Joint Standing Committee on the Corruption and Crime Commission

How the Corruption and Crime Commission Handles Allegations and Notifications of Police Misconduct

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Joint Standing Committee on the Corruption and Crime Commission

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Presented by

Hon Nick Goiran, MLC and John Hyde, MLA

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Chairman’s Foreword

In his seminal *Critique of Pure Reason*, German philosopher Immanuel Kant stridently insisted that human perception was very much a function of our ability to imagine: “Psychologists,” Kant lamented, “have hitherto failed to realize that imagination is a necessary ingredient of perception itself.” At the time of its publication in 1781, Kant’s assertion was – to put it mildly – controversial. Today, in a world coloured by our mastery of advertising and marketing, cosmetic surgery and Photoshop, press conferences and media management, the notion that the world is not necessarily as we see it seems pedestrian.

It is an unfortunate truism that the fight against corruption, particularly in public administration, is a crucial facet of twenty-first century governance. This is so because corruption is not limited to a few ethically weak persons: though we might like to describe those who have engaged in corrupt behaviour as “bad apples,” the reality is that corruption is an inherent characteristic of human nature. Though we all aspire to see our society mirror that which is described in Plato’s *Republic*, we must be conscious of the fact that each of us has the capacity – howsoever well contained – to exemplify the distasteful observation of Thomas Hobbes. Furthermore, it takes the trespass of only one person to begin a total dissolution of the social contract. Eternal vigilance is most certainly the price of liberty.

It is not difficult to recall examples of what happens to the fabric of societies when executive corruption becomes endemic. In the past year alone we have witnessed a gamut of social unrest arising out of corruption, from street-level rioting and looting in London, to the current tragic Civil War that is tearing Syria apart. Furthermore, though it is difficult to adequately quantify, the economic benefit associated with having a public service that is – by virtue of the good work performed by agencies like our Corruption and Crime Commission – resistant to corruption are undoubtedly significant.

For these and a myriad of other reasons, there can be no doubting that the role played by our CCC is vital.

It is equally true, however, that while it is without question that the Western Australian Public Service is today stronger and fairer in discharging its functions as a result of the existence of the CCC, it is essentially impossible to adequately quantify the full impact the work that the CCC does. A very unfortunate consequence of this fact is that our perception of the success of the CCC is – to return to Kant – largely informed by our

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1 In *The Republic* (~380BC), Plato explored the definition of justice, just society and just humanity. In *The Leviathan* (1651) Thomas Hobbes asserted that in a state of nature, human life would be “solitary, poor, nasty, brutish, and short.”
collective imagination. Coupled with the fact that controversy makes good media copy, it is perhaps easy to appreciate the appeal of pronounced intentions to somehow “make better use” of an agency that already performs such a noble and essential role.

The Joint Standing Committee on the Corruption and Crime Commission has long harboured the strong belief that, while every component of the CCC’s role is important, its role in working to enhance and maintain the highest standards of integrity within the WA Police is of paramount imporance. “Police officers are,” as the former Parliamentary Inspector, the Honourable Chris Steytler AO QC put it, “in many ways the front line of the justice system.”\(^2\) Certainly police officers are the most visible component of that system, and as such the manner in which the police function is – and is seen to be – discharged is a fundamental element in the rule of law in Western Australia.

It is for this reason that police corruption is a particularly problematic phenomenon: our system of law and order in the main relies upon individual persons obeying the law, an outcome that is in effect supported by the existence of the police. When the police themselves break the law the entire justice system is placed into jeopardy, as it creates the perception that the rule of law is unimportant, which in turn diminishes public confidence in the police. Furthermore, though it is acknowledged that police – like every other public service entity – ought to assume primary responsibility for dealing with misconduct allegations that are levelled against them, postmodern cynicism represents a barrier to even the most stringent of internal investigations.

As a consequence, independent police oversight is crucial. Throughout the course of this inquiry it has been continually reiterated to the Committee that it is essential that serious and credible public complaints of serious police misconduct – such as those involving either the excessive use of force or else the misuse of police discretion – are regularly subjected to robust investigation and review by an external agency. Having an external agency able to perform this task obviates the perceived conflict of interest that is generated by a police force investigating its own officers.

It was for all of these reasons that in November 2010 the Committee – having, like everyone else in Western Australia, viewed and considered the distressing footage of taser weapons being used on Mr Kevin Spratt by WA Police officers in the Perth Watch House on 31 August 2008 – resolved to undertake this inquiry. Though the public release of this footage on 4 October 2010 by the CCC coincided with the publication of an excellent CCC report – a report that had a positive impact on the use of tasers by WA Police officers – the Committee wanted to find out why the CCC had not undertaken an immediate inquiry into the incident when first apprised of its

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seriousness back in 2008. Of particular concern to the Committee was the apparent reluctance by the CCC to undertake independent investigations of alleged misconduct on the part of WA Police officers.

Unfortunately this inquiry has confirmed the view initially formed by the Committee when it viewed that footage in 2010: in the past, the CCC has not devoted adequate priority to its police oversight role. Furthermore, it is the view of the Committee that the decision of the CCC, communicated to the WA Police in October 2008, to internally investigate this obviously serious matter amounted to a serious misjudgement by the CCC.

In forming this view, the Committee acknowledges and supports the notion that the optimum model for promoting and enhancing integrity in any agency – including (if not especially) a law enforcement agency – involves requiring the leadership of that agency to assume responsibility for the actions of their staff members. It is abundantly clear that promoting a culture of integrity is the single greatest misconduct deterrent, and such a culture is always best built from within. On this point, it is clear to the Committee – and the vast majority of everyday Western Australians – that the internal culture of the WA Police is very strong, a fact that is in no small part a reflection on the commitment to integrity that is continually exhibited by the WA Police Commissioner, Dr Karl O’Callaghan APM. Furthermore, through the course of this inquiry the Committee has been very pleased to learn about the many ways in which the Professional Standards portfolio of the WA Police – a portfolio that is led with dedication by Assistant Commissioner Dominic Staltari APM – works to continually enhance that already-strong culture. Indeed, giving due regard to this fact, the Committee can to some extent appreciate the decision by the CCC with respect to the initial investigation of the 31 August 2008 incident, and certainly there can be no doubt that the investigation initiated and conducted by the WA Police was painstaking and thorough. Even after having given regard to the positive outcomes that flowed from the CCC’s subsequent inquiry into that incident, the Committee maintains that it would have been more appropriate and of greater benefit to the State of Western Australia for the CCC to have embarked upon this inquiry two years earlier than it did.

As it considered the evidence provided in aid of this inquiry, the Committee was reminded of the Ancient Greek proverb that \textit{all that is good to know is difficult to learn}. While the 31 August 2008 incident remains a black mark on the history of the Western Australian justice system, it is clear to the Committee that many important lessons have been learned as a consequence of its occurrence. The world has undergone significant change over the past four years; so too has the CCC, and the Committee is very pleased to report that, in the time since his appointment to the role of CCC Commissioner in November 2011, the Honourable Roger Macknay QC has overseen the implementation of numerous changes to CCC policy and procedure, with the effect of affording a far greater priority to the CCC’s consideration of allegations of police
misconduct than has historically been the case. As a consequence, the CCC has through the course of 2012 significantly increased its investigative effort with respect to allegations made in relation to the WA Police: since Commissioner Macknay’s appointment, it has undertaken and completed a total of ten independent investigations into allegations of the excessive use of force by police. It is worth noting that this increase in investigative effort stands as testament to the strong WA Police internal culture, as none of these investigations have substantiated the allegations upon which they were initiated. Although this leaves media organisations having to indulge in even more creative writing than usual, this is evidence of an excellent system of oversight at work.

This is not to say that further improvement is not possible: the Committee believes that enhancements to the transparency of the CCC’s police oversight role would reap significant benefits. If a person sees fit to bring an allegation to the attention of the CCC, that person should have, or be able to gain, a solid understanding of the CCC’s investigative processes, and what they can expect from the process. To this end, the Committee is hopeful that this report might be of some benefit, and the Committee would also very much encourage efforts by the CCC to enhance the discharge of its education and prevention function with respect to officers of the WA Police. Notwithstanding these potential enhancements, the Committee believes strongly that the police oversight model that exists in Western Australia in 2012 is a model that the citizens of Western Australia can most certainly trust.

I take this opportunity to thank and pay tribute to each of the persons who assisted this inquiry process, either by way of making a submission to the Committee, or else – by virtue of their expertise in this area – by making time to meet with and brief the Committee. This report is very much the product of the devoted efforts of a significant number of dedicated people.
As this is almost certainly the final report of the Joint Standing Committee on the Corruption and Crime Commission in the current Parliament, I would also like to acknowledge and again thank the former Parliamentary Inspector, the Honourable Chris Steytler AO QC, the current Acting Parliamentary Inspector, Mr Craig Colvin SC, and the Assistant to the Parliamentary Inspector, Mr Murray Alder, as well as the WA Police Commissioner and all those officers of the WA Police who have provided assistance to the Committee and indeed to the citizens of Western Australia on a daily basis. Finally, on behalf of the Committee I offer my sincere thanks to the CCC Commissioner and the entire CCC staff: the work that you do is difficult, often thankless, and absolutely vital to the discharge of good government in the State of Western Australia.

Hon Nick Goiran, MLC
Chairman
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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, through an appropriate representative in the Legislative Assembly, 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, within not more than three months, or at the earliest opportunity after that time if the Assembly is adjourned or in recess, from the date of tabling of this report in the Assembly.
Findings and Recommendations

Recommendation 1
Section 7A of the Corruption and Crime Commission Act 2003 should be amended so as to read:

7A. Act’s purposes
The main purposes of this Act are –
(a) to aid the efforts of the WA Police to combat and reduce the incidence of organised crime; and
(b) to improve continuously the integrity of the Western Australian public sector, and in particular the WA Police.

Finding 1
The CCC should have itself commenced an investigation into the 31 August 2008 incident involving Mr Kevin Spratt at the Perth Watch House when, or shortly after, it was first informed of this incident in September 2008.

Finding 2
The Corruption and Crime Commission is, in 2012, an organisation more committed to prioritising the discharge of its misconduct function, by way of independent investigation, with respect to the WA Police than was the case in 2008.

Finding 3
Undue delays in the CCC’s inquiry into the use of taser weapons on Mr Kevin Spratt at the Perth Watch House on 31 August 2008 could have been avoided if the CCC Act facilitated the appointment of a Deputy or Assistant Commissioner.

