

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

*Fifteenth Report — “If Not the CCC ... Then Where? An Examination of the Corruption and Crime Commission’s Oversight of Excessive Use of Force Allegations against Members of the WA Police Force” —
Tabling*

MS M.M. QUIRK (Girrawheen) [11.02 am]: I present for tabling the fifteenth report of the Joint Standing Committee on the Corruption and Crime Commission, entitled “If Not the CCC ... Then Where? An Examination of the Corruption and Crime Commission’s Oversight of Excessive Use of Force Allegations against Members of the WA Police Force”, together with submissions.

[See papers [3782](#) and [3783](#).]

Ms M.M. QUIRK: At the front of this report, the committee has taken an unusual action. We have paid tribute to the late Hon Michael Murray, AM, QC, who performed the very important role of Parliamentary Inspector of the Corruption and Crime Commission for seven years. In June, the Attorney General paid tribute to Hon Michael Murray’s considerable public service and legacy in the law over his whole career. We wanted, however, to especially acknowledge his role as Parliamentary Inspector of the Corruption and Crime Commission. He served with great distinction.

In recent times, the issue of excessive use of force by police has been propelled into international and national focus through the Black Lives Matter movement. This, however, was not the catalyst for this inquiry. The effectiveness of oversight on such matters by the Corruption and Crime Commission has been of longstanding concern for the committee. This report deals not with the fundamental issue of why excessive use of force occurs or how it can be prevented; rather, how police misconduct is independently and effectively investigated and reviewed in Western Australia.

The Kennedy Royal Commission recommended for police a new external oversight agency. As a consequence, the Corruption and Crime Commission was created. The report contains an examination of whether the independent oversight, which was contemplated almost two decades ago, functions well for allegations of excessive use of force by police. The title of this report, “If Not the CCC ... Then Where?” reflects that if the CCC does not adequately embrace its police oversight role, where are complainants to go? They have no other avenues for independent oversight and review. It is also conceded that the sheer number of allegations makes a triage process necessary. Moreover, the committee heard that WA Police has refined and improved internal oversight. It is now more robust, and includes taking a number of investigations away from district level.

The committee concluded that even if there was more robust internal police oversight, the CCC cannot abrogate its responsibility. Instances are certainly cited within this report, and are the subject of previous tabled reports, that evidence the fact that this confidence by the CCC in internal police inquiries was misplaced. This report highlights the huge disparity between the number of allegations that the CCC chooses to investigate closely, and those—the vast majority—that are left to police to investigate internally. Members, as is often said, a picture speaks a thousand words, and so it is with the pie chart on page 15 of the report. I will lay on the table a copy of that chart.

The ACTING SPEAKER (Mr S.J. Price): The chart is laid on the table.

Ms M.M. QUIRK: Thank you.

The chart sets out the proportion of allegations assessed and actions undertaken by the CCC on excessive use of force by police. Even a cursory inspection of that chart shows that the preponderance of allegations is either not actioned at all, or referred back for internal police investigation, with various levels of monitoring.

As an aside, I found the categories used by the CCC to be opaque. As explained in the report, “active oversight” may in fact be relatively at arm’s length. However thorough and professional police internal investigations may be, it is not consistent with either public expectations or the statutory intent that the CCC play a central role.

It is trite to observe that the governing legislation is the Corruption, Crime and Misconduct Act 2003—I emphasise “and misconduct”. The CCC’s role is broader than simply targeting official corruption. Excessive use of force by police is categorised as serious misconduct and hence within the parameters of the CCC’s statutory obligations. This is different from other jurisdictions, such as New South Wales, in which separate official corruption and police integrity oversight bodies exist.

The report chronicles a change of strategic direction by the CCC in recent years. It is arguable that this change of focus has had the practical effect of reducing further the direct involvement of the CCC through independent investigations, in favour of “higher value” investigations. Allied to the CCC’s deliberations on what matters to pursue, the CCC has cited on numerous occasions, as being influential, the limited resources available for this oversight role. This is perplexing given that this change of strategic direction occurred at the same time that the CCC divested to the Public Sector Commission its education and minor misconduct functions, thereby freeing up resources.

Evidence given to the committee indicates that the criteria that may influence the CCC to investigate matters more fully tend to be those in which CCTV or mobile phone footage exists, there has been media coverage, or the case is high profile. It may be open to conclude from this that these are the very matters for which resolution can be assured in any event, or, to use the vernacular, matters that are low-hanging fruit. It also begs the question, central to this inquiry, of why the more complex and difficult matters are not afforded the same level of attention and given the benefit of the expertise of the CCC.

As I have noted, reference has been made by the CCC, in both written submissions and evidence, that the availability and estimated expenditure of resources is influential in the assessing of complaints. Although this should be part of any sound management decision-making process, it would be unfortunate if that consideration acted as a barrier to oversight in all but the most high-profile complaints.

