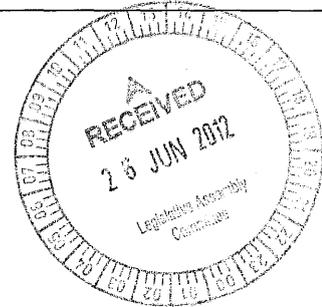




**PARLIAMENTARY INSPECTOR
OF THE CORRUPTION AND CRIME COMMISSION
OF WESTERN AUSTRALIA**

21 June 2012

The Hon Nick Goiran MLC
Chairman
Joint Standing Committee of the
Corruption and Crime Commission
Level 1, 11 Harvest Terrace
PERTH WA 6000



Dear Mr Chairman

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

I refer to your letter dated 24 May 2012 in which you invited me to make a submission in respect of the Committee's abovementioned Inquiry. I regret that, in the time left available to me, I am able only to make the following brief comments.

During the 2010/2011 reporting year, the Commission received a total of 3,184 allegations and notifications about misconduct. Of these, 1038 (33%) related to the WA Police. The statistics for the 2009/2010 reporting year are similar – a total of 1,221 allegations and notifications related to the WA Police (38%). Complaints against police officers consequently make up a significant proportion of the Commission's work.

The *Corruption and Crime Commission Act 2003 (WA)* ('CCC Act') contemplates that the CCC will retain 'power to itself investigate cases of misconduct, particularly serious misconduct' (s 7B(3)). It also contemplates that the CCC will play a more active role in investigating police misconduct than other forms of public service misconduct. That is why s 21A was enacted, requiring the Commissioner of Police to notify the CCC of 'matters concerning, or that may concern, reviewable police action' and giving to the CCC the power to deal with a matter so notified as if it were an allegation of misconduct. I have touched upon this, and related matters, in my report (presented by you and the Deputy Chairman to Parliament on 8 September 2011) concerning the procedures adopted by the Commission when dealing with complaints of that kind. However, there are some points that are worth reiterating.

Police officers are in many ways the front line of the justice system. Abuses of power by police officers, especially those involving the use of excessive force, undermine the integrity of, and respect for, the justice system. Notwithstanding this, it is undoubtedly true that the police service should itself take primary responsibility for dealing with

allegations of police misconduct. As the CCC says, this promotes ownership of the responsibility for misconduct and of the need to deal with it effectively. That, in turn, promotes lasting positive cultural and organisational change. Moreover, as the CCC also points out, this reflects the Police Royal Commission recommendation that the Commissioner of Police should have 'the *primary* responsibility for dealing with complaints about police conduct' (my emphasis).

However, it is essential that serious and credible complaints of serious police misconduct, whether involving the use of excessive force or other forms of misconduct, are regularly subjected to robust investigation by an external agency so that a conflict of interest created by a police force investigating its own officers is avoided, the truth is ascertained, public confidence in the misconduct oversight regime is maintained and any unwelcome trends are recognised and discouraged.

A failure to persuade the CCC to independently investigate seemingly credible allegations of serious misconduct on the part of police officers leads to a loss of confidence in the police service, the system of justice and the Commission itself. It also results in a failure to promote a culture of accountability.

In my opinion, the emphasis placed by the CCC Act on investigating police misconduct has not historically been reflected in the way in which the Commission has dealt with allegations of police misconduct. I have particularly in mind its treatment of complaints concerning the use of excessive force by police. Save for institutionalised corruption, the use of excessive force by police can be regarded as the most serious form of police misconduct because of its very real impact on affected citizens and because of its wider impact on society's confidence in those entrusted to uphold the law. However, until recently, such complaints were rarely independently investigated by the Commission. I will not repeat all that I have said in that respect in my report, mentioned above.

On 29 May 2012, I wrote to Commissioner Macknay QC asking him to list the changes made to the Commission's procedures relating to police misconduct since the date of my report. On 14 June 2012, he responded, saying that the Commission has realigned the internal structure of its Corruption Prevention Directorate to provide more emphasis on the oversight of police and to facilitate the creation of a new research capacity. He identified the following specific changes. The Commission has

1. implemented a process in which every excessive force allegation, accompanying documentation and recommendation for action is provided to the Commissioner for consideration and decision making;
2. enhanced the consultative process between the Corruption Prevention and Operations Directorate, particularly relating to allegations of excessive force, before these matters are presented for the Commissioner's consideration;
3. introduced, through an ongoing process of continuous improvement, an enhanced assessment process to ensure appropriate scrutiny and resources are provided to allegations of serious misconduct and matters of particular interest to the Commission;

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4. dedicated experienced officers within the team that deals with allegations and oversees appropriate authority investigations to deal exclusively with police matters;
 5. created a police capacity development team for the sole purpose of increasing the capacity of WA Police to prevent, identify and deal with misconduct;
 6. created a special project team staffed by senior officers for the purpose of investigating a particular significant issue involving a large number of allegations and police officers;
 7. introduced a new process for conducting police systems based evaluations, with a greater emphasis on organisation systems and police culture, and
 8. created a research team comprising officers experienced in research to conduct it in consultation with the police capacity development team into specific matters related to policing (this team is currently conducting research into the use of force by police).

Commissioner Macknay QC has also informed me that, since my report, the Commission has assessed 81 allegations of excessive force by police and that he has personally finalised the assessment of each allegation. Seven of these allegations were retained by the Commission for its investigation, 42 were referred for internal police investigation (with Commission oversight) and seven required no further action. Of the seven allegations retained by the Commission for investigation, five were finally assessed as not constituting misconduct or as inconclusive and unable to sustain the allegation.

In addition, the Commission's research project had identified three matters in which excessive force by police was suspected and that they are currently being investigated by the Commission.

These are welcome changes which should result in a significant improvement in the Commission's processes relating to police oversight.

Yours faithfully,



C D STEYTLER QC
PARLIAMENTARY INSPECTOR