Recommendation 2
The Corruption and Crime Commission Act 2003 should be amended to allow for the appointment of a full-time deputy and/or assistant commissioner, to whom specific functions may be delegated by the Commissioner, and who is able to act as the Commissioner in the Commissioner’s absence.

Recommendation 3
The Corruption and Crime Commission Act 2003 should be amended to require the role of CCC Executive Director to be performed by someone who meets the same criteria for appointment to the role of CCC Commissioner. This would allow the Executive Director to be an Acting CCC Commissioner in the Commissioner’s absence.
Finding 4
Independent police oversight bodies – by their very existence – enhance public trust in police agencies.

Finding 5
At the conclusion of an investigation by a police oversight agency which confirms the occurrence of an incident but does not identify any misconduct, there is benefit in the agency reporting that the officer(s) under investigation discharged their police functions exactly as was required in the circumstances.

Finding 6
Constant vigilance and professionalism is a crucial component of internal police investigations.

Finding 7
Whatever police oversight model a society may see it fit to implement, the two most crucial components are a thorough and transparent implementation of the model in line with community expectations, and an unwavering commitment to professional conduct by the staff of the police oversight agency.

Finding 8
A successful police oversight model will ensure that those performing police leadership roles will want to assume direct responsibility for the actions of their officers.

Finding 9
Police oversight agencies will likely often find themselves incident to imbalanced criticism.

Finding 10
With the CCC, Western Australia has implemented a good police oversight model.

Finding 11
The independence of a police oversight agency is a critically important component of the proper discharge of its police oversight function.

Finding 12
That CCC findings cannot be drawn upon by other agencies for the purpose of their own disciplinary proceedings is a significant flaw in the Corruption and Crime Commission Act 2003.
Recommendation 4
The Corruption and Crime Commission Act 2003 should be amended to make it clear that the CCC may include findings of fact in its reports.

Finding 13
Ensuring adherence to investigation timeframe policy can be a useful function of a police oversight agency.

Finding 14
Misconduct prevention and education efforts reap significant – albeit difficult to quantify – benefits as a result of affecting significant cultural change for the better within organisations.

Finding 15
The timeliness of investigations is an important component of public confidence in a police oversight model.

Finding 16
The Corruption and Crime Commission regularly reviews a substantial proportion of all WA Police internal investigations of allegations and notifications of police misconduct. Overwhelmingly, these reviews demonstrate a strong internal culture of integrity within the WA Police.

Finding 17
Misconduct resistance within any individual Western Australian public sector agency – while enhanced by the existence and work of the Corruption and Crime Commission – is ultimately a function of and a reflection upon the culture within that agency.

Recommendation 5
The CCC should report to Parliament on the outcome of any operation that it conducts – even when that outcome is not controversial.

Finding 18
Since being appointed Commissioner of the Corruption and Crime Commission in November 2011, the Honourable Roger Macknay QC has overseen a vast enhancement to the way in which the Corruption and Crime Commission performs its police oversight role, in response to criticism of the Corruption and Crime Commission contained within the Committee report Parliamentary Inspector’s Report Concerning the Procedures Adopted by the Corruption and Crime Commission when Dealing with Complaints of the Excessive use of Force by Police, which was tabled in Parliament on 8 September 2011.
Finding 19
The fight against internal misconduct is a very complex and difficult undertaking. Efforts by the WA Police to continually enhance their integrity are very much aided by the presence and support of the CCC.

Finding 20
The police integrity model that exists in Western Australia in 2012 is appropriate and comprehensive.
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Inquiry background

Some people see things that are and ask, why? Some people dream of things that never were and ask, why not? Some people have to go to work and don’t have time for all that.

George Carlin

Police integrity

In June 2010, eager to better acquaint itself with some of the challenges faced by agencies that are either directly engaged in the fight against organised crime in Australia or else tasked with the responsibility of ensuring that the fight is not compromised by corruption, the Joint Standing Committee on the Corruption and Crime Commission resolved to visit a number of the key law enforcement and anti-corruption agencies in Victoria and New South Wales, so as to receive briefings on the work and role of each. Accordingly, a series of briefings was scheduled for the first week of November 2010.

One month prior to these meetings – on 4 October 2010 – the Corruption and Crime Commission tabled a report entitled The Use of Taser® Weapons by Western Australia Police, which report considered the policies of the WA Police in relation to the benefits and dangers inherent to the use of taser weapons by WA Police officers. In preparing the report, the CCC had conducted a detailed investigation into the function of tasers, had reviewed a considerable quantity of international literature pertaining to their use, and had examined taser use in Western Australia from 2007 to 2009. In addition to tabling the report (along with an accompanying “summary report”), the CCC also released video footage of five specific incidents, each of which was referred to in the report as a “case study” of some particular instance in which a taser weapon was either used incorrectly, or else used correctly albeit in difficult circumstances. Included in the release of this video footage was disturbing closed-circuit television footage of an incident that had occurred on 31 August 2008 at the Perth Watch House involving numerous deployments by multiple officers of taser weapons in both “probe,” and “drive-stun,” modes into Mr Kevin Spratt. The CCC report acknowledged that this incident had been investigated internally by the WA Police, and that this investigation had concluded that the officers in question had incorrectly used their tasers to achieve compliance, rather than – as the WA Police policy requires – to prevent harm.
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The release of this footage caused widespread outrage, which somewhat overshadowed the good work done by the CCC both in preparing the report and in bringing the matter in question – as well as the use of tasers by the WA Police generally – to a greater level of public scrutiny. As might have been expected, despite the fact that the CCC’s report included numerous examples of the appropriate and beneficial use of tasers by WA Police officers, this aspect of the report was wholly ignored by the media, and the question of police oversight became an item of popular concern.

As a consequence, police oversight was a strong theme of many of the briefings received by the Committee in November. Among the agencies that hosted and briefed the Committee on their work and role was the Office of Police Integrity Victoria (“OPI”) which, through its independent oversight role, works to ensure that the Victorian Police maintains the highest ethical and professional standards. The Committee found this briefing, which was organised and facilitated by the then Deputy Director of the OPI, Mr Paul Jevtovic APM, to be both very informative and worthwhile, and the Committee came away from the briefing energised by the professionalism and obvious passion for the police oversight role exhibited by the OPI’s executive staff. As a consequence, and with the taser incident involving Mr Spratt still a matter of widespread concern, the Committee formed the view that there would be significant merit in informing itself as to exactly how the police oversight role was being discharged by the CCC.

Accordingly, during a meeting on 24 November 2010 the Committee resolved to undertake an inquiry and report to Parliament on:

- how the Corruption and Crime Commission deals with allegations and notifications of police misconduct;
- the impact of the Corruption and Crime Commission’s practices in this regard on the capacity of the WA Police to deal effectively and appropriately with misconduct; and
- how the Corruption and Crime Commission’s practices in this regard compare to police oversight bodies in other jurisdictions.

Report provided by the Parliamentary Inspector

Prior to turning its full attention to this inquiry, the Committee became engaged in a separate inquiry into the use of public examinations by the CCC, the outcome of which was reported to Parliament on 27 March 2012. In addition, on 2 December 2010 the CCC announced its intention to convene a series of public examinations in aid of its

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3 A formal inquiry into this matter was announced by the CCC on 12 November 2010.
4 See the Committee’s twenty-fifth report in the current Parliament, entitled The use of Public Examinations by the Corruption and Crime Commission, which was tabled on 27 March 2012.
inquiry into the use of taser weapons on Mr Spratt, beginning on Thursday 9 December 2010, and as such the Committee resolved to defer any further work on this matter until such time as the CCC had completed its inquiry.

In May 2011, however, the CCC’s police oversight role was again brought to the attention of the Committee during a closed review hearing attended by the then Parliamentary Inspector of the Corruption and Crime Commission, the Honourable Chris Steytler QC. In the course of that hearing, convened by the Committee for the purpose of receiving an update on the work undertaken by his Office in the first half of 2011, Parliamentary Inspector Steytler foreshadowed his intention to provide a report to the Committee concerning the apparent reluctance by the CCC to independently investigate seemingly credible allegations of excessive use of force by police. In reference to this report, Mr Steytler informed the Committee that:

[The intended report] arises out of what presently seem to me to be significant failures by the Commission to conduct independent investigations into complaints alleging the excessive use of force by police.5

Parliamentary Inspector Steytler explained to the Committee that two complaints received by his office had given him cause for concern, “and both seemed… to raise credible complaints of the use of excessive force and bullying, intimidatory behaviour on the part of the police.” As Mr Steytler explained:

The first incident was not investigated by the Commission at all. It referred the matter back to the police for investigation.

The second incident was the subject of some investigation after twice referring the matter back to the police, but the investigation was perfunctory and made no pretence at thoroughness. In that incident there had also been allegations that police had tampered with evidence.6

Parliamentary Inspector Steytler also explained to the Committee the follow-up work that he had undertaken in response to his concerns:

My concerns arising out of those matters led me to ask the Commission to provide me with some statistical information concerning investigations about allegations of excessive use of force by police. These reveal that in the 2009–10 financial year the Commission received 235 allegations concerning the use of excessive force by police. In the period 1 July 2010 to 13 March 2011 the Commission received 146 allegations concerning the use of excessive force by police. During that period, the Commission commenced an independent investigation into only one of these excessive force allegations, and that was the matter of the deployment of taser

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6 Ibid.
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weapons against Mr Kevin Spratt at the Perth watch-house in August 2008. The Commission also commenced an investigation into an excessive force allegation from a much earlier period; that was the alleged shooting of Ian Quartermaine on 4 December 1990. But that investigation came far too late and only after intervention by me. The statistics reveal that over the 21-month period in question the commission has received a total 381 complaints concerning the use of excessive force by police, but it has conducted an independent investigation into only one of those. These statistics, coupled with the attitude taken by the commission in the two matters to which I referred, are troubling, and that has led me to prepare a draft report.  

The Committee received this report, entitled The procedures adopted by the CCC when dealing with complaints of the use of excessive force by police, on 11 August 2011. After considering the content of this report, the Committee resolved to table it in Parliament in full, which it did on 8 September 2011, adding only a series of brief comments of its own. As the Committee explained:

The report arose out of the Parliamentary Inspector’s concern that serious complaints alleging the excessive use of force by officers of the WA Police were not being adequately investigated by the CCC. The Parliamentary Inspector began to harbour this concern after receiving a number of complaints from persons who were dissatisfied with the manner in which their original complaints to the CCC had been dealt with.

By virtue of his regular attendance before closed hearings of the Committee, the Parliamentary Inspector had been keeping the Committee abreast of his inquiries into this matter for some time. This matter was and is of concern to the Committee: it should be noted that the Committee is presently engaged in a broad inquiry into how the Corruption and Crime Commission processes allegations and notifications of police misconduct.  

