the Garda had conducted 386 investigations into its members unsupervised by its oversight body, GSOC, and there had been 65 investigations undertaken and supervised by GSOC.¹⁰²

Oversight agency

The Garda Síochána Ombudsman Commission (GSOC) was established in 2007 to provide an independent oversight of policing in Ireland. It does not oversight other Irish public service agencies.¹⁰³ Its establishment followed the passing of the *Garda Síochána Act 2005*.¹⁰⁴ GSOC's budget for 2013 was €8.01 million (\$11.75 million) and it employed a total of 78 staff, with 37 investigators. In 2013 GSOC received 2,027 complaints from members of the public containing 5,299 allegations of misconduct by Gardaí. The Garda Commissioner referred 41 incidents to GSOC under section 102(1) of the *Garda Síochána Act 2005* which involved actions by the Gardaí that resulted in fatalities. This was down from a high of 103 in 2010.¹⁰⁵

100 Wikipedia, *Garda Síochána*. Available at: http://en.wikipedia.org/wiki/Garda_S%C3%ADoch%C3%A1na. Accessed on 16 February 2015.

101 WA Police, *Annual Report 2014*, 26 September 2014, p24 & p118. Available at: www.police.wa.gov.au/LinkClick.aspx?fileticket=pgoQta8o54o%3d&tabid=935. Accessed on 16 February 2015.

102 Mr Tony O'Loughlin, Chief Superintendent Internal Affairs, An Garda Síochána, *Briefing*, 4 November 2014.

103 Garda Síochána Ombudsman Commission, 2015. Available at: www.gardaombudsman.ie/. Accessed on 16 February 2015.

104 *Garda Síochána Act 2005*, 2005. Available at: www.gardaombudsman.ie/docs/publications/GSOC-Garda-Act-2005.pdf. Accessed on 16 February 2015.

105 Garda Síochána Ombudsman Commission, 2015, *Annual Report 2013*, March 2014, p6 & p36. Available at: www.gardaombudsman.ie/docs/publications/GSOC_Annual_Report_2013_FINAL.pdf. Accessed on 16 February 2015.

By comparison, the CCC oversees all State agencies for serious misconduct and its 2013-14 budget was \$32.2 million. In that year it employed 151 FTE staff, with 37 investigators. In 2013-14 there were 2,800 allegations made against WAPOL officers.¹⁰⁶

The GSOC Executive

Unlike the CCC, the GSOC Commissioners are not ex-judges although the GSOC Act allows for ex-judges to be appointed to it. There are currently two Commissioners. Ms Carmel Foley was appointed to GSOC in February 2006. Ms Foley began her career in the civil service in 1976, and mostly was employed with the Department of Foreign Affairs. She was later appointed as Chief Executive of the Council for the Status of Women, Chief Executive of the Employment Equality Agency and Director of Consumer Affairs. Dr Kieran FitzGerald was appointed as a Commissioner in December 2011. He had served as GSOC's Head of Communications and Research since 2007 and prior to that had been a producer, reporter and researcher with RTÉ (Ireland's national TV and radio broadcaster). He has a Doctorate in Governance from Queens University Belfast.¹⁰⁷ Mr Simon O'Brien, then-Chairman of GSOC, told the Committee

Recent tensions between the Garda and GSOC

The GSOC Chairman reported to the Parliament over the two-year delay in having a new version of its MOU with the Garda completed and in obtaining documents from the Garda relating to an inquiry:

Throughout 2012, we spent considerable time negotiating privately with the Garda Síochána around our operational protocols, addressing issues of timelines and other issues of interagency co-operation. Towards the end of 2012, we took a strategic decision that we needed to air publicly some dissatisfaction with the level of co-operation we were getting from the Garda Síochána. This resulted in us making very public comment around the publication of one report following a sensitive investigation.

For example, on 9 May 2013, we took the unusual step of submitting to the Minister a special report in accordance with section 80(5) of the Garda Síochána Act 2005. That special report contained some highly critical comments on our relationship with the Garda Síochána. A few weeks later, on 23 May 2013, we also made some further criticism of the Garda Síochána's adherence to our operational protocols in our

106 Corruption and Crime Commission, *Annual Report 2013-14*, 26 September 2014, p6. Available at: www.ccc.wa.gov.au/Publications/Reports/Annual%20Reports/CCC%20Annual%20Report%202013-2014%20Complete.pdf. Accessed on 16 February 2015.

