



Your Ref:
Our Ref: 00582/2011 RM:MP

5 September 2013

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

Dear Chairman

**PUBLIC HEARING WITH THE JOINT STANDING COMMITTEE ON
9 SEPTEMBER 2013**

I refer to your letter of 4 September 2013 in which you request copies of any correspondence received or sent by the Commission subsequent to the WA Police Union of Workers (WAPU) letter of 22 July 2013 relating to voluntary interviews of WAPU Members by Commission officers. I advise that the following letters fall into that category:

- letter of 26 July 2013 to the Commissioner of Police (COP) from the Commission;
- letter of 29 July 2013 to the President of WAPU from the Commission;
- letter of 5 August 2013 to the Commission from COP;
- letter of 15 August 2013 to the Commission from the Parliamentary Inspector; and
- letter of 22 August to the President of WAPU from the Commission.

A copy of each of the above letters is enclosed. I have also enclosed a copy of the letter of 22 July 2013 from WAPU for ease of reference.

Yours faithfully



Roger Macknay, QC
COMMISSIONER

Encl.

CORRUPTION AND CRIME COMMISSION

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00054/2010

CORRUPTION
AND CRIME
COMMISSION

Your Ref:
Our Ref: RM:MS

26 July 2013

Dr Karl O'Callaghan, APM, Himself
Commissioner of Police
Western Australia Police
2 Adelaide Terrace
EAST PERTH WA 6004

PRIVATE AND CONFIDENTIAL

Dear Commissioner

WA POLICE UNION OF WORKERS

I refer to the letter to me of 22 July 2013 from the WA Police Union of Workers (WAPU), a copy of which I enclose. I understand that you may have received a similar letter.

The decision of WAPU to advise its members not to participate in any voluntary interviews conducted by the Commission is already adversely affecting Commission investigations. That advice is a retrograde step and is contrary to the interests of police officers themselves, the Western Australia Police (WAPOL) and the people of Western Australia.

That you are responsible and accountable for preventing and dealing with police misconduct is not a contentious point. Nor is the Commission's role in overseeing the way WAPOL deals with misconduct. This relationship is addressed at sections 7(B)(3), 28 and 32 of the *Corruption and Crime Commission Act 2003* ("the CCC Act").

WAPU's letter contains a number of misperceptions about the Commission's role and how it performs its functions. That the Commission routinely conducts investigations and inquiries independently of WAPOL is a matter of fact.

The CCC Act enables the Commission to conduct investigations, at section 33. Section 34 describes the circumstances in which those investigations might occur. The requirements for the Commission to give particular attention to WAPOL arises from its origins in the Police Royal Commission and a number of reports and recommendations in recent years from the Joint Standing Committee on the Corruption and Crime Commission and the Commission's Parliamentary Inspector. Clearly the conduct of investigations of WAPOL by the Commission was intended by the Parliament and expected by the people of Western Australia.

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CCC 90069



The Commission has regularly conducted investigations and inquiries independently of WAPOL. Its investigations of such matters as those associated with the wrongful arrest, trial and imprisonment of Mr Andrew Mallard, the treatment of Mr Kevin Spratt in the Perth Watch House and, more recently, of issues associated with [REDACTED] [REDACTED] conduct at the Broome Lock-Up are but three prominent examples of this. They are also indicative of the fact that due to the nature of policing from time-to-time allegations of particularly serious misconduct arise that require rigorous, independent investigation. The capacity to conduct such investigations is critical to public confidence in the police.

The Commission has frequent interactions with individual police officers. Predominately these interactions are for the purpose of establishing the facts about the conduct of other persons, some of whom are police officers. While the Commission's inquiries may result in adverse consequences for some police officers, overwhelmingly this is not the case for most of those who have contact with it. Not infrequently the Commission's inquiries identify material that supports the appropriateness of police actions. Commission investigations also identify weaknesses or failures in police support systems and processes so that improvements can be made to make the work of police safer and more effective.