In the report, the Committee also noted that

In its response to the Parliamentary Inspector’s report, the CCC argues that there are two “opposing philosophical approaches to how police oversight should occur.” By this dichotomy, the job of investigating and resolving allegations made against police officers can either be done by an external, independent agency, or else police can themselves investigate and resolve such allegations, with the performance of this task subjected to monitoring and oversight by an external agency. The CCC’s approach to its police oversight role accords with the second of these methodologies because, according to the CCC, this approach “results in lasting positive cultural and organisational change.”

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7 Ibid., pp 5-6.
The Committee appreciates the merit in having agencies deal with misconduct allegations themselves, and indeed has heard evidence from police officers in different jurisdictions in support of the positive effect of this approach. At the same time, however, the Committee is concerned at the characterisation of these ‘two approaches’ as being somehow mutually exclusive.

The Committee agrees with the Parliamentary Inspector that the information provided by the CCC – In essence, that within an almost two-year window, only one out of 381 complaints of the excessive use of force were independently investigated by the CCC – is troubling. A statistic of this nature serves only to undermine the CCC’s role and the good work that it does do in improving the integrity of the Western Australian public sector and helping public sector agencies minimise and manage misconduct.

This statistic aside, however, the Committee agrees with the CCC - as does the Parliamentary Inspector - that the WA Police should take primary responsibility for dealing with allegations of police misconduct. As stated by the Parliamentary Inspector, however, this does not mean that the CCC should never itself investigate claims of serious police misconduct. When an apparently serious and credible complaint alleging excessive use of force by the police is made to the CCC, it is plainly the role of the CCC to conduct a full independent investigation. As stated by the Committee in an earlier report to Parliament, the Committee is firmly of the belief that the CCC’s priority should be on improving its oversight of the WA Police, as the Committee believes that the CCC’s most important function is to ensure that the work and role of the WA Police is not hampered by misconduct or corruption. The Parliamentary Inspector’s report on this matter has strengthened the Committee’s belief that there is significantly more that the CCC should be doing in this regard.9

Rather predictably, the tabling of this report was met with considerable media interest, which was followed by some public comment concerning the voracity of the CCC’s police oversight role. The Committee, however, remained committed to its earlier decision to defer any active consideration of issues associated with this inquiry until the CCC’s inquiry into the use of taser weapons on Mr Spratt.

Investigative inquiries

In October 2011 the Committee undertook investigative travel to Chicago and Ottawa where it was briefed by a number of law enforcement and anti-corruption agencies on a range of topics pertaining to the aforementioned inquiry into the use of public examinations by the CCC, as well as another contemporaneous inquiry into whether there might be a role for the CCC in recovering proceeds of crime and investigating

9 Ibid., pp ix-x.
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unexplained wealth in aid of the fight against organised crime in Western Australia.\textsuperscript{10} In
addition, and notwithstanding its decision to defer consideration of how the CCC handles allegations and notifications of police misconduct until after the CCC had completed its inquiry into the use of taser weapons on Mr Spratt, the Committee took the opportunity in both Chicago and Ottawa to meet with several persons with police oversight expertise.

In May 2012 the Committee Chairman and Deputy Chairman represented the Parliament of Western Australia in attending the 5th ICAC Symposium, hosted by the Independent Commission Against Corruption in Hong Kong. After attending the Symposium, the Chairman and Deputy Chairman remained in Hong Kong so as to take advantage of an offer of briefings by the ICAC and the Hong Kong Independent Police Complaints Council on the subjects of police oversight and the handling of allegations of police misconduct in Hong Kong. The information gathered by the Chairman and Deputy Chairman during these briefings was then relayed to the Committee as a whole when the Committee next met.

During the Symposium, the Chairman and Deputy Chairman crossed paths with Mr Michael Strong, the former Director of the Office of Police Integrity Victoria. Although Mr Strong had been unavailable to meet with the Committee when it had been in Melbourne in 2010, Committee Members had enjoyed a similar chance meeting with Mr Strong during the 2011 Australian Public Sector Anti-Corruption Conference, hosted by the CCC in Fremantle, and the Chairman and Deputy Chairman had long been familiar with his impressive tenure as OPI Director. Accordingly, the Chairman and Deputy Chairman took the opportunity afforded by a break in Symposium proceedings to discuss some of the general matters associated with its inquiry with Mr Strong; at the conclusion of this conversation Mr Strong offered to assist the Committee in any way that he might be able to. As a consequence, in August 2012 the Committee travelled to Melbourne, where it formally met and was briefed by both Mr Strong and Mr Douglas Meagher QC in aid of this inquiry, and on how it might best discharge its own functions with respect to the CCC. Prior to returning to Perth, the Committee spent one day in Sydney, where the Committee received briefings from the Commissioner and Assistant Commissioner of the New South Wales Police Force, and representatives of the Office of the New South Wales Ombudsman regarding the handling of allegations of police misconduct in that state jurisdiction.

\textsuperscript{10} This inquiry culminated in the Committee’s twenty-eighth report in the current Parliament, entitled \textit{Proceeds of crime and unexplained wealth: a role for the Corruption and Crime Commission?}, which was tabled on 28 June 2012.
Submissions

On 16 April 2012 the CCC tabled its long-awaited report pertaining to its inquiry into the use of tasers on Mr Kevin Spratt. The Committee resumed active work on its inquiry into how the CCC handles allegations and notifications of police misconduct, and on 30 May 2012 placed an advertisement in The West Australian newspaper calling for submissions in aid of the inquiry to be made by 20 July 2012. In addition, the Committee sent letters to a number of specific persons, inviting them to make submissions and/or appear before Committee hearings in aid of the inquiry, including CCC Commissioner Macknay, Parliamentary Inspector Steytler, the WA Police Commissioner, Dr Karl O’Callaghan APM, and the newly-elected President of the WA Police Union of Workers, Mr George Tilbury.

The Committee duly received submissions in response to each of these letters, which submissions were then made available via the Committee website. The Committee also received submissions from several other persons who offered a number of perspectives on the police complaints handling process, based upon various experiences. The Committee found each of these submissions to be illuminative of the police oversight experience from the perspective of persons who might wish to make a complaint of police misconduct.

The Committee has elected not to publish these submissions owing to various privacy concerns: it suffices to say that each of these submissions conveyed concern with some aspect of the police complaints handling procedures previously undertaken by the CCC, and in particular in relation to the CCC procedure of referring received complaints about police conduct directly to the WA Police for internal investigation. The concern generated by this practice was best articulated in a submission expressing the author’s dissatisfaction with the CCC’s handling of a specific complaint, and conveying the central assertion that, in the event of serious allegations of WA Police misconduct the CCC must engage in a direct, independent, and original investigation of the matter. In explaining this assertion, the author stated that:

As the CCC largely refused to engage in a direct, independent and original investigation of [my] matter, the CCC was unable to satisfy its own threshold requirements for “further information” in order to engage in a more extensive investigation. In this context there is an inherent paradox that operates within the CCC complaint process. That is, the CCC will not engage in a direct, independent and original investigation unless it has before it a threshold level of information; however, the CCC is unlikely to obtain the requisite threshold level of information unless it engages with a direct, independent and original investigation. It is in this manner that
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Stalemate often results from CCC complaints involving serious allegations of WA Police misconduct.11

This submission and highlighted ‘paradox’ largely reflected the sentiments expressed by Parliamentary Inspector Steytler in his aforementioned report. The Committee believes that there is significant merit in this submission; in essence it largely mirrors a recommendation made by the Committee in its fifteenth report in the current Parliament, which was tabled on 16 June 2011. In that report, entitled Corruption Risks of Controlled Operations and Informants, the Committee recommended that section 7A of the CCC Act be amended so as to better articulate the specific purposes of the CCC; such an amendment would specify that the continuously improving the integrity of the WA Police should be the main priority in the discharge of the CCC’s misconduct function. In addition, the Committee believes there would also be significant benefit in amending this section to specify that the function of the CCC in respect of organised crime is to aid the WA Police in the overall fight against organised crime. In the 17 months since that report was tabled the Committee’s belief in the value of this recommendation has only increased, and as such that recommendation is repeated:

**Recommendation 1**

Section 7A of the Corruption and Crime Commission Act 2003 should be amended so as to read:

7A. Act’s purposes

The main purposes of this Act are –

(a) to aid the efforts of the WA Police to combat and reduce the incidence of organised crime; and

(b) to improve continuously the integrity of the Western Australian public sector, and in particular the WA Police.

**Hearings**

A total of six public hearings were convened in aid of this inquiry:

- On 15 August 2012 the Committee heard evidence from CCC Commissioner Macknay, as well as the CCC Executive Director, Mr Mike Silverstone, Director of Corruption Prevention, Mr Roger Watson, and Acting Director Operations, Mr Robert Sutton;

- Associate Professor Murray Lampard APM, whose 33-year career with the WA Police saw him reach the rank of Deputy Commissioner before his retirement in 2008, appeared on 12 September 2012;

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11 Mr Author, Submission to the Joint Standing Committee on the Corruption and Crime Commission, 8 July 2012.
• Also on 12 September 2012 the Committee heard from Mr Ron Davies QC, who had been recommended as a witness to the Committee by the then Parliamentary Inspector Steytler on the basis of Mr Davies’ experience in representing WA Police officers before both public and private CCC examinations;

• The President of the WA Police Union of Workers, Mr George Tilbury, appeared before the Committee on 26 September 2012, joined by the Union’s Vice President, Mr Brandon Shortland, as well as Associate Professors Judith Fordham and Stephen Roast, who had assisted the Union in preparing and making a comprehensive submission based upon the perspectives of some of its members in aid of the inquiry;

• On 24 October 2012, the WA Police Commissioner, Dr Karl O’Callaghan APM, and Assistant Commissioner (Professional Standards), Mr Dominic Staltari APM, along with Inspector Greg Young from the Professional Standards portfolio of the WA Police, appeared before the Committee; and

• Bringing the hearings process to a conclusion, on 9 November 2012 the Committee heard final closing evidence from Commissioner Macknay, along with the Assistant CCC Commissioner, Mr Mark Herron, and CCC General Counsel, Ms Michelle Harries, as well as Mr Silverstone and Mr Watson.

Supplementary submissions

In addition to the initial submissions provided, as the inquiry process continued the Committee also received a number of supplementary submissions from each of the CCC, the WA Police, the WA Police Union of Workers and the newly-appointed Acting Parliamentary Inspector, Mr Craig Colvin SC. These supplementary submissions were either provided in response to questions posed by the Committee, or else were provided in response to matters raised in the course of certain hearings.