107 Garda Síochána Ombudsman Commission, *About*, 2015. Available at: www.gardaombudsman.ie/about/about.html. Accessed on 17 February 2015.

*annual report. Members may recall that this Committee invited us to attend to discuss these reports on 3 July 2013.*¹⁰⁸

These tensions between the Garda and GSOC have been exacerbated by two events over the past two years. Senior Gardaí have discretionary power to annul penalty points accrued for traffic infringements. In September 2012 two Garda whistleblowers alleged that this power had been abused to annul thousands of penalties favouring some influential people and others later involved in serious traffic accidents. An internal Garda report on the allegations was published in May 2013 which found that only three of 113 officers had departed from guidelines and found no evidence of widespread corruption. In January 2014 the Parliament's Public Accounts Committee (PAC) reviewed the report and questioned the Garda Commissioner, Mr Martin Callinan, over the allegations. He defended the Gardaí's application of discretion and argued that the whistleblowers should have raised their concerns internally. He described the actions of the whistleblowers as "disgusting".

The PAC referred the allegations to GSOC whose report of 12 March 2014 found widespread breaches of policy and recommended the establishment of a working group to manage the penalty points system. Two Ministers called on Mr Callinan to withdraw the word "disgusting" from his previous testimony but he unexpectedly resigned as Commissioner on 25 March 2014.¹⁰⁹ Later, Ireland's Justice Minister, Mr Alan Shatter, resigned in May 2014 over the findings of a Government report into his handling of the original allegations.¹¹⁰

Another recent case of tensions between the Garda and GSOC was over leaked allegations that the Garda may have bugged GSOC's headquarters in Dublin. GSOC had heightened concerns about confidentiality in light of some public comment which appeared to be exceptionally well-informed. Due to the lack of availability of an Irish firm, it engaged a UK counter-surveillance firm, Verrimus, in September 2013 to undertake a sweep of its headquarters. This was the first such security operation undertaken since 2007.¹¹¹

108 Joint Committee on Public Service Oversight and Petitions Debate, *Security and Protocol Issues: Garda Síochána Ombudsman Commission*, 12 February 2014, p4. Available at: <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/NVJ2014021200003?opendocument#C00100>. Accessed on 16 February 2015.

109 Wikipedia, *Penalty points in Ireland*. Available at: http://en.wikipedia.org/wiki/Penalty_points_in_Ireland#Annulment_controversy. Accessed on 16 February 2015.

110 *The Independent*, 'Shatter initiates High Court challenge with aim to quash certain findings in Guerin Report', 30 July 2014. Available at: www.independent.ie/irish-news/courts/shatter-initiates-high-court-challenge-with-aim-to-quash-certain-findings-in-guerin-report-30471339.html. Accessed on 16 February 2015.

111 Joint Committee on Public Service Oversight and Petitions Debate, *Security and Protocol Issues: Garda Síochána Ombudsman Commission*, 12 February 2014, p4. Available at:

On 9 February 2014 *The Sunday Times* leaked the result of the GSOC bugging report on its front page. A written and oral briefing outlining GSOC's investigation was given to Justice Minister Shatter by the GSOC Chairman Mr Simon O'Brien after the publication of the newspaper story. GSOC appeared before the Joint Committee on Public Service Oversight and Petitions to discuss the possible bugging of its offices where it emerged that it had not briefed the Minister on this matter when it received the original report from Verrimus. Garda Commissioner Callinan appeared alongside Minister Shatter at a Garda event and said he was satisfied no member of the Gardaí had ever spied on GSOC.¹¹² An investigation of the allegations by a judge found no evidence to prove the bugging was being undertaken by the Garda. Since the resignations of both the Minister and Commissioner in 2014, GSOC's Chairman, Mr O'Brien, resigned from his post on 30 January 2015 after serving three years of his five-year contract.¹¹³

The Committee was told in its briefings in Northern Ireland that there was an important difference between the two Irish jurisdictions. In the Republic of Ireland the public's approach to the Gardaí was an almost absolute trust in them, so much so that if the police said something it was assumed to be true. This made GSOC's task more difficult, especially in gaining convictions against an individual Gardaí.¹¹⁴ This reputation had now been tarnished by the penalty point scandal. The then-GSOC Chairman told the Committee that while minor, the penalty point scandal had led to a 'sea change' in the public's attitude to the Gardaí. The public had been roused by cases of well-known Irish people, such as rugby players, having their penalty points wiped off by the Gardaí while poorer young people from council estates didn't have this opportunity.¹¹⁵

Northern Ireland

Northern Ireland was created in 1921 when Ireland was partitioned by an act of the British Parliament. Since the signing of the Good Friday Agreement in 1998, Northern Ireland is largely self-governing. According to this agreement, Northern Ireland co-operates with the Republic of Ireland on some policy areas while other areas are

<http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/committeetakes/NVJ2014021200003?opendocument#C00100>. Accessed on 16 February 2015.