The Commission's intends to continue to investigate police misconduct. If police officers decline to participate in voluntary interviews then the Commission will use its various powers and conduct more hearings if necessary. This will inevitably slow the work of the Commission but will also likely lead to significant cost and disruption to WAPOL. This is undesirable.

The vast majority of your members do a great job in trying circumstances. There are a small number of officers who act dishonestly or improperly and they need to be dealt with appropriately. WAPU's advice will simply protect police who behave badly while making life more difficult for honest, hard-working officers.

Over the long term the Commission's activities that hold WAPOL and its members to account makes the police more effective and contributes to sustaining public trust and confidence in them. Clearly all police and WAPU expect and deserve community support. It is therefore difficult to understand how WAPU can believe that its recent advice to members can do anything other than erode that support.

Yours faithfully



Roger Macknay, QC
COMMISSIONER

Encl.

cc: Hon. Michael Murray, QC, Parliamentary Inspector of the Corruption and Crime Commission.

02269/2013



CORRUPTION
AND CRIME
COMMISSION

Your Ref: -
Our Ref: 02269/2013:MS:MP

29 July 2013

Mr George Tilbury
President
WA Police Union of Workers
639 Murray Street
WEST PERTH WA 6005

 COPY

Dear Mr Tilbury

WA POLICE UNION OF WORKERS ADVICE TO ITS MEMBERS

I refer to the WA Police Union of Workers ("the Union") letter to the Corruption and Crime Commission ("the Commission") of 22 July 2013.

The decision of the Union to advise its members not to participate in any voluntary interviews conducted by the Commission is already adversely affecting Commission investigations. That advice is a retrograde step and is contrary to the interests of police officers themselves, the Western Australia Police (WAPOL) and the people of Western Australia.

Your letter contains a number of misperceptions about the Commission and the way it performs its functions.

That the Commissioner of Police, as a chief executive officer, is first and foremost responsible and accountable for preventing and dealing with police misconduct is not contentious. Nor is the role of the Commission in overseeing the way WAPOL deals with misconduct. Sections 7B(3), 28 and 32 of the *Corruption and Crime Commission Act 2003* ("the CCC Act") addresses this relationship.

In accordance with the intention of the CCC Act, WAPOL deals with most complaints concerning police misconduct, albeit while subject to monitoring and review by the Commission. Section 33 of the CCC Act enables the Commission to itself conduct investigations. Section 34 describes the circumstances in which those investigations might occur. The requirement for the Commission to give particular attention to WAPOL arises from its origins in the Police Royal Commission and from a number of reports and recommendations in recent years from the Joint Standing Committee on the Corruption and Crime Commission and the Commission's Parliamentary Inspector. Clearly the conduct of investigations of WAPOL by the Commission was intended by the Parliament and expected by the people of Western Australia.

The Union's letter appears to suggest that the Commission's conduct of investigations of the police is a recent phenomenon. Since its inception the

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CCC 90071



Commission has regularly conducted investigations and inquiries independently of WAPOL. Its investigations of such matters as those associated with the wrongful arrest, trial and imprisonment of Mr Andrew Mallard, the treatment of Mr Kevin Spratt in the Perth Watch House and, more recently, of issues associated with [REDACTED] [REDACTED] conduct at the Broome Lock-Up are but three prominent examples of this. They are also indicative of the fact that due to the nature of policing from time-to-time allegations of particularly serious misconduct arise that require rigorous, independent investigation. The capacity to conduct such investigations is critical to public confidence in the police.

The Commission has frequent interactions with individual police officers. Predominately these interactions are for the purpose of establishing the facts about the conduct of other persons, some of whom are police officers. While the Commission's inquiries may result in adverse consequences for some police officers, overwhelmingly this is not the case for most of those who have contact with it. Not infrequently the Commission's inquiries identify material that supports the appropriateness of police actions. Commission investigations also identify weaknesses or failures in police support systems and processes so that improvements can be made to make the work of police safer and more effective.