The full list of submissions made in aid of this inquiry can be found at Appendix Six.

Unfortunately the Committee cannot avoid registering its profound disappointment with the way that the CCC conducted itself at times during the course of this inquiry. This is the first time that this has been the case, with the CCC having fully cooperated with all past inquiries of this Committee in the 38th Parliament. The Committee wrote to Commissioner Macknay on 24 May 2012, to both invite the CCC to make a submission in aid of the inquiry, and to schedule the CCC’s 15 August 2012 appearance before a public inquiry hearing. The Committee was pleased to duly receive what is a comprehensive submission from the CCC on 20 July 2012 as requested, and the
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Committee was in the main impressed by Commissioner Macknay’s evidence during the first public inquiry hearing.

The next public inquiry hearings, which included a hearing with Mr Ron Davies QC, were scheduled for 12 September 2012; as a courtesy, the CCC was informed of this fact in the early part of September. The Committee was therefore disappointed to receive a letter on 11 September 2012 (albeit dated 5 November), which letter effectively called into question the Committee’s collective judgement in resolving to seek Mr Davies’ attendance in aid of this inquiry, and stating that the Committee was, in the view of the CCC, wasting public resources in calling Mr Davies as a witness. The Committee notes that Commissioner Macknay was unaware at the time of writing this letter that the decision of the Committee to seek Mr Davies’ attendance was made based upon the advice of Parliamentary Inspector Steytler.

The Committee was also disappointed by the CCC’s abject failure to provide requested information to the Committee in a timely fashion – in contrast to the CCC’s ability to question the Committee’s judgement in what was a very expeditious manner – as the inquiry progressed. Subsequent to the 15 August 2012 hearing attended by Commissioner Macknay and other senior CCC officers, the Committee Chairman wrote to the Commissioner on 28 August 2012 to seek answers to a series of questions that were unable to be posed in the course of the hearing. The Committee did not receive a response to this letter until – after itself sending a reminder on 19 October 2012 – 25 October 2012. By contrast, the CCC was able to issue media releases immediately subsequent to the Committee inquiry hearings on 12 September 2012, and again on the day following the Committee inquiry hearing on 24 October 2012, both of which media releases sought to question the evidence of witnesses who had appeared before the Committee during those hearings. The view of the Committee is that this was demonstrative of a poor sense of priority on the part of the CCC.

With respect to the CCC’s 12 September 2012 media release, the Committee was extremely disappointed that the CCC saw fit to disclose the fact of Commissioner Macknay’s intended appearance before the Committee on 7 November 2012. At the time of that media release, although informal inquiries had been made to confirm Commissioner Macknay’s availability on that date, this hearing had not, in fact, been scheduled: this hearing was only formally scheduled by way of a letter from the Committee Chairman dated 19 October 2012, subsequent to the Committee having had the opportunity to consider the CCC’s Annual Report 2011-2012. The Chairman’s letter made it clear that the purpose of the 7 November 2012 hearing would be to discuss the CCC’s Annual Report:

I refer to the Corruption and Crime Commission’s Annual Report 2011-2012, which was considered by the Committee at a meeting on 17 October 2012. I advise that in the course of that meeting the Committee resolved
to request your combined attendance, along with Mr Mike Silverstone and Mr Roger Watson, before a public hearing in order to discuss the Report.\textsuperscript{12}

Though the Chairman’s letter made no reference to the inquiry, the Committee received a response from Commissioner Macknay dated 5 November 2012 in the following terms:

\textit{I hereby confirm my attendance at the public hearing of the Joint Standing Committee (JSC) on Wednesday 7 November 2012 whereby the Commission will be afforded the opportunity to respond to evidence given by various witnesses at public hearings convened by the JSC in relation to its inquiry into how the Commission handles allegations and notifications of police misconduct, subsequent to its attendance at a public hearing on 15 August 2012 in relation to the same matter, and the JSC will question the Commission in relation to its Annual Report 2011-2012.\textsuperscript{13}}

Earlier, the Committee had received another letter from Commissioner Macknay dated 2 November 2012, stating the following in respect of the inquiry:

\textit{Since 15 August 2012, when the Commission appeared, a substantial body of evidence, both written and oral, has been received by the Committee. When the Commission reappears on 7 November 2012 it will be necessary to traverse that evidence in considerable detail.}

\textit{In those circumstances, the Commission has a real concern that the Committee would be unable to properly consider that further evidence, in the event any report was tabled on the proposed date.}

\textit{In the circumstances, and with respect, the Commission would seek an assurance that the Committee will give itself sufficient time to properly consider the Commission’s evidence and to analyse other evidence in the light of it, prior to the tabling of a report, even if that has the result that any report is delayed.\textsuperscript{14}}

The Committee regarded the tone and content of this letter to be extremely disappointing. The view of the Committee is that the CCC would do well to maintain its focus on its own role and responsibilities.

Finally, by a letter dated 6 November 2012 Commissioner Macknay expressed concern that the CCC might be denied the opportunity to respond to the evidence heard in aid of the inquiry from witnesses who had appeared subsequent to the CCC:

\begin{itemize}
\item \textsuperscript{12} Hon Nick Goiran MLC, Chairman, Joint Standing Committee on the Corruption and Crime Commission, Letter to CCC Commissioner Macknay: Request to attend before a public hearing of the Committee, 19 October 2012, p 1.
\item \textsuperscript{13} The Honourable Roger Macknay QC, CCC Commissioner, Letter to the Chairman of the Joint Standing Committee on the Corruption and Crime Commission: Public hearing of the Joint Standing Committee, 5 November 2012, p 1.
\item \textsuperscript{14} The Honourable Roger Macknay QC, CCC Commissioner, Letter to the Chairman of the Joint Standing Committee on the Corruption and Crime Commission: Committee inquiry into how the CCC handles allegations and notifications of police misconduct, 2 November 2012, p 2.
\end{itemize}
Evidence given to the Committee by witnesses after the Commission’s appearance on 15 August 2012 received, in some cases, extravagant coverage in the media.

The Commission would say that much of that evidence, including the written submissions that formed part of it, was grossly inaccurate or just wrong.

To deny the Commission an opportunity to rebut such evidence in an open hearing would, in my view, and with all due respect, be extremely unfair and a most serious breach of procedural fairness. It would also of course not be in the public interest.

Commissioner Macknay concluded this letter by stating that:

The suggestion that the Commission be permitted to file written submissions is not a substitute for the opportunity to give such evidence.¹⁵

At the outset of the 7 November 2012, Commissioner Macknay put voice to this concern, stating that:

The Committee presently has underway an inquiry in relation to the Commission’s exercise of its police oversight capacity. I and other officers of the Commission gave evidence on 15 August in relation to that. Following that evidence, the Committee in its wisdom called a number of witnesses, some of whom were trenchant in their criticism of the Commission. As a result of that evidence, very extensive publicity was given to that evidence.

Clearly, the Commission would ordinarily have an opportunity to give evidence in rebuttal of that. That was clearly contemplated. We were advised, as I indicated to you yesterday by letter, that we would be given that opportunity today. It came to my notice last week that this Committee intends tabling that report on 15 November, which is eight days from today, and that gave rise to a concern on my part that there might not be sufficient time between us giving evidence today and the release of the report for the Committee to have a proper opportunity to consider our evidence and also to consider the other evidence that had been given in the light of our evidence today. And I expressed that concern in a letter to the Committee on 2 November—that is, last Friday. I did not receive any reply to that letter and it was not until yesterday that I was informed that in fact the Committee was not meeting today for the purpose of hearing any evidence in rebuttal but, rather, for the purpose simply of considering the annual report.

Now, two matters arise. The first matter which is a matter that stands alone, in the event that the Committee agreed with me, is that if it be the Committee’s intention to deliver a report on 15 November in relation to this matter, then necessarily that report is in the final stages of

¹⁵ Ibid.
preparation, given the need for printing, given the fact that this Committee is not a group that comes together on a daily basis. In those circumstances that report will have been completed to that point without having heard from me or other officers of the Commission and in those circumstances I think it is probably too late for the Committee to hear our evidence with a collective open mind, and it is regrettable that this apparent error has been made. But when one looks at the record it can be seen very plainly that it was in fact the intention originally of this Committee for us to be heard in relation to the evidence that has been given. That can be demonstrated by a number of things. It can be demonstrated by the conversation which took place between Mr Burton and an officer of the Commission in September; it can be demonstrated by the fact that the Committee forwarded to the Commission transcripts of the evidence of all the witnesses; it can be demonstrated by a letter written by the Acting Commissioner in October to the Committee making reference to the fact that the Commission would deal with certain matters today by way of rebuttal; and, in those circumstances, it is clear that there has been some misunderstanding which has resulted in this Committee arriving at certain almost concluded views as to the evidence without having had the benefit of any reply from me or other officers of the Commission. In those circumstances I greatly regret it is necessary for me to suggest to this Committee that, in fact, this whole process has miscarried in relation to the inquiry into oversight of police conduct and to say to this Committee, with respect, that in those circumstances it would not be appropriate for the Committee to proceed further with the inquiry in relation to police oversight, but, rather, it would be necessary for the Committee to continue that differently constituted.16

The Committee elected to proceed with its examination of the CCC’s recent Annual Report 2011-2012 as intended. At the conclusion of the hearing, Commissioner Macknay then stated that:

I do not want to seem difficult but I can assure the Committee that I am not here for the fun of it. I can think of lots of other things I would rather be doing. I spent the last several days, as have a number of Commission officers, preparing a response. I was dismayed at some of the evidence that was given by people called to give evidence. Some of it is wrong and some of it is really offensive. I am privileged; I can come along and complain but there are 150-odd commission officers who simply have to, if I can use the vernacular, “wear” that sort of material in the media, and it does become wearing over a period of time. With great respect, it is not a sufficient answer to that sort of material given by way of oral evidence and given wide currency in the media for the Commission to send up a written document tomorrow that is ultimately posted on the

16 The Honourable Roger Macnay QC, Commissioner, Mr Mark Herron, Acting Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, Ms Michelle Harries, General Counsel, and Mr Maurice Hanranah, Chief Finance Officer, Corruption and Crime Commission, Transcript of evidence, 7 November 2012, p 3.
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Committee’s website and read by no-one. This Committee, rightly, with respect, has placed great emphasis on the need for procedural fairness. I might say just by way of interest that in relation to the matter concerning the Commissioner of Police, which was dealt with in part in evidence recently before you, that in that particular case, written submissions by senior counsel assisting were provided to the person who was the subject of the investigation and a copy of the transcript was provided to that person in addition to the section 86 process. So there have been some changes of procedure, or there were in that particular case, and I am very conscious of the need for procedural fairness. I hope I have a reputation for being fair. I also have some experience in relation to the question of fairness and I say to you in all sincerity that if this Committee does not give me an opportunity to spend an hour going through those matters then, with great respect, the Commission will have been denied procedural fairness. I am conscious of the fact that Parliament is to resume shortly and this Committee must rise. I understand Parliament will not be sitting on Friday and I would invite the Committee to consider having a further hearing to give me an opportunity to go through the evidence, and with a reasonable amount of time. As I say, I estimate it would take one hour to canvass the issues which I and other Commission officers consider need to be canvassed in relation to the evidence that has been given.