112 *The Journal*, 'The GSOC bugging saga: Here's what's happened since the story broke last Sunday', 15 February 2014. Available at: www.thejournal.ie/gsoc-bugging-summary-1316052-Feb2014/. Accessed on 16 February 2015.

113 *BBC News*, 'GSOC: Simon O'Brien resigns as chairman of Irish police watchdog', 7 January 2015. Available at: www.bbc.com/news/world-europe-30717638. Accessed on 16 February 2015.

114 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

115 Mr Simon O'Brien, Chairman, Garda Síochána Ombudsman Commission, *Briefing*, 4 November 2014.

reserved for the British Government. Its population is about 1.84 million in an area about 20% of the size of the Republic of Ireland.¹¹⁶

Police force

The Police Service of Northern Ireland (PSNI) replaced the highly militarized Royal Ulster Constabulary at the conclusion of 'The Troubles' in November 2001 as part of the Good Friday Agreement. It was established by the *Police (Northern Ireland) Act 2000*. As part of the later St Andrews Agreement, Sinn Féin announced its full acceptance of the PSNI in January 2007.¹¹⁷ In 2014 PSNI had 9,700 officers and civilian staff and an annual budget of £848.7 million (\$1.68 billion).¹¹⁸

The Committee was told by Detective Chief Superintendent George Clarke, who had served in both the RUC and PSNI, that Northern Ireland's police had been put in a very different role during The Troubles than many civic police forces. It was required to daily deal with issues around national identity politics, high levels of terrorist threat and high levels of violence. This meant that inevitably the police were in a different relationship with the Catholic and Protestant sides of the community. The outcome of this history meant there were many people who were not prepared to acquiescence to that policing model. They did not trust the police and did not trust the existing police complaints system.¹¹⁹

Mr George Clarke said the development of the PSNI was shaped by three factors. The first was the Hayes Report which was established in 1995 to review the police complaints system in Northern Ireland and how complaints were investigated.¹²⁰ The second was the Patten Report in September 1999. This was established in 1998 as part of the Good Friday Agreement to inquire into policing in Northern Ireland, make proposals for future policing structures and arrangements, including how to change from the RUC's militarised approach to policing. One of the Patten Report's recommendations was to establish the PONI.¹²¹ The final factor cited by Mr Clarke was

116 Wikipedia, *Northern Ireland*. Available at: http://en.wikipedia.org/wiki/Northern_Ireland. Accessed on 16 February 2015.

117 Wikipedia, *Police Service of Northern Ireland*. Available at: http://en.wikipedia.org/wiki/Police_Service_of_Northern_Ireland. Accessed on 16 February 2015.

118 Police Service of Northern Ireland, *Annual Report and Accounts For the year ended 31 March 2014*, July 2014, p9 & p54. Available at: www.psni.police.uk/main_account_2014.pdf. Accessed on 16 February 2015.

119 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

120 UK Parliament, *Memorandum submitted by the Northern Ireland Office*, 23 February 2005. Available at: <http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/344/4102009.htm>. Accessed on 17 February 2015.

121 Wikipedia, *Independent Commission on Policing for Northern Ireland*. Available at: http://en.wikipedia.org/wiki/Independent_Commission_on_Policing_for_Northern_Ireland. Accessed on 17 February 2015.

the *Human Rights Act* which imposed on all British public authorities the requirement to work within the European Convention on Human Rights. This convention included rights such as the right to trial, the right to life and the absence of inhumane, unusual and perverse punishments.¹²²

Similar to WAPOL, the PSNI has an Internal Affairs Unit that undertakes its own investigations into the majority of misconduct claims against police officers. The PSNI's Chief Constable is required to mandatorily refer matters to the PONI in situations of a death in custody, a death after contact with a police officer and the use of firearms and tasers.¹²³