The Commission intends to continue to investigate police misconduct. If police officers decline to participate in voluntary interviews then the Commission will use its various other powers and will conduct more hearings if necessary. This will inevitably slow the work of the Commission but will also likely lead to significant cost and disruption to WAPOL. This is undesirable.

The vast majority of your members do a great job in trying circumstances. There are a small number of officers who act dishonestly or improperly and they need to be dealt with appropriately. The Union's advice will simply protect police who behave badly while making life more difficult for honest, hard-working officers.

Over the long term the Commission's activities that hold WAPOL and its members to account makes the police more effective and contributes to sustaining public trust and confidence in them. Clearly all police and the Union expect and deserve community support. It is therefore difficult to understand how the Union can believe that its recent advice to members can do anything other than erode that support.

Yours faithfully



Roger Macknay, QC
COMMISSIONER

cc: Hon. Michael Murray, QC, Parliamentary Inspector of the Corruption and Crime Commission.

00054/2010



WESTERN AUSTRALIA POLICE

OFFICE OF COMMISSIONER OF POLICE

POLICE HEADQUARTERS

6TH FLOOR

2 ADELAIDE TERRACE, EAST PERTH

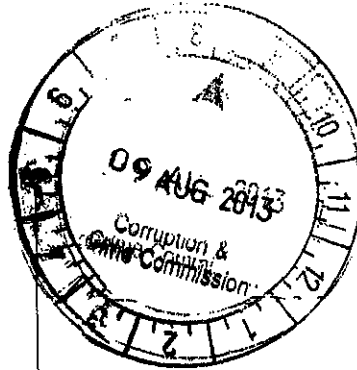
WESTERN AUSTRALIA 6004

TELEPHONE : (08) 9222 1978

FACSIMILE : (08) 9222 1717

Your Ref: RM:MS
Our Ref: EA1046762
Inquiries:

Commissioner Roger Macknay QC
Corruption and Crime Commission
PO Box 7667
Cloisters Square
PERTH WA 6850



Dear Commissioner Macknay

WA POLICE UNION OF WORKERS

I refer to your correspondence dated 26 July 2013 expressing concern about a letter circulated by the Western Australian Police Union of Workers (WAPU) to its membership.

The letter advises WAPU members of their right not to participate in voluntary interviews with Corruption and Crime Commission investigators.

Whilst I am sympathetic to the impact of this advice upon the day to day operations of the Corruption and Crime Commission, it is not within my remit to direct the Executive of WAPU as to what advice should be provided to the membership.

You may consider that contact and discussions with the WAPU Board of Directors would be of benefit in allaying your concerns.

Yours sincerely


KARL J O'CALLAGHAN APM
COMMISSIONER OF POLICE
5 August 2013

Corruption and Crime Commission	
	Obj Ref
Commissioner	<input checked="" type="checkbox"/>
Exec. Director	<input checked="" type="checkbox"/>
General Counsel	<input type="checkbox"/>
Director DO, DDO, DCP	<input checked="" type="checkbox"/>
Manager ES	<input checked="" type="checkbox"/>
Case Officer	<input type="checkbox"/>
Other	<input type="checkbox"/>
Commissioner.....	

cc M. Silverstone, C. McGowan
J Lynch, R Watson, M Powell
J Evans-Roland





**PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

Our ref: 412/13
Your ref: 02269/2013

15 August 2013

Commissioner Roger Macknay QC
Corruption and Crime Commission of Western Australia
PO Box 7667
CLOISTERS SQUARE WA 6850



Dear Commissioner,

RE: WA Police Union of Workers Advice to Members

Thank you for referring the above matter for my information. I agree with you that the advice proposed to be given by the Union to its members concerning their rights when the subject of an investigation by the Commission (CCC) would be unfortunate because it would hinder the timeliness of the process and I cannot see that it would produce any benefit to a police officer who was called upon to assist.

Forgive me for what follows, of which I am sure you are well aware, but I thought it would assist me to grasp the point if I considered the relevant statutory provisions. I was assisted also by reading the judgments of the High Court in the decision delivered on 26 June 2013, *X7 v Australian Crime Commission [2013]HCA 29*. The case is concerned with the point that such legislation will only be interpreted as abrogating protections otherwise provided by the law if that was clearly the legislative intention.

By a majority, Hayne, Kiefel and Bell JJ, French CJ and Crennan J dissenting, the Court held that an examiner appointed under the provisions of the ACC Act could not question a witness about matters into which an inquiry was being held, to the extent that they constituted the subject matter of an offence with which the person had already been charged, because to do so would infringe upon the right to silence and the privilege against self-incrimination which had not been expressly abrogated by the legislation. Of course the position may be different at an earlier stage in the process before any charge has been laid. I attach a copy of the reasons for ease of reference.

The Union says that it is acting consistently with its legal advice, but it seems to me that the position under the CCC Act is clear:

- A witness at an examination is compellable to answer questions which are considered by the Commissioner to be relevant and permissible: s143.
- It matters not that the witness has been summoned to attend or appears voluntarily: s3(1), definition of "witness".



- Legal professional privilege (but not public interest immunity), the privilege against self-incrimination and the like are all preserved: ss147(3), 144, and 223.
- The answers of the witness are not admissible in any criminal or quasi-criminal proceeding, except for contempt of the Commission or otherwise for an offence against the CCC Act: s145.
- The answers are admissible in disciplinary proceedings: s145.
- Outside the area of formal examination, during an investigation into alleged misconduct, etc., the CCC has the power to compel the provision of information, records and other evidentiary material directly by a public officer or by the appropriate authority, by notice or summons: Part 6, Division 1.
- Referral of the matter to an appropriate authority may precede or follow such an investigation, with or without a recommendation as to the action to be taken: ss 33, 37 and 43.
- If a statement is made under compulsion it is inadmissible except to the extent provided by s145: s94, but, of course, it may be used to test the evidence of a witness as a prior inconsistent statement.

Given that an investigation, or evidence as a witness, will not necessarily have the potential to require a declaration against interest or of a confessional nature, and given the retention of relevant privileges and the very restricted admissibility of any information provided in other proceedings, I cannot see the point in adopting a general stance of denial of co-operation with CCC officers.

In light of the fact that information denied upon a request may be obtained by compulsion there would seem to be little point in refusing to co-operate.

Finally, in light of the recent decision of the High Court, I have no doubt that point 4 of the letter dated 22 July from the President of the Union to you is wrong. The CCC Act would not be interpreted as having the effect that the protections otherwise provided by the Act would be lost because the person concerned elected to co-operate with a CCC investigation, rather than hold out until he or she was compelled to do so.

If you were proposing to write further on this subject to the President of the Union and to the Commissioner of Police, you are at liberty to forward a copy of this letter to them or to make such other use of it as you may see fit.

Yours sincerely,


THE HON MICHAEL MURRAY QC
PARLIAMENTARY INSPECTOR

Corruption and Crime Commission	
	Obj Ref
Commissioner	<input checked="" type="checkbox"/>
Exec. Director	<input checked="" type="checkbox"/>
General Counsel	<input type="checkbox"/>
Director <i>LS</i>	<input checked="" type="checkbox"/>
Manager <i>ES</i>	<input checked="" type="checkbox"/>
Case Officer	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>
<i>J. Wilby</i>	

cc | *Commissioner, M. Silverstone*
P O'Connor, M Powell, V Chong-Walsh



COPY

Your Ref:
Our Ref: 00269/2013 PO

22 August 2013

Mr George Tilbury
President
WA Police Union of Workers
639 Murray St
WEST PERTH WA 6005

Dear Mr Tilbury

WA POLICE UNION OF WORKERS ADVICE TO ITS MEMBERS

I refer to the Commissioner's letter to you of 29 July 2013.

The Commissioner provided a copy of his letter to the Parliamentary Inspector of the Corruption & Crime Commission for his information.

The Parliamentary Inspector has taken the opportunity to comment on the matter and shares the Commission's concern that the advice proposed to be given by your Union to its members concerning their rights when the subject of an investigation by the Commission would be unfortunate. The Parliamentary Inspector is of the view that the proposed advice would hinder the timeliness of the Commission's investigation and would not produce any benefit to a police officer who was called upon to assist.

I enclose for your information a copy of the Parliamentary Inspector's letter to the Commissioner dated 15 August 2013.

Yours faithfully,

Paul O'Connor
Director Legal Services

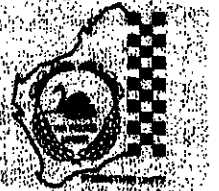
Encl

cc: Dr Karl O'Callaghan APM - Commissioner of Police, Western Australia Police

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02269/2013

22 July 2013

Mr R. Macknay QC
Commissioner
Corruption and Crime Commission
186 St Georges Terrace
PERTH WA 6000



Dear Mr Macknay

VOLUNTARY INTERVIEW REQUESTS BY THE CORRUPTION AND CRIME COMMISSION – ADVICE TO MEMBERS

We have received a number of enquiries from Members who are concerned about their rights and options, with respect to requests to participate in voluntary interviews with Officers from the Corruption and Crime Commission (CCC).

Following receipt of advice from independent counsel, WAPU intends to inform Members that:

1. Any statement made by a Police Officer in answer to a question under compulsion cannot be used in evidence against the Officer in subsequent criminal or civil proceedings, but may be used in disciplinary proceedings, proceedings for contempt of the CCC or for offences against the *Corruption and Crime Commission Act*;
2. Officers are not obliged to participate in a voluntary interview with the CCC that is conducted without a notice or summons first being issued to the Officer;
3. Officers have a lawful right to refuse to participate in interviews which are not compulsory;
4. If an Officer voluntarily elects to participate in an interview which is not compulsory, any statements made by the Officer can be used against them in subsequent criminal or civil proceedings;
5. No disciplinary action can be taken against an Officer who exercises their lawful right to refuse to participate in a voluntary interview with the CCC.

Rather than being primarily focussed on an oversight role, it is clear that the CCC is now actively involved in investigations which appear to be undertaken independently of WA Police.

As part of this process, your preferred method of engagement with our Members is to seek participation in voluntary interviews, as outlined above at point 2.

CCC 89952



Unless extraordinary circumstances dictate otherwise, it is our view that WA Police should be given the first opportunity to conduct internal investigations, given that Professional Standards personnel possess the requisite knowledge and expertise to deal with all matters involving Police Officers.

Given recent incidents, the belief that our Members should be treated fairly and reasonably and knowing that the CCC and WA Police have adequate powers to compel Police Officers to participate in interviews, WAPU will recommend (as outlined at Point 3) that our Members exercise their rights and decline to participate in all voluntary interviews conducted by the CCC.

This action has been endorsed by the WAPU Board of Directors and is based on sound legal advice.

Prior to advising our Members of their rights, I have extended the courtesy of this early notification to both you and the Commissioner of Police.

Yours sincerely


George Tilbury
President

Corruption and Crime Commission	
	Obj Ref
Commissioner	<input checked="" type="checkbox"/>
Exec. Director	<input checked="" type="checkbox"/>
General Counsel	<input type="checkbox"/>
Director DO, DDC	<input checked="" type="checkbox"/>
Manager Es	<input checked="" type="checkbox"/>
Case Officer	<input type="checkbox"/>
Other	<input type="checkbox"/>
Commissioner.....	
cc	M. Silverstone, C McGowan
	S Lynch, M Powell