In response, the Committee Chairman said that the decision as to whether or not to accede to Commissioner Macknay’s request “will be a matter that the committee will deliberate on and I undertake to respond to you accordingly.” The Chairman then asked whether, in the event that the Committee was not inclined to hold a further public hearing, the CCC would provide a supplementary submission to the Committee, addressing the evidence of witnesses that it felt was incorrect – as had been an option available to the CCC through the entire course of the inquiry process – to which Commissioner Macknay responded:

I would act in the way I thought best for the Commission, Mr Chairman, trying to realise at all times that I was appointed to serve the public good. I trust it will not come to that, Mr Chairman, and I look forward to the Committee’s communication.

Immediately subsequent to the hearing, the Committee considered the request of Commissioner Macknay and resolved to convene an extra public hearing on 9 November 2012 as requested. That hearing duly took place and the view of the Committee is that there was nothing raised in the course of that hearing that could not have just as effectively – and far earlier – been put to the Committee in writing.

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17 Ibid., p 17.
18 Ibid.
Allegations and notifications

The title of this report alludes to there being some distinction between *allegations* and *notifications* of police misconduct; insofar as this is most certainly the case, the Committee believes there is merit in clarifying this point. Section 3(1) of the CCC Act defines allegation as meaning any of:

(a) a report made to the Commission under section 25;
(b) a proposition initiated by the Commission under section 26;
(c) a matter notified under section 28(2); or
(d) a received matter.\(^\text{19}\)

This means that, for the purposes of the CCC, any evidence of misconduct that comes to its attention by any method – whether through a complaint made by a member of the public, through a complaint made by a public servant in relation to a colleague, through some peripheral CCC activity, or by virtue of the requirement that the CCC be notified by the agency chief of any complaint of misconduct under investigation by that agency – is an *allegation* of misconduct.

Section 3(1) of the CCC Act also in effect defines police misconduct as a specific subset of misconduct, insofar as it contains a definition of reviewable police action, which is defined as meaning:

any action taken by a police officer or an employee of the Police Service of the Public Service, that —

(a) is contrary to law;
(b) is unreasonable, unjust, oppressive or improperly discriminatory;
(c) is in accordance with a rule of law, or a provision of an enactment or a practice, that is or may be unreasonable, unjust, oppressive or improperly discriminatory;
(d) is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or
(e) is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given.\(^\text{20}\)

The Committee has reported previously its strongly-held view in relation to this provision of the CCC Act:

\(^{19}\) Section 3(1), Corruption and Crime Commission Act 2003, p 2.
\(^{20}\) Ibid., p 7.
This requirement, insofar as it is specific and unique within the Act, means that officers of the WA Police are, or at least should be, subject to a greater level of CCC oversight than any other public servants. The Committee considers this requirement to represent an acknowledgement within the CCC Act that officers of the WA Police, especially in consideration of their ability to use discretion in carrying out their duties, generally possess greater powers than other Western Australian public servants.21

This is so because the duty of the WA Police Commissioner to notify the CCC of reviewable police action gives the Police Commissioner a significantly increased responsibility to notify the CCC of matters that might involve police impropriety than is the case with respect to the notifying responsibility of other public sector agency chief. The view of the Committee is that this provision properly recognises that police officers, simply as a consequence of the police role, are incident to a greater misconduct risk than other public servants. For the sake of convenience, the Committee believes there to be value in considering notifications of police misconduct to be those matters involving reviewable police action communicated to the CCC by the WA Police Commissioner; allegations of police misconduct are those matters pertaining to possible police misconduct that are brought to the attention of the CCC via some other channel.

Chapter 2

The use of taser weapons on Mr Kevin Spratt in the Perth Watch House on 31 August 2008

No man is an iland, intire of it selfe; every man is a peece of the Continent, a part of the maine; if a Clod bee washed away by the Sea, Europe is the lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or of thine owne were; any mans death diminishes me, because I am involved in Mankinde; And therefore never send to know for whom the bell tolls; It tolls for thee.

John Donne

A troubling incident

More than two years have now passed since the release by the CCC of closed-circuit television footage of the use of taser weapons on Mr Kevin Spratt in the Perth Watch House on 31 August 2008. It is extremely difficult – if not impossible – to adequately capture in writing the Committee’s immediate reaction to the release of that footage; it is equally difficult to describe the Committee’s considered reaction to that footage and what has occurred since. In addition, the Committee is unsure as to what it might usefully be able to add to the voluminous commentary pertaining to this incident and its subsequent investigation by first the WA Police and then the CCC.

The Committee has heard and read multiple submissions relating to that incident. The Committee has read through the CCC’s report, has considered the transcripts of public CCC examinations convened in aid of the CCC’s inquiry, and was earlier in the process kept abreast of the inquiry by its research staff, who attended the vast majority of those examinations. As a whole, the episode was a product of a series of deficiencies in both WA Police and CCC policy and procedure, and although the Committee is confident that these deficiencies have now been addressed by both agencies and that, as a result, a similar incident will almost certainly never again occur, the fact remains that the 31 August 2008 incident and the events that followed were a shameful episode in the history of the Western Australian justice system.

As always, however, and as difficult as it may be in respect of this episode, the Committee maintains that its oversight jurisdiction ought to wherever possible focus on systemic matters. The CCC’s 4 October 2010 report, The Use of Taser® Weapons by Western Australia Police, explains that “Taser weapons were introduced for general use
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by WAPOL officers in June 2007,”22 and that “Taser weapon use increased from 49% in 2007 to 74% in 2008 and declined to 65% in 2009.”23 Their notoriety notwithstanding, taser weapons are a relatively new use of force alternative available to WA Police officers, and there can be no doubt that the publication of the CCC’s report increased community and police appreciation of the use of taser weapons, both in terms of their direct effect as an alternative use of force in potentially violent situations, and in terms of their indirect effect upon the exercise of police functions, which are always best achieved without the use of force. Although the report became infamous for drawing public attention to the incident involving Mr Spratt, the information contained within the report, along with the various other ‘case studies’ outlined in the report, offered a level of real-world detail far in excess to that which any amount of training might provide, and was thus of significant benefit.

The public nature of the inquiry conducted by the CCC into this incident, demonstrative as it was of a system of government that does not shy away from the task of addressing its own failings, must also be regarded in a positive light. The Committee has previously inquired into the use of public examinations by the CCC and, in its associated report on this matter (which was tabled in Parliament on 27 March 2012), the Committee commented on the use of public examinations by the CCC in respect of its inquiry into this incident:

...it is clear that in the right circumstances it is both useful and indeed desirable that certain CCC examinations be opened to the public. Indeed, one of the more recent series of public CCC examinations – those in aid of a misconduct investigation arising out of the arrest, detention and investigation of matters involving Mr Kevin Spratt by the Western Australia Police and the Department of Corrective Services – is representative of a set of circumstances in which the transparency afforded by opening the examinations to the public brings with it a range of significant advantages over conducting the investigation in private.24

During a public hearing attended by WA Police Commissioner O’Callaghan on 24 October 2012, the CCC’s investigation of this incident was discussed at length, and Commissioner O’Callaghan expressed some frustration at the decision by the CCC to initiate an inquiry into this matter on 12 November 2010, as well as with the amount of time taken by the CCC to complete this inquiry. During this hearing, the Committee Chairman asked Commissioner O’Callaghan to confirm his apparent assertion that the CCC inquiry had not achieved any particular outcome, to which Commissioner O’Callaghan responded:

23 Ibid., p xiii.
We are not one step in front of where we were. It took 18 months to recommence the process of the DPP considering, because the DPP said, “Well if the CCC is doing this inquiry”—I spoke to the DPP—“we are not going to do anything until they tell us what to do.” So it all went into stasis for about 18 months, and now we are four years down the track from when the original event happened and those police officers are still not clear about their future.25

While the Committee understands and appreciates this view – and certainly the fact that the officers in question have been effectively left uncertain as to when this matter will be resolved for in excess of four years is unsatisfactory – the Committee does not share the belief that the CCC’s inquiry did not achieve anything. Perhaps most notably – in addition to the aforementioned positive outcomes achieved as a consequence of the public nature of the CCC inquiry – it must be recognised that as a result of the CCC’s investigation a miscarriage of justice that led to a wrongful conviction being recorded against Mr Spratt was rectified, and the view of the Committee is that this is an exceptionally positive outcome.26

The WA Police internal investigation of this matter was also demonstrative of the strong internal culture of the WA Police, and testament to the fact that the WA Police maintains an appropriate system for addressing incidents of misconduct. In making this observation, the Committee notes that:

- the decision to initiate an internal investigation of alleged police misconduct in relation to the 31 August 2008 incident was made by the WA Police on 16 September 2008 after an initial review – as required by WA Police policy – of the ‘Use of Force Reports’ filed in respect of the incident;
- the CCC were also notified of the incident on 16 September 2008;
- due to the seriousness of the alleged conduct, the investigation was assigned to the WA Police Internal Affairs Unit on 23 September 2008;
- the then CCC Commissioner, the Honourable Len Roberts-Smith RFD QC, along with the CCC Executive Director, Mr Mike Silverstone, the then Director Operations, Mr Nick Anticich and the then Director Corruption Prevention Education and Research, Dr Irene Froyland, were all apprised of the incident and the police response to it by the WA Police Deputy Commissioner, Mr Chris

25 Dr Karl O’Callaghan APM, Commissioner, Mr Dominic Staltari APM, Assistant Commissioner (Professional Standards), and Inspector Greg Young, WA Police, Transcript of evidence, 24 October 2012, p 6.
Dawson, at a Joint Agency Steering Committee meeting on 24 September 2008;

- on 6 October 2008 the CCC communicated its agreement that the WA Police ought to conduct its own internal investigation of the incident;