Oversight agencies

The accountability structure for the PSNI includes two agencies- the Police Ombudsman for Northern Ireland (PONI) and the Northern Ireland Policing Board (NIPB). The NIPB oversees the PSNI systems including monitoring its performance in complying with the *Human Rights Act 1998*. Its broad functions include:

- appoint (and dismiss, if necessary) the Chief Constable, Deputy Chief Constable, Assistant Chief Constables and senior civilian staff;
- consult widely with local people on how their area is policed;
- monitor the work of the police and how well they perform against the targets set by the Policing Board;
- publish a rolling three year policing plan each year which informs people what they can expect from their police service and reports on police performance every year;
- ensure local people get best value from the police; and
- discipline senior officers.¹²⁴

Detective Chief Superintendent Clarke said that, like many other British jurisdictions, Northern Ireland had a tripartite accountability structure. The PSNI Chief Constable was accountable to PONI as well as the Policing Board and the Minister for Justice.¹²⁵

122 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

123 Ibid.

124 Northern Ireland Policing Board, *Our Work*, 2014. Available at: www.nipolicingboard.org.uk/index/our-work.htm. Accessed on 16 February 2015.

125 Mr George Clarke, Detective Chief Superintendent, Police Service of Northern Ireland, *Briefing*, 6 November 2014.

PONI's role is similar to that undertaken by the CCC in regard to WAPOL. It provides an independent and impartial system for the handling of complaints about the conduct of PSNI officers. PONI replaced the Independent Commission for Police Complaints which faced public criticism for requiring police to investigate the majority of complaints internally. It was established by the *Police (Northern Ireland) Act 1998*.¹²⁶ In 2013-14 it received over 3,700 complaints containing over 6,000 allegations about the police, an increase of 14% on the previous year and the highest number of complaints it has received. In that year it had 151FTE and an annual budget of £9.5 million (\$18.8 million).¹²⁷

The Department of Justice is PONI's sponsor department for funding. PONI is a non-departmental public body administrated through the Department of Justice. The Department of Justice is overseen by the Legislative Assembly's Justice Committee of the Legislative Assembly. The Police Ombudsman told the Committee that he can be invited to attend a parliamentary hearing but that there is no political influence on the decision-making of his office. PONI also has a Memorandum of Understanding with the Department of Justice as well as its MOU with the PSNI. It is also developing MOUs with the Public Prosecution Service and the Coroner Service. The MOUs are a way for PONI to codify and structure how PONI engages with these organisations. The MOU with the police provides protocols about the handling of sensitive information, including time frames for the provision of that information and allows each organisation to understand the expectations of the other.¹²⁸

PONI also has a Historical Investigations Directorate that works with PSNI's Historic Enquiries Team to inquire into unsolved murders during 'The Troubles' (between approximately 1968 and 1998).¹²⁹ PONI has received about 280 complaints against members of the Royal Ulster Constabulary and has about 30 investigators inquiring into these complaints. Members of the HET team must not have served in Northern Ireland with either the military or the RUC, and are brought in from other jurisdictions.¹³⁰

PONI Executive

Before becoming Police Ombudsman in July 2012, Dr Maguire was the Chief Inspector of the Criminal Justice Inspectorate in Northern Ireland. Prior to this he spent 18 years as a Management Consultant specialising in strategy and organisational development.

126 Police Ombudsman for Northern Ireland, *About Us*. Available at:

www.policeombudsman.org/About-us. Accessed on 16 February 2015.

127 Police Ombudsman for Northern Ireland, *Annual Report and Accounts For the year ended 31 March 2014*, p12 & p21. Available at: www.policeombudsman.org/PONI/files/82/82749d42-8bab-47bf-a43e-0a3f1fa5470e.pdf. Accessed on 16 February 2015.

128 Dr Michael Maguire, Police Ombudsman for Northern Ireland, *Briefing*, 5 November 2014.

129 Wikipedia, *Historical Enquiries Team*. Available at:

http://en.wikipedia.org/wiki/Historical_Enquiries_Team. Accessed on 17 February 2015.

