

41ST PARLIAMENT



Joint Standing Committee on the  
Corruption and Crime Commission

Report 2

IF NOT THE CCC ... THEN WHERE?

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

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Presented by  
Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC

September 2021

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

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

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

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Report No. 2

Presented by

**Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC**

Laid on the Table of the Legislative Assembly and Legislative Council on  
9 September 2021



## Chair's foreword

**R**eport 15 of the Joint Standing Committee on the Corruption and Crime Commission in the 40th Parliament (the previous committee), *[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](#)*, was tabled in the Legislative Assembly and Legislative Council on 24 September 2020.

The previous committee examined how the Corruption and Crime Commission was overseeing WA Police Force investigations into allegations of excessive use of force, and if this oversight was sufficient. Its Report 15 contained 52 findings and 13 recommendations.

Due to the prorogation of the Parliament, and the dissolution of the Legislative Assembly on 7 December 2020, the government did not have the opportunity to respond to the recommendations in Report 15.

The Joint Standing Committee on the Corruption and Crime Commission of the present Parliament resolved to table a report containing the findings and recommendation of Report 15 and seek a government response to the recommendations of the previous committee.

A handwritten signature in blue ink, appearing to read 'M. Hughes'.

Mr M HUGHES, MLA  
CHAIR



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## **Ministerial response**

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



# Report

## Findings and recommendations

### **Finding 1**

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

### **Finding 2**

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

### **Finding 3**

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

### **Finding 4**

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

### **Finding 5**

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

### **Finding 6**

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

### **Finding 7**

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

### **Finding 8**

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

### **Finding 9**

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

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

**Finding 10**

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

**Finding 11**

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

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

**Finding 12**

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

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

**Finding 13**

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

**Finding 14**

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

**Finding 15**

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

**Finding 16**

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

**Finding 17**

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

**Recommendation 1**

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

**Finding 18**

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

**Finding 19**

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

**Finding 20**

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

**Finding 21**

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

**Finding 22**

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

**Finding 23**

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

**Finding 24**

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

**Finding 25**

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

**Finding 26**

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

**Recommendation 2**

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

**Finding 27**

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

**Recommendation 3**

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

**Recommendation 4**

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

**Finding 28**

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

**Finding 29**

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

**Finding 30**

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

**Finding 31**

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

**Finding 32**

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

**Finding 33**

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

**Finding 34**

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

**Finding 35**

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

**Recommendation 5**

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

**Finding 36**

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

**Finding 37**

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

**Finding 38**

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

**Finding 39**

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

**Finding 40**

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

**Finding 41**

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

**Finding 42**

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

**Finding 43**

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

**Finding 44**

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

**Finding 45**

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

**Finding 46**

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

**Finding 47**

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

**Recommendation 6**

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

**Finding 48**

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



**Recommendation 7**

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

**Recommendation 8**

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

**Recommendation 9**

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

**Recommendation 10**

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

**Finding 49**

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

**Recommendation 11**

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

**Finding 50**

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

**Recommendation 12**

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

**Finding 51**

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

**Finding 52**

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

**Recommendation 13**

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

A handwritten signature in blue ink, appearing to read 'M. Hughes'.

MR M. HUGHES, MLA

# Appendix 1

## Committee's functions and powers

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By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 25 May 2021.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289 to 292 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
- c) carry out any other functions conferred on the committee under the *Corruption, Crime and Misconduct Act 2003*.

The committee consists of 4 members, 2 from the Legislative Assembly and 2 from the Legislative Council.



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