- the IAU investigation was completed, and a final report on the matter prepared and sent for legal opinion, by 15 December 2008;

- WA Police liaised with the Director of Public Prosecutions and the Aboriginal Legal Service between December 2008 and February 2009, and on 24 February 2009 the Aboriginal Legal Service advised that Mr Spratt did not wish to pursue criminal charges in relation to the incident as he apparently had no recollection of its occurrence;

- disciplinary charges were commenced against four officers on 6-7 May 2009, and hearings in relation to these charges were conducted between July and October 2009; and

- the WA Police disciplinary charges were finalised on 26 November 2009.27

The view of the Committee is that while the response by the WA Police to the 31 August 2008 incident was largely appropriate, two aspects of this chronology of events remain concerning. First and foremost, the Committee has trouble reconciling the events depicted in the footage of the incident with the apparent conclusion in February 2009 that the success of any subsequent criminal charges would have been contingent upon the evidence of Mr Spratt. As this matter is now being considered by the Director of Public Prosecutions, however, the Committee shall offer no further comment on this point.28

The primary aspect of concern to the Committee is the fact that the incident was demonstrative of the past reluctance of (or inadequate priority given by) the CCC to independently investigate allegations made against the WA Police. Plainly, while the Committee appreciates that the WA Police were and are well equipped to investigate matters of this nature, the need for such incidents to be thoroughly investigated by an agency that is independent of the WA Police is one of the primary reasons for the existence of the CCC, especially giving consideration to the misconduct prevention


28 The Committee notes that this view was also offered in a further Supplementary submission provided by the CCC on 12 November 2012, which stated that “A prosecution,” in respect of this matter “would not depend on [Mr Spratt’s] evidence.”
benefit that has ultimately – albeit belatedly – flowed from the subsequent CCC inquiry. The obvious seriousness of this incident was demonstrated by the fact that WA Police Deputy Commissioner Dawson raised the matter at a meeting with the then CCC Commissioner, the CCC Executive Director and two of the CCC’s most senior officers inside one month of its occurrence. The view of the Committee is that the decision by the CCC, communicated to the WA Police on 6 October 2008, that the WA Police should proceed with their own investigation of this incident amounted to a dereliction of duty by the CCC.

Finding 1
The CCC should have itself commenced an investigation into the 31 August 2008 incident involving Mr Kevin Spratt at the Perth Watch House when, or shortly after, it was first informed of this incident in September 2008.

Pleasingly, however, the Committee is able to report that the CCC is now, as a result of changes made following the appointment of the Honourable Roger Macknay QC as Commissioner in November 2011, an organisation better equipped to prioritise an issue of this gravity than was the case in October 2008. This fact was made abundantly clear during the 9 November 2012 public hearing, in which the following exchange between the Committee Chairman, Hon Nick Goiran MLC, and Commissioner Macknay:

**The CHAIRMAN:** …as I understand it, senior members of the CCC were apprised of the seriousness of the Spratt incident on 24 September 2008.

**Mr Macknay:** There was a conversation. Mr Dawson, the Deputy Commissioner of the WA Police, briefed Commissioner Roberts-Smith, as I understand, on it. The position, as I am led to believe, is that Deputy Commissioner Dawson was plainly extremely concerned about it and was very anxious that the police conduct a full and proper investigation in relation to it.

**The CHAIRMAN:** As one would expect.

**Mr Macknay:** Yes. Of course, with that assurance the Commission was content for WA Police to investigate the matter.

**The CHAIRMAN:** It is easy with the benefit of hindsight, Commissioner, for me to ask this question, but since your time on the Commission it has been noted by the Committee, as you have outlined before, that there has been an increase of priority put by the Commission in terms of matters dealing with excessive use of force or at least alleged excessive use of force. With the benefit of hindsight, is it fair for the Committee to presume that under the new regime the investigation might have been taken over by the Commission earlier?

**Mr Macknay:** Can I say this: I certainly would not like to say anything from which an inference could be drawn that Commissioner Roberts-Smith was in any way not acting perfectly properly in leaving it with the police.
Chapter 2

The CHAIRMAN: That is understood by the Committee, Commissioner, in the sense that if every single matter was left with WA Police and the Commission decided to take over no matters of itself statutorily, that would not be wrong in terms of a decision. But whether it would be the best approach is another thing altogether.

Mr Macknay: Whether it was the best, again, is something that is only known with hindsight. The Internal Affairs Unit, based on my understanding, is a very professional, well-led unit that does very good work, so one ought to be hesitant to say that in any case they would not do a completely thorough and adequate job. If I can answer your question this way, Mr Chairman, given the view that I formed that it was necessary to maintain public confidence, really, as much as anything else, that we investigate a certain number of these matters ourselves so that police knew we were active in the area and that, in any case, we may come in and take it over. So, that is a salutary reason—public confidence reason—all those sorts of things. I suppose one would say that this would be the sort of thing that would certainly interest us. Put it that way.

The CHAIRMAN: I guess the Committee would want to be satisfied at the end of this exercise in this particular inquiry that there has been some lessons learned by the Commission. It would be somewhat distressing to me as the Chair of the Committee if I was to leave here today under the assumption that were that video to be placed before you today, you would not make a decision to take that matter on.

Mr Macknay: We would be interested in it, Mr Chairman. I think you have been told that, as with most organisations, there is a T&CG group, which decides which matters are to be investigated. There is a subcommittee, if you like, of that, which looks at every use of force matter. The members of it, if they do not agree, make individual recommendations and it then comes to me, and I look at every matter, give consideration to every matter, ask further questions and so on.

The CHAIRMAN: This would fall in that category.

Mr Macknay: Yes. As I say, we would be interested.29

Finding 2

The Corruption and Crime Commission is, in 2012, an organisation more committed to prioritising the discharge of its misconduct function, by way of independent investigation, with respect to the WA Police than was the case in 2008.

29 The Honourable Roger Macnay QC, Commissioner, Mr Mark Herron, Acting Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, Ms Michelle Harries, General Counsel, and Mr Maurice Hanrahan, Chief Finance Officer, Corruption and Crime Commission, Transcript of evidence, 9 November 2012, pp 16-17.
16 April 2012 CCC report: Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser® Weapons by Officers of Western Australia Police and the Department of Corrective Services

The CCC inquiry into the use of tasers on Mr Kevin Spratt resulted in the production of a report that was deemed tabled in Parliament on 16 April 2012. The report is a comprehensive document arising out of a thorough investigation of the incident, and is demonstrative of why the Committee believes firmly that the investigation of the incident should have been undertaken by the CCC in September 2008.

Notwithstanding the thorough nature of the report, the Committee was concerned to note that a total of 521 days elapsed between the 12 November 2010 announcement of the CCC inquiry into this matter and the publication of the report. Subsequent to the 15 August 2012 public hearing attended by the CCC in aid of this inquiry, the Committee provided a series of specific questions to the CCC pertaining to the issue of police oversight, and specifically its investigation into the use of tasers on Mr Spratt. One of those questions sought clarification as to the time taken by the CCC in completing this inquiry. In responding, the CCC pointed out that it had produced a total of six other reports within this 521 day window, and that its operations had been somewhat hampered through most of 2011 owing to the absence of a substantive Commissioner following the January 2011 retirement of Commissioner Roberts-Smith:

> It is incorrect and misleading to state that the Commission took 521 days “in completing the Spratt report”. As the [Committee] is aware, from the contents of the Spratt Report, the Commission conducted an extensive investigation including public and private examinations (hearings) prior to the preparation of the Spratt Report. Public and private examinations commenced in December 2010 and continued through until April 2011. A final private examination took place in August 2011 and was followed by further investigation and analysis. The drafting of the Spratt Report commenced in October 2011 after the main investigation phase was complete. In the circumstances, the Commission believes that the time taken to complete the report was reasonable.

As noted by the [Committee] in its letter of 28 August 2012, the Commission investigation was conducted during a time when the Commission was without a permanent Commissioner. Acting Commissioner Herron took responsibility for the matter part way through the investigation following the retirement of Commissioner Robert-Smith in January 2011. While a second Acting Commissioner was appointed in January 2011 (at the same time as Acting Commissioner Herron), Acting Commissioner Herron took responsibility for major and high-profile matters. The second Acting Commissioner [Ms Michelle Hullett] subsequently resigned on 15 August 2011.
Chapter 2

The appointment of the Acting Commissioners took effect the day before the retirement of Commissioner Roberts-Smith. Not only did the Acting Commissioners need to familiarise themselves with the CCC Act and the Commission’s systems, processes and procedures, but they also had to familiarise themselves with the various authorities that guide the conduct of standing commissions of inquiry such as this Commission.

Acting Commissioner Herron did not take-up the “Spratt matter” immediately upon his appointment in January 2011, as he held the view that it was more appropriate for a full-time Commissioner to deal with public examinations. When it became apparent that an early appointment was unlikely, Acting Commissioner Herron took-up the International English Language Testing System (or IELTS) matter and the “Spratt matter”. This required him to examine the material gathered thus far in those investigations and to determine the approach he wished to take in respect of those matters. For example, in relation to the “Spratt matter” it took him several days to review the video recordings of the preceding examinations and relevant transcripts.

Acting Commissioner Herron’s involvement with the Commission was such that he quickly became the principal Acting Commissioner and had to deal with a range of other complex matters and issues (in addition to the IELTS matter and “Spratt matter”). These included a series of complex interactions with the Parliamentary Inspector (including matters concerning the Quartermaine inquiry and the inquiry into the way the Commission dealt with allegations concerning WAPOL use of force), the Government proposal to amend the CCC Act, a series of inquiries by the [Committee], including the conduct of public examinations by the Commission. The dealings with the Parliamentary Inspector and the [Committee] required the development of lengthy submissions.

The Commission under the leadership of Acting Commissioner Herron dealt with numerous complex matters. Regardless of the officers available to support him, the scheme of the CCC Act required that he personally consider and adopt positions on matters that are exclusively the remit of the person performing the functions of Commissioner and which may not be delegated (refer section 185 of the CCC Act). Given the range of issues, not the least of which was the investigation of the “Spratt matter”, Acting Commissioner Herron had a demanding workload.