130 Dr Michael Maguire, Police Ombudsman for Northern Ireland, *Briefing*, 5 November 2014.

PONI's current Chief Executive, Mr Adrian McAllister, joined PONI in January 2013 and previously held the post of Chief Executive of the Independent Safeguarding Authority, a non-departmental public body set up by Government in response to the Soham murders. Prior to joining the ISA he was Acting Deputy Chief Constable of Lancashire Constabulary.¹³¹

PONI's Commissioners have not been ex-judges, unlike the CCC. The initial Ombudsman was Baroness O'Loan who was a Senior Law Lecturer, holding the Jean Monnet Chair in European Law, at the University of Ulster from 1992 until her appointment. She was succeeded by Mr Al Hutchinson, who had previously been Oversight Commissioner with the Office of the Oversight Commissioner, the body established in 2001 to oversee changes to policing in Northern Ireland.¹³²

United Kingdom- London

Metropolitan Police Service

The Metropolitan Police Service (MPS) (based at New Scotland Yard) is the police force for London's population of 8.4 million and was formed in September 1829. London is the most populous municipality in the European Union and accounts for 12.5% of the UK's population. The MPS is responsible for an area of about 1,000 sq km and employs around 31,000 officers together with about 13,000 police staff and 2,600 Police Community Support Officers (PCSOs). The MPS is also supported by more than 5,100 volunteer police officers in the Metropolitan Special Constabulary (MSC) and its Employer Supported Policing (ESP) program. Its Budget is about £3.6 billion (\$7.1 billion).¹³³

The Committee was told that the MPS is the only police force in England with a standing anti-corruption unit that utilises covert techniques and is based in non-police sites to investigate corruption amongst MPS officers. In terms of tension with the IPCC, Assistant Commissioner for Professionalism, Mr Martin Hewitt, said that tensions are often created where inquiries extend for too long, and that this also creates tensions for families involved in incidents being investigated. Other impacts of extended inquiries are on the police involved, who may be suspended for long periods. In one recent case, Assistant Commissioner Hewitt refused an officer, who was being investigated by the IPCC, request to resign due to the likely negative impact on public confidence. The other cause for current tensions with the IPCC was its rapid expansion

131 Police Ombudsman for Northern Ireland, *Staff Profiles*. Available at:

www.policeombudsman.org/About-Us/Staff-Profiles. Accessed on 17 February 2015.

132 Police Ombudsman for Northern Ireland, *History of the Office*. Available at:

www.policeombudsman.org/About-Us/History-of-the-Office. Accessed on 17 February 2015.

133 Wikipedia, *Metropolitan Police Service*. Available at:

http://en.wikipedia.org/wiki/Metropolitan_Police_Service#Police_numbers. Accessed on 17 February 2015.

and employment of non-police investigators who in some cases lacked the necessary experience to speedily conclude inquiries.¹³⁴

Oversight agency

The MPS' oversight agency is the Independent Police Complaints Commission (IPCC) which was created in 2004 to independently investigate serious matters involving police and to handle appeals from citizens unhappy with the police's response to their complaint. Prior to the establishment of the IPCC, complaints about the police were handled by the Police Complaints Authority (PCA). The PCA was created under the *Police and Criminal Evidence Act 1984* and its more limited powers were amended by the *Police Act 1996*. The PCA had replaced the Police Complaints Board in April 1985.

The 1999 report of an inquiry chaired by Sir William Macpherson of Cluny into the murder of Stephen Lawrence in April 1993 recommended the establishment of an independent police complaints body.¹³⁵ Partly in response to this report, in May 2000 the UK Government carried out a consultation on a new police complaints system. These consultations culminated in the *Police Reform Act 2002* which established the IPCC.¹³⁶

In 2014 the IPCC had staff numbers of about 500 and an annual budget of £40.9 million (\$80.7 million). The IPCC is responsible for overseeing 43 independent police forces in England and Wales. In 2014 there were about 35,000 complaints about the 210,000 police and civilian staff employed in these independent police forces.¹³⁷

In 2013-14 the IPCC received 12,825 direct complaints about police throughout the UK with over 5,000 received through its online complaint form. It independently investigates only a small proportion of these complaints (just under 4% in 2009-10). The IPCC considers appeals from people who are dissatisfied with the way a police force has dealt with their complaint. Since November 2012 the responsibility for determining appeals is shared with local police forces. In February 2013, the Home Secretary announced a proposal to transfer resources from police forces to the IPCC, to

134 Assistant Commissioner Martin Hewitt, Chair, Metropolitan Police Service, *Briefing*, 7 November 2014.

135 UK Government, *The Stephen Lawrence Inquiry*, February 1999. Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf. Accessed on 17 February 2015.

136 Independent Police Complaints Commission, *History*. Available at: www.ipcc.gov.uk/page/history. Accessed on 17 February 2015.

137 Dame Anne Owers DBE, Chair, Independent Police Complaints Commission, *Briefing*, 7 November 2014.

enable it to carry out more independent investigations into serious and sensitive allegations.¹³⁸

Allegations that police conduct has led to someone dying or being seriously injured or involve allegations of serious assault, serious sexual offence, or serious corruption by police must be referred directly to the IPCC. The IPCC received 3,176 referrals in 2013-14 (almost 25% more than in 2012/13) - the highest number it had ever received. In 2014-15 it is on course to receive more than 3,600 referrals.¹³⁹

The IPCC deals with the matters referred to it in four ways:

1. An independent investigation undertaken by IPCC staff;
2. Direct and control an investigation undertaken by the police force where the matter arose or by another police force;
3. Send the matter back to the police force where the matter arose for investigation.¹⁴⁰

The IPCC directly investigates about 100 of the matters referred to it (or about 3%) each year. These matters almost always involve a death or serious injury to the public. It has recently received additional funds from the UK Government that will allow it to double the number of investigators it employs, and therefore should be able to undertake more independent investigations. Of the appeals made by the public against the outcome of investigations undertaken by police forces, the IPCC has found that the police were in error in about 45% of the appeals.¹⁴¹

Beside the MPS, the following agencies are subject to oversight by the IPCC:

- 43 Home Office police forces of England and Wales;
- Non-Home Office forces;
- Ministry of Defence Police;
- Civil Nuclear Constabulary;
- National Crime Agency;

138 Independent Police Complaints Commission, *Annual Report and Statement of Accounts 2013/14*, 15 July 2014, p6. Available at: www.ipcc.gov.uk/sites/default/files/Documents/publications/annual_report_IPCC_2014.PDF. Accessed on 17 February 2015.

139 Ibid, p11.

140 Dame Anne Owers DBE, Chair, Independent Police Complaints Commission, *Briefing*, 7 November 2014.

141 Ibid.

- HM Revenues and Customs; and
- UK Visas and Immigration, UK Immigration Enforcement and UK Border Force.¹⁴²

In terms of its oversight of the MPS, in 2013-14 the IPCC received 7,115 complaints containing 11,542 allegations. This was a 5% increase in complaints over 2012-13. Allegations resolved in 2013-14 locally by the MPS took on average 43 days to resolve while those investigated by the MPS took on average 93 days to resolve. The allegations investigated by the IPCC took on average 323 days to resolve. Only 10% of the allegations were upheld by the MPS or IPCC.¹⁴³

MOUs and Concordats

The IPCC currently has a range of MOUs and Concordats with a number of other agencies, such as Her Majesty's Inspectorate of Prisons, Her Majesty's Inspectorate of Constabulary (IoC), the College of Policing (CoP), the Crown Prosecution Service Special Crime Division, the Parliamentary Ombudsman and the Health and Safety Executive.¹⁴⁴ Its Concordat with the CoP was updated in February 2015 and allows the IPCC to inform the CoP's standard setting across England and Wales while recognising best practise within the 43 police forces. The IoC undertakes routine inspections of the police forces and the IPCC's Concordat allows it to influence.¹⁴⁵

IPCC Executive

Unlike the CCC Act, section 9(3) of the UK's *Police Reform Act 2002* does not require either the Chair or Deputy Chairs of the IPCC to be a judicial officer.¹⁴⁶ The Chair of the IPCC is Dame Anne Owers who was appointed in February 2012 for a five year term. Prior to the IPCC, Dame Owers was HM Chief Inspector of Prisons from 2001 to 2010 with a remit that included inspections of prisons, immigration removal centres and

142 Independent Police Complaints Commission, Annual Report and Statement of Accounts 2013/14, 15 July 2014, p41. Available at: www.ipcc.gov.uk/sites/default/files/Documents/publications/annual_report_IPCC_2014.PDF. Accessed on 17 February 2015.

143 Independent Police Complaints Commission, *Police complaints- Statistics for England and Wales 2013/14 and 2012/13*, p14, p16, p21 & p23. Available at: www.ipcc.gov.uk/sites/default/files/Documents/research_stats/complaints_statistics_2012-13_and_2013-14.PDF. Accessed on 17 February 2015.

144 Independent Police Complaints Commission, *Working with other agencies*, nd. Available at: www.ipcc.gov.uk/page/policy-documents#working-with-other-agencies. Accessed on 17 February 2015.

145 Dame Anne Owers DBE, Chair, Independent Police Complaints Commission, *Briefing*, 7 November 2014.

146 UK Government, *Police Reform Act 2002*. Available at: <http://www.legislation.gov.uk/ukpga/2002/30/part/2/crossheading/the-independent-police-complaints-commission>. Accessed on 17 February 2015.

police custody. She is a history graduate with a long history of managing non-profit organisations such as Christian Aid prior to her role as Chief Inspector of Prisons.

The IPCC has two Deputy Chairs. Ms Rachel Cerfontyne was appointed in August 2013. She had held the post of Development Director with the Barrow Cadbury Trust prior to joining the IPCC and is a qualified social worker with a MBA. She has also been a senior Director within criminal justice agencies and has experience in HM Court Services and the Probation Service. Sarah Green became a Deputy Chair in January 2014. Prior to joining the IPCC she was Head of Legal Services at the East of England Development Agency. Before that, she was area solicitor for the eastern region of the Legal Aid Board and then held a number of senior management roles nationally within the Legal Services Commission.¹⁴⁷

147 Independent Police Complaints Commission, *Chair and commissioners*. Available at: www.ipcc.gov.uk/page/chair-and-commissioners. Accessed on 17 February 2015.

Appendix Eight

MOU between IPCC, GSOC, PONI and PCCS



**Joint agreement in relation to
Scrutiny between the Independent
Police Complaints Commission,
Police Ombudsman for Northern
Ireland, the Garda Síochána
Ombudsman Commission and
Police Complaints Commissioner
for Scotland**

Memorandum of Understanding

Joint scrutiny agreement between the Independent Police Complaints Commission for England and Wales, the Police Ombudsman for Northern Ireland, the Garda Síochána Ombudsman Commission and the Police Complaints Commissioner for Scotland

The Police Ombudsman for Northern Ireland (PONI) is the oversight body for complaints against the Police in Northern Ireland.

The Independent Police Complaints Commission (IPCC) is the oversight body for complaints against the Police in England and Wales.

The Garda Síochána Ombudsman Commission (GSOC) is the oversight body for complaints against members of the Garda Síochána in Ireland.

The Police Complaints Commissioner for Scotland (PCCS) is the police oversight body for non-criminal complaints against the police in Scotland

The IPCC, PONI, GSOC and PCCS recognise that there will be times when their decisions and actions will be the subject of much debate and scrutiny.

There is justified and legitimate perception that the bodies that oversee the complaints process in respect of the police service are not themselves subject to any detailed external scrutiny when the need arises.

Whilst the respective legislatures of each jurisdiction have ultimate oversight of these bodies, there is a need to ensure transparency and independent scrutiny in matters that impact on the oversight bodies' reputation and integrity.

This joint memorandum of understanding seeks to address and alleviate those concerns.

The Independent Police Complaints Commission, the Police Ombudsman for Northern Ireland, the Garda Síochána Ombudsman Commission and the Police Complaints Commissioner for Scotland agree a memorandum of understanding that:


1. Each organisation can request, at Chief Executive/Director of Operations level, a review or the scrutiny of an investigation or review it is undertaking or undertook.
2. The Chief Executive/Director of Operations of each organisation can make "special requests" to each other where, in their view, a "critical incident" affecting the public confidence in their respective organisations requires an independent review.

3. Each organisation agrees that reviews would be cost neutral in respect of staffing but travel, accommodation or the requirement for specialist services would be recoverable from the organisation requesting the review.
4. Staff conducting reviews will possess the appropriate level of security vetting clearance in line with the matter they are dealing with.
5. Confidentiality agreements between the four organisations are implicit in this agreement.
6. Ownership of any product/material arising out of a review will rest with the commissioning body.
7. Reviews where appropriate may include "critical friend" debriefing/advice.
8. The agreement is subject to any legal requirements that each body has, exists or may arise.

Signatories

Signed 

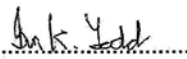
Jane Furniss
Chief Executive
Independent Police Complaints
Commission

Signed 

Paul Buschini
Director of Operations
Garda Síochána Ombudsman
Commission

Signed 

Samuel Pollock
Chief Executive
Police Ombudsman for Northern
Ireland

Signed 

Ian Todd
Director
PCCS

Appendix Nine

Committee's functions and powers

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

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

It is the function of the Joint Standing Committee to -

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

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