The Corruption and Crime Commission's role to undertake system-wide reviews in situations in which a pattern of conduct emerges is welcome. This could relate to a series of events occurring at one location over a period, a particular officer coming to notice consistently in relation to a number of separate incidents, or the way in which a category of complainants is dealt with. However, these trends may come to light only through routinely auditing and interrogating police data. It is not apparent whether this occurs on a proactive basis.

The committee heard troubling evidence from the Aboriginal Legal Service of Western Australia about a series of cases over an extended period and in a range of locations involving the alleged improper use of police dogs. In bringing these complaints to the attention of the CCC, it presented evidence of injuries sustained as a result. The CCC formed the view that none of the individual cases amounted to serious misconduct. The Aboriginal Legal Service gave evidence that it now was disinclined to contact the CCC about alleged incidents of excessive use of force. It had no confidence that the allegations would be acted upon. In fact, evidence was given that in recent times, senior WA police were more receptive to investigating such allegations than the CCC. WAPOL now works cooperatively with the Aboriginal Legal Service to address matters raised. This is a sorry state of affairs.

The report recommends a greater level of engagement by the CCC to improve the handling of cases involving Aboriginal Western Australians. The CCC has regular meetings with the Aboriginal Legal Service, but there may be some more fundamental questions to address. The principles of substantive equality demand not that all persons be treated equally, but that they be treated in such a way as to ensure equality of outcomes. Over the course of hearings, the scenario was canvassed in which some level of force is used, possibly not excessively, but it was alleged that the use of force was accompanied by racist comments or epithets by police. In those circumstances, maybe the seriousness of that conduct should be elevated, warranting greater oversight or sanction?

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

Given the COVID-19 disruption to ordinary parliamentary business this year, the committee was unable to consult with or inquire into corresponding agencies to the CCC in other jurisdictions. However, it did conduct a number of hearings and received submissions. We are grateful for the substantial and comprehensive material provided by the WA Police Force and the Corruption and Crime Commission. The central issues were canvassed with key stakeholders at hearings. These included the Corruption and Crime Commission, the Western Australia Police Force, some complainants, the Aboriginal Legal Service, and the Western Australian Police Union. The committee also relied on material put before it over the past three years. Included at appendix 7 is a brief summary of some overseas examples of external oversight of police.

The Corruption, Crime and Misconduct Act 2003 was last reviewed in 2008, and has been subject to only piecemeal changes since then. Although not forming part of the terms of reference, this inquiry reinforced our long-held view that a complete overhaul of the act is required. The deliberations of the Kennedy royal commission are fading with time. Consideration needs to be given afresh to delineating how the CCC will more effectively oversee allegations of misconduct by police, especially those involving excessive use of force.

In reading this report, it is important to be mindful that WA police have 2.2 million interactions with members of the public each year. This compares with, on average, 400 complaints of excessive use of force. Deservedly, police in this state are generally held in high regard, facing challenging and confronting situations on a daily basis. That is all the more reason for any system that thoroughly overlooks the unacceptable behaviour of a few to enjoy the support, confidence and endorsement of the public.

Finally, on an encouraging note, the recent progressive rollout of body-worn cameras for police is already proving to be invaluable. Fewer vexatious allegations have been made that police officers have to defend, investigations can be expedited, and the public can be confident that they provide technological oversight of conduct that may otherwise go undetected.

As usual, I appreciate the commitment and engagement of committee members: deputy chair Hon Jim Chown, MLC; the member for Kalamunda, Mr Matthew Hughes, MLA; and Hon Alison Xamon, MLC. The committee was ably and conscientiously supported by the secretariat, Ms Vanessa Beckingham, Ms Lucy Roberts and Ms Sylvia Wolf. The committee's deliberations are aptly summarised in the words of Molière —

It is not only what we do, but also what we do not do, for which we are accountable.

MR M. HUGHES (Kalamunda) [11.15 am]: In speaking to this report, I think it fair to reflect that this has been a difficult year for the cohesiveness of the committee, as events in this place earlier in the year over the reappointment of the Corruption and Crime Commissioner revealed —

Mr Z.R.F. Kirkup: Made worse by your contribution.

Mr M. HUGHES: Possibly. It revealed a matter that is not yet resolved because of the resulting impasse that ensued. In that regard, I wish to thank the principal research officer, Vanessa Beckingham, and her co-research officers, Sylvia Wolf and Lucy Roberts, for the high calibre of their work in their service to the members of the committee, and particularly in the preparation of this report.