The 10-month period between the departure of Commissioner Roberts-Smith and the arrival of Commissioner Macknay was a period of considerable uncertainty and pressure, compounded by a demanding workload. The view of the Commission is that Acting Commissioner Herron is owed a significant debt of appreciation for his preparedness to accept very considerable and unexpected responsibilities for an extended period of time.30

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In concluding its response, the CCC proposed a solution:

In order to prevent similar circumstances arising in the future, the Commission believes that a pressing need exists to enable the appointment of a Deputy Commissioner to both deputise for the Commissioner as required (to assist in the management of his workload) and to provide continuity during the transition periods following the departure of Commissioners and the arrival of replacement Commissioners.31

The Committee recognises the fact that Acting Commissioner Herron performed admirably in trying circumstances through the course of 2011: the role that he agreed to undertake was vastly different to the role that he was ultimately asked to perform, and his commitment to the CCC remained unwavering. One of the many anomalies in the CCC Act is that, despite having a wealth of roles and responsibilities necessitating a substantial budget and staff, many of the functions of the CCC can only be performed with the sanction of a Commissioner or, in the absence of a Commissioner, an Acting Commissioner (who is only engaged when the Commissioner is, for whatever reason, unable to perform the duties of the role). As such, the Committee agrees that there would be significant merit in amending the CCC Act so as to allow for the appointment of a full-time “Deputy” or Assistant Commissioner (as opposed to what amounts to an on-call Acting Commissioner), who would meet with the criteria for appointment to the role of substantive Commissioner, and work alongside the Commissioner in a full-time capacity. Indeed, the appointment of a full-time Assistant Commissioner, to whom specific functions could be delegated by the Commissioner, has been recommended by the Committee in two previous reports to Parliament – and pleasingly, the Government has indicated its support for this recommendation.32 Nonetheless, as no amendment to the CCC Act has been made, the Committee believes there is merit in reiterating this point:

**Finding 3**

Undue delays in the CCC’s inquiry into the use of taser weapons on Mr Kevin Spratt at the Perth Watch House on 31 August 2008 could have been avoided if the CCC Act facilitated the appointment of a Deputy or Assistant Commissioner.

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31 Ibid., p 4.
32 This recommendation was reported by the Committee in its thirteenth report (Analysis of Recommended Reforms to the Corruption and Crime Commission Act 2003, 17 February 2011, p 9.) and twenty-first report (Parliamentary Inspector’s report Concerning Telecommunications Interceptions and Legal Professional Privilege, 24 November 2011, p ix.). Government acknowledgement of this recommendation was communicated in the official response to the second of these reports, which response is Tabled Paper number 4620 in the Legislative Assembly (tabled on 22 March 2012).
Chapter 2

**Recommendation 2**
The *Corruption and Crime Commission Act 2003* should be amended to allow for the appointment of a full-time deputy and/or assistant commissioner, to whom specific functions may be delegated by the Commissioner, and who is able to act as the Commissioner in the Commissioner’s absence.

On this point, the Committee offers a final observation: in New South Wales, the Independent Commission Against Corruption has both a Commissioner and an Assistant Commissioner, both of whom are equally able to discharge functions of the Commissioner. Notwithstanding this fact, it is exceedingly rare for the Assistant Commissioner to have to discharge the functions of the Commissioner (as it is for an Acting Commissioner in Western Australia). As such, the Assistant Commissioner of the ICAC – as this person is also employed on a full-time basis – in the main performs a role that is equivalent to that of the Executive Director in the CCC context. Certainly there would be significant merit in having a CCC Executive Director who was able to perform the Commissioner’s functions in the absence, for whatever reason, of a Commissioner.

**Recommendation 3**
The *Corruption and Crime Commission Act 2003* should be amended to require the role of CCC Executive Director to be performed by someone who meets the same criteria for appointment to the role of CCC Commissioner. This would allow the Executive Director to be an Acting CCC Commissioner in the Commissioner’s absence.
Chapter 3

Examining other jurisdictions

You need to have someone who is independent watching the guys who police organised crime.

Ms Ilana Rosenzweig, Chief Administrator of the City of Chicago Independent Police Review Authority, October 2011.

Inquiries in Chicago and Ottawa, October 2011

In October 2011 the Committee undertook investigative travel to Ottawa and Chicago, for briefings on the use of public examinations, the investigation of unexplained wealth and the recovery of proceeds of crime, and the handling of allegations and notifications of police misconduct. Particularly relevant to this current inquiry were briefings by representatives of the City of Chicago’s Independent Police Review Authority, the Commission for Public Complaints Against the Royal Canadian Mounted Police, and the Royal Canadian Mounted Police Office of Professional Integrity. Each of these briefings reaffirmed the Committee’s preliminary view that police oversight is a challenging, albeit vital component of contemporary democratic governance.

Chicago: Briefing by the Chief Administrator of the City of Chicago Independent Police Review Authority

In Chicago the Committee met with the Chief Administrator of the City of Chicago Independent Police Review Authority (IPRA), Ms Ilana Rosenzweig. The Committee learned that the IPRA was formed in 2007 as a replacement for the former Office of Professional Standard of the Chicago Police Department, in response to community concern regarding the handling of allegations of police misconduct by the police. An independent agency of the City of Chicago, the IPRA is separate from the Chicago Police Department and has functioned under the leadership of Ms Rosenzweig since its inception. The Committee found Ms Rosenzweig to be an informed and inspiring advocate for integrity in government: in an engaging and thought-provoking briefing, her belief in and commitment to enhancing the police role through independent oversight was profound.

The Committee was informed that the IPRA, much like the CCC, receives all allegations of misconduct made against Chicago Police Department officers, whether from the public or from police officers. In contrast to the CCC, however, Ms Rosenzweig
explained that the IRPA has exclusive jurisdiction over allegations involving excessive force, domestic violence, or coercion though the threat of violence. When it receives an allegation that falls into any of these categories, the IPRA conducts an investigation into the allegation, makes a finding and – if appropriate – recommends an outcome. Significantly, all other allegations made against police officers are referred by the IPRA to the Internal Affairs Division of the Chicago Police Department. Ms Rosenzweig also informed the Committee that the IPRA, in addition to investigating allegations that fall within its jurisdiction, also reviews all lock-up incidents, as well as all uses of firearms and taser weapons by Chicago Police officers. As a result of these reviews, the IPRA may make recommendations for changes to training procedures and Chicago Police Department policies.

Ms Rosenzweig explained that police oversight is a most important aspect of law enforcement, because adequate police oversight is a crucial component of public confidence and trust in the justice system. The Committee was also informed that police officers derive significant benefit and confidence from the fact that the trust placed in them by the citizens that they serve is enhanced by the existence of a transparent and thorough system of police oversight.

**Finding 4**

Independent police oversight bodies – by their very existence – enhance public trust in police agencies.

The Committee learned that there are five possible outcomes of an IPRA investigation. As detailed on the IPRA website, these are:

<table>
<thead>
<tr>
<th>IPRA Investigation Findings</th>
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</thead>
<tbody>
<tr>
<td><strong>Sustained</strong></td>
</tr>
<tr>
<td>The allegation is supported by sufficient evidence to justify disciplinary action.</td>
</tr>
<tr>
<td><strong>Not sustained</strong></td>
</tr>
<tr>
<td>There is insufficient evidence to either prove or disprove the allegation.</td>
</tr>
<tr>
<td><strong>Unfounded</strong></td>
</tr>
<tr>
<td>The allegation is false or not factual.</td>
</tr>
<tr>
<td><strong>Exonerated</strong></td>
</tr>
<tr>
<td>The incident occurred, but the actions of the accused were lawful and proper.</td>
</tr>
<tr>
<td><strong>No Affidavit</strong></td>
</tr>
<tr>
<td>No one who witnessed the alleged misconduct provided a sworn statement and no exception to the affidavit requirement was applicable.</td>
</tr>
</tbody>
</table>
Examining other jurisdictions

Presented with this information, the Committee enquired as to the benefit inherent to the ability of the IPRA to not simply conclude that an allegation was “not sustained” because of a lack of evidence, but in fact “exonerated” because although an incident had occurred, and a complaint had been made in good faith, the conduct of the officer in question was in fact completely in line with police policy. Ms Rosenzweig explained to the Committee that being able to properly exonerate an officer subsequent to an investigation was very beneficial, because a full investigation was still undertaken and the IPRA is able to communicate the full nature of that investigation to the complainant. This is often to the satisfaction of both the complainant and the police officer, which puts the allegation totally to rest. In addition, Ms Rosenzweig expressed her belief that this process often functioned to enhance the reputation of both the police officer in question and the Chicago Police Department generally, and was from the perspective of the IPRA the best possible outcome, as it was demonstrative of the system functioning well.

**Finding 5**

At the conclusion of an investigation by a police oversight agency which confirms the occurrence of an incident but does not identify any misconduct, there is benefit in the agency reporting that the officer(s) under investigation discharged their police functions exactly as was required in the circumstances.

According to Ms Rosenzweig, with the passing of time it is not uncommon for police officers to become resistant to changing their behaviour, owing to the very complex and challenging nature of the police vocation. As a consequence, it is very important that investigators in police internal affairs units conduct proper investigations into allegations against police officers, as inadequate internal protocols can very quickly undermine the law enforcement effort.

**Finding 6**

Constant vigilance and professionalism is a crucial component of internal police investigations.

The Committee was also interested to hear Ms Rosenzweig explain that there is no “perfect” model for police oversight, and that no two models are the same. Prior to taking on the leadership of the IPRA, Ms Rosenzweig had spent six years working as one of six attorneys overseeing the Los Angeles County Sherriff’s Department as part of Los Angeles’ Office of Independent Review. Ms Rosenzweig informed the Committee that the challenges associated with the role and work of her former agency were very different to those challenges she now faced in Chicago, and as such the police oversight model was quite different. She did add, however, that in her opinion the single best model would involve an independent process auditor working side-by-side with police internal investigators – a model that is not dissimilar to the CCC practice of reviewing
Chapter 3

the internal handling of complaints by the WA Police. Ms Rosenzweig also explained that it was her strong belief that far more important that whatever model was put in place was that the model was implemented properly, and that the people doing the work invested themselves into their roles, and discharged their duties with the highest standards of integrity.

Finding 7
Whatever police oversight model a society may see it fit to implement, the two most crucial components are a thorough and transparent implementation of the model in line with community expectations, and an unwavering commitment to professional conduct by the staff of the police oversight agency.

Questioned as to the notion that it was very important that police leadership take central responsibility for misconduct in their ranks, Ms Rosenzweig agreed completely, adding that it is very important that police command is held accountable for any internal problems.

Finding 8
A successful police oversight model will ensure that those performing police leadership roles will want to assume direct responsibility for the actions of their officers.

Ms Rosenzweig said that when the outcome of an IPRA investigation was pending, there would always be a significant number of people who wanted to know the outcome, and that it is very beneficial for a police oversight agency to maintain a keen awareness of both public and police sentiment, so as to be able to react to issues as they develop in the most appropriate way. While acknowledging that this was a challenge, Ms Rosenzweig added that the best way to achieve this objective was to bring investigations to a resolution in a timely manner, so as to curtail the negative effect of rumour and innuendo.

As the briefing drew to a close, Ms Rosenzweig concluded by telling the Committee that the police oversight role would always be a very demanding role by virtue of the fact that its successes were difficult to measure and the investigation of any particular complaint against police would rarely conclude to the complete satisfaction of any incident party. In making this point, Ms Rosenzweig stressed to the Committee that it is important that the people doing the work within an oversight agency maintain their dignity and respect for others – and especially for those who are under investigation for having transgressed in some way.

The Committee came away from the briefing very thankful for having had the opportunity to meet Ms Rosenzweig: she is undoubtedly a dedicated servant to the City of Chicago, and a staunch advocate for the benefit of independent police oversight. With this in mind, the challenging nature of the police oversight role was further
reinforced to the Committee with the publication of an article in the 17 June 2012 edition of the Chicago Tribune concerning the IPRA, entitled “Police misconduct cases drag for years – Investigative agency’s delays can lead to dismissal of charges.”33 The article, which was critical of the IPRA and of Ms Rosenzweig, asserted that the time taken for IPRA investigations was unreasonable, and was evidence that the IPRA was failing in its charter. The article is instructive with respect to this inquiry: a common theme of the police oversight role is that although its importance cannot be understated, its successes are virtually invisible, which permits ample opportunity for criticism. Certainly police oversight is very often a thankless task.

**Finding 9**

Police oversight agencies will likely often find themselves incident to imbalanced criticism.

**Ottawa: Briefing by the Office of Professional Standards of the Royal Canadian Mounted Police**

In Ottawa the Committee was hosted by a number of representatives of the Royal Canadian Mounted Police, and Committee Members enjoyed a series of briefings convened at RCMP National Headquarters. In aid of this particular inquiry, the Committee was briefed by Professional Integrity Officer Joseph Hincke and Inspector Alfredo Bangloy, both of the RCMP Office of Professional Standards.

The Committee was informed that the Office of Professional Standards works to promote and enhance integrity within the RCMP by providing national leadership in support of efforts to continually enhance the professional integrity of all RCMP officers, and by actively monitoring the way that police across Canada investigate allegations against their colleagues. The Office of Professional Standards also works to address findings and implement recommendations made by the Commission for Public Complaints on the RCMP and, through the work of its “values and ethics” division, conducts ongoing education of all RCMP officers to encourage and ensure ethical and appropriate behaviour at all times. Mr Hincke also informed the Committee that all RCMP officers undergo security assessments at least every five years, and that all officers have both a “security status,” so as to be trusted with sensitive information, and – more importantly – a “reliability status,” which is contingent upon their personal background and history. According to Inspector Bangloy, maintaining a strong “reliability status,” is a condition of working for the RCMP, which enhances the discharge of RCMP functions.

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Chapter 3

During the briefing, the Committee described the work and role of the CCC to Mr Hincke and Inspector Bangloy, and the Committee was encouraged to be informed that the model in place in Western Australia more than met with the approval of these gentlemen. Mr Hincke, who is a civilian member of the RCMP, expressed his strong approval for the fact that the CCC operates independently of, but nonetheless makes a strong contribution to, the WA Police; Inspector Bangloy said that, as a serving police officer working within a police professional integrity portfolio, he would expect that the CCC by its very existence would very much support the efforts of the equivalent (Professional Standards) portfolio within the WA Police.

Finding 10
With the CCC, Western Australia has implemented a good police oversight model.

The objective of the Office of Professional Standards is ultimately to make the RCMP into an even better police force than it already is. It was clear that this goal – notwithstanding the strong and well-earned reputation of the RCMP – was something that both Mr Hincke and Inspector Bangloy were both very committed to and passionate about. For the Committee, their approach exemplified why the RCMP is held in such high worldwide regard.

Ottawa: Briefing by the Commission for Public Complaints Against the RCMP

Also in Ottawa the Committee received a briefing from the Interim Chair of the Commission for Public Complaints Against the RCMP, Mr Ian McPhail QC, along with the Commission’s Senior Director of Operations, Mr Richard Evans.

The Committee was informed that the CPC RCMP has a very strictly defined role, which is limited to investigating complaints and allegations made by Canadian citizens against officers of the RCMP. That is, the CPC RCMP discharges the “civilian oversight” model; it does not have an educative role or indeed any other role with respect to the RCMP.

Mr Evans was firm in his belief as to the integrity of this model, expressing the view that the very purpose of oversight bodies is to be independent of the police. This belief was strongly supported by Mr McPhail, who said that it was very important that the CPC RCMP maintained the respect of, and credibility with, RCMP officers, and this was the main reason why it was important that the two entities remained separate in discharging their functions.

Finding 11
The independence of a police oversight agency is a critically important component of the proper discharge of its police oversight function.
The Committee was informed that it was also for this reason that the CPC RCMP would simply report its findings and recommendations to Parliament, as opposed to liaising with the RCMP. According to Mr McPhail, the fact that it is ultimately left to the RCMP to decide whether (and how) to implement any particular recommendation made by the CPC RCMP means that those recommendations had to be carefully thought out, clear and precise – a requirement that was to the great benefit of both the RCMP and the CPC RCMP.

The Committee was also interested to learn that the CPC RCMP has the ability to make “findings of fact,” which is to say that its reported findings can be directly drawn upon in RCMP disciplinary hearings. The Committee is aware that the inability of the CCC to do likewise is a significant flaw in the current CCC Act, and has previously voiced its concern with respect to this problem: the Committee first considered this problem in the course of preparing its thirteenth report, Analysis of Recommended Reforms to the Corruption and Crime Commission Act 2003, which was tabled in Parliament on 17 February 2011. That report was the product of the Committee’s consideration of each of the 58 recommendations for amendment to the CCC Act recommended by Ms Gail Archer SC when she reported the outcome of her statutory review of the CCC Act in February 2008. Recommendation 36 of that report was “that the Act be amended to make it clear that the CCC may include findings of fact in its reports.” In preparing its own report on this matter, the Committee sought the opinions of the CCC and Parliamentary Inspector Steytler, both of whom indicated their complete support for this recommendation – a recommendation that the Committee also voiced its strong support for.

During the 24 October 2012 hearing with WA Police Commissioner O’Callaghan and WA Police Assistant Commissioner Staltari, reference was again made to this point when Assistant Commissioner Staltari said:

*The reality of it is that the sections of the CCC act make it quite specific that we cannot use those materials [assembled in the course of a CCC investigation]. If the act were amended to say that when the Corruption and Crime Commission do an investigation and do not want to pursue it and say “here”, we can then use those materials without having to duplicate what they have already done.*

[...]

[Parliament should] amend the act so that—I am probably reluctant to raise this, but [in the past the CCC] did an inquiry and made findings of misconduct. The [Police] Commissioner cannot do anything with that. What does a finding of misconduct mean? It means a finding of misconduct. The [Police] Commissioner cannot act on that finding of
misconduct. The [Police] Commissioner then has to go away, do his own investigation, and take action. Well, what a waste of time all that is.  

The Committee concurs completely with these sentiments: the inability for other agencies to take CCC findings and opinions as fact is yet another example of an unnecessary flaw in the CCC Act – and yet another flaw that the Government could very easily rectify:

Finding 12

That CCC findings cannot be drawn upon by other agencies for the purpose of their own disciplinary proceedings is a significant flaw in the Corruption and Crime Commission Act 2003.

Recommendation 4

The Corruption and Crime Commission Act 2003 should be amended to make it clear that the CCC may include findings of fact in its reports.

The Committee was most thankful for having had the opportunity to be briefed by both Mr McPhail and Mr Evans; their candour and professionalism made for an informative and beneficial experience.

Inquiries in Hong Kong, May 2012

In May 2012 the Committee Chairman and Deputy Chairman attended the 5th ICAC Symposium, hosted by the Independent Commission Against Corruption in Hong Kong. After attending the Symposium, the Chairman and Deputy Chairman met and received briefings from the Hong Kong Independent Police Complaints Council (IPCC), and the Hong Kong Independent Commission Against Corruption (ICAC), at their respective offices.

Hong Kong: Briefing by the Members of the Independent Police Complaints Council

IPCC Members Dr the Hon Joseph LEE Kok-long, SBS, JP (IPCC Vice-chairman), Mr Lawrence MA Yan-kwok and Mr IP Shing-hing, JP, as well as Secretariat staff Mr Ricky CHU (Secretary General), Mr Daniel MUI (Deputy Secretary General), Ms Cherry CHAN (Legal Officer) and Ms Charlotte KONG (Public Relations Manager), provided an extensive briefing to the Committee Chairman and Deputy Chairman.

34 Dr Karl O’Callaghan APM, Commissioner, Mr Dominic Staltari APM, Assistant Commissioner (Professional Standards), and Inspector Greg Young, WA Police, Transcript of evidence, 24 October 2012, p 12.
The main functions of the IPCC include observing, monitoring and reviewing the handling and investigation of reportable complaints by the Hong Kong Police and making recommendations in respect of the handling or investigation of such complaints, as well as identifying any fault or deficiency in the practices or procedures adopted by the Hong Kong Police. They are empowered to require the police to investigate or re-investigate complaints, to submit investigation reports to the IPCC and to provide other information as the IPCC requires. All investigative work is carried out by the Complaints Against Police Office (CAPO), which is part of the Complaints and Internal Investigations Bureau of the Hong Kong Police.

The “observers’ scheme” is one mechanism by which police investigations are monitored by the IPCC. These are honorary positions appointed by the Secretary for Security; currently there are approximately 110 observers. They can attend any interview or evidence collection exercise by the police, either by appointment or completely unannounced as a surprise visit. Once identified the police cannot refuse permission for attendance. Observers must be passive participants who then make written reports on all attendances to the Secretariat. Any problems identified by observers are put in writing by the secretariat to the CAPO for a response or remedy. The Secretariat makes recommendations to members who will then either endorse the relevant CAPO investigation report or request follow-up or remedial efforts from the CAPO.

Of particular interest to the Committee was the notion of performance pledges published on the IPCC website, with time frames provided for investigations. The CAPO must try to complete all investigations within six months. If this deadline lapses, an interim report must be provided to the IPCC after the six months, giving factual reasons as to why the case has not been completed is required. In addition, a detailed summary of what has been completed and a timeline of further proposed investigations and completion. