



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

Our ref: 833/18
Your ref: Petition No. 60

11 October 2018

Hon Matthew Swinbourn MLC
Chair
Standing Committee on Environment and Public Affairs
BY EMAIL:
env@parliament.wa.gov.au

Dear Chair

**RE: PETITION NO 060 – ACCOUNTABILITY OF POLICE AND
CORRUPTION OVERSIGHT AGENCIES**

Thank you for your letter dated 19 September 2018 and its attachments.

Following are my requested comments on the terms of the petition and the submissions from the principal petitioner, Ms Howkins and tabling Member, the Hon Alison Xamon MLC.

The petition

The petition says the existing statutory framework governing the investigation of police misconduct is ineffective because complaints are systematically refuted. Because of this, the Corruption and Crime Commission (Commission), the Police Internal Affairs Unit and the Ombudsman should be abolished and replaced by a single civilian oversight body.¹

I believe the existing framework governing the investigation of police misconduct embodied in the *Corruption, Crime and Misconduct Act 2003 (WA)* (Act) is, on balance, the most appropriate, although not without its faults. It is a framework that resulted from a great deal of parliamentary deliberation following the recommendations made by the Kennedy Royal Commission.

The Act places the ultimate responsibility for the investigation and assessment of police misconduct in a single body: the Commission. It has powers similar to a Royal Commission and is headed by a former judicial officer of a superior court. The

¹ The Ombudsman does not have the function of investigating police misconduct in Western Australia.

Commissioner is assisted by an Acting Commissioner(s) and legal qualified staff who are subject to contractual terms of employment of five years. In these respects, the existing framework largely mirrors the suggestions made in the petition.²

Poor or incompetent decisions made within the existing legislative framework by officers of the Commission and by police officers who investigate and assess incidents of police misconduct must be distinguished from the appropriateness of the framework itself (as some of my past reports and those of my predecessors that have been tabled in Parliament demonstrate)³.

Aspects of culture within the Commission and the police which contribute to such poor decisions must also be distinguished from the appropriateness of the legislative framework. But the independent oversight by the Commission of the mode of exercise, or the failure to exercise, police power of efficient and effective investigation may, by the reporting process and the making of appropriate recommendations of a remedial character, assist to enable cultural and systemic problems to be amended or eliminated.

No system of independent oversight of police misconduct is capable of eliminating the chance of poor decisions being made. This fact is demonstrated by my reports and those of my predecessors that were made in respect of the Commission and the police whose processes and procedures were at the time of reporting, and which remain, extensive if not exhaustive.

It must be remembered that police misconduct is only part of the misconduct in the public service to which the existing framework extends. The creation of a single oversight body whose jurisdiction is police misconduct only would still require the existing Commission (or some other organisation that replaces it) to continue to function in response to wider public service misconduct. Such a framework, needless to say, would have obvious financial and efficiency consequences for the State.

Ms Howkins' submission

I have genuine sympathy with some aspects of Ms Howkins' submission, and I disagree with others. The thrust of her submission is that some investigations of police misconduct and other related injustices in this State have eroded public confidence in the existing framework. This may well be so.

I do not propose to comment on Ms Howkins' suggestion to adopt other jurisdiction's oversight models, except to say that all – including our existing framework – have meritorious aspects, but none have proven effective in entirely eliminating poor or incompetent decisions from being made by public agencies, despite processes and procedures designed to prevent the making of such decisions.

² The Police Internal Affairs Unit is not a formally recognised body in this framework, but rather a part of the police which assists the organisation with an array of tasks, including some investigations of alleged police misconduct.

³ See for example, *Parliamentary Inspector's report on a complaint made by Dr Robert Cunningham and Ms Catherine Atoms*, Joint Standing Committee on the Corruption and Crime Commission, Report No. 4, October 2017.

In making my observations I have had regard to the Joint Standing Committee for the Corruption and Crime Commission's report on Australian and other country's models in respect of the reporting and investigation of police misconduct.⁴

The Hon Alison Xamon MLC's submission

I do not disagree with anything the honourable Member has said in her submission, particularly in respect of the themes that have arisen in the various reports to which she has had regard. I would merely add that the observation she makes, that the Commission cannot be compelled to investigate and act upon a matter which is clearly in the public interest to be dealt with, is an observation about a particular aspect of the statutory scheme, rather than a ground upon which a call for a different model may be based.

Given my responsibilities under the Act and the fact that the honourable Member is a member of the current Joint Standing Committee on the Corruption and Crime Commission, my general agreement with the issues raised in her submission do not require further elaboration beyond the points I have already made.

Thank you for the opportunity to make my submission to your Committee. I remain happy to discuss any matter which has arisen from it.

Yours sincerely,



**HON MICHAEL MURRAY AM QC
PARLIAMENTARY INSPECTOR**

⁴ *How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct*, Joint Standing Committee on the Corruption and Crime Commission, Report No. 32, November 2012.