Members should understand that this report was prepared within a very tight time frame. Although the inquiry was announced at the end of 2019, work did not begin in earnest until May 2020—five months ago—with a single day of hearings held on 1 July 2020. Only 16 submissions were received, with nine from private citizens and one from an undisclosed source. The rest of the submissions, as the chair of the committee has mentioned already, were received from the Corruption and Crime Commission, the Parliamentary Inspector of the Corruption and Crime Commission, the Aboriginal Legal Service of Western Australia, the Western Australia Police Force and the Western Australian Police Union. In addition, the report is very much dependent on an analysis of a number of reports and sources already in the public domain. How these reports have been interpreted is predicated on how the interrogation of that information has been framed by the committee. The committee came to the view that police oversight should be prioritised over and above other strategic themes identified by the CCC. This view will no doubt give rise to some healthy public debate on the findings and recommendations of the committee regarding the issues raised. I am confident that matters of importance raised by the committee will be subject to much deliberation and comment, not least by WA police and the CCC itself.

In speaking to the report, I wish to make a number of observations. As is the case with all agencies, agency activity is subject to the prioritisation of resources. In that regard, the CCC is no different from any other agency. The former Corruption and Crime Commissioner, Hon John McKechnie, more than once talked to the committee about the difficulty of prioritisation of investigations with finite resources. I am reminded that at the CCC annual report hearing held in October last year, Hon Alison Xamon suggested to the commissioner that police oversight was not receiving maximum priority, particularly considering the number of complaints that were made about police. He responded by saying —

I would with great respect challenge that it is not receiving maximum priority. The commission was set up—I have often said this, too—effectively as two commissions. It is a public sector misconduct commission and it is a police misconduct commission.

Further, the chief executive of the CCC advised the committee in relation to the inquiry reported on and tabled today that if there were more resources available, more independent or cooperative investigations could be undertaken, although a system of triage, or prioritisation, would still need to be adhered to. Following that, the acting Corruption and Crime Commissioner, Mr Scott Ellis explained it in this way —

Where we are at is that we are actively engaging through the active oversight process with matters that come in, and we do not control what comes in; it comes in. We see that there is a circumstance there which requires us to have an active involvement. It is not a random process that is an allocation of resources to an area that we think is or might be a problem.

It is important to understand that the balance between allocation of CCC resources to police oversight, as opposed to resources allocated to its role as the anti-corruption body overseeing the rest of the public sector, has long been a tension that is difficult to resolve. We can go back to the CCC report on excessive use of force by the police published on 8 September 2011 in which the then acting commissioner, Mark Herron, made a similar observation, so it is not something new. It is a fact that the bulk of the CCC's oversight team is focused on police matters. In the transcript of last year's annual report hearing the CCC noted that —

At the present time, 75 per cent of the work of the oversight team is on police matters.

I note too, that a review of CCC reports tabled since the re-positioning of the CCC in 2015 reveal that around one-third of CCC reports to Parliament are on police matters. The majority of these are reporting on excessive use of force matters. In fact, there appears to be have been a slight increase recently in CCC reporting on police use of

force matters. I note that there are two upcoming reports due to be tabled by the CCC on police use of force that were referred to in additional information received from the CCC following the July public hearing.

I note also the public talk given by Hon John McKechnie on 7 March 2017 as part of the Curtin University Eminent Speaker Series. In the talk he commented about the CCC budget. He observed that even if the budget were magically doubled, it would not change the fact that misconduct remains the responsibility of the CEOs of individual agencies. This includes the Commissioner of Police. The 2015 CCC repositioning report sets out why it started to take a more strategic approach to agency oversight. My question is: Is the CCC doing a better job these days than was previously the case? Was the 2015 repositioning an improvement? On page 1, paragraph 1.3 of the report the committee acknowledges that the CCC has improved and refined oversight processes since the Cunningham and Atoms matter came to light, the ongoing saga of which members will be familiar. The introduction of the active oversight model currently in place is arguably an improvement on what was in place before.

It is important to note that when the Corruption, Crime and Misconduct Act was introduced in 2003, police oversight was not accorded any particular importance over and above public sector misconduct. Thus, it is open to conclude that in accordance with the current act the CCC has been fulfilling its function in accordance with the statutory role given to it. I think *Hansard* substantiates this. After going through the *Hansard* transcript of debates it appears that the debate did not particularly emphasise oversight of police as the key priority of the CCC over and above the rest of the public sector. The discussion in *Hansard* about the establishment of the CCC consistently references oversight of police and the broader public sector together as important issues requiring address. Is the oversight of the police one of a number of priorities? Yes, it is, but it is one of a number of priorities.

This report should encourage the CCC to reflect on the effectiveness of the active oversight approach and its interface with the WA police commissioner in ensuring complaints against the police are thoroughly investigated. It is timely for the CCC to review the processes and procedures in place to investigate complaints against the police for excessive use of force generally and particularly the level of confidence that Indigenous Western Australians have in the investigation of allegations of excessive use of force by the police against that section of the community. The CCC should hear the Aboriginal Legal Service's view that matters concerning excessive use of force by police against Aboriginal members of our community receive too little attention. In that regard, I commend the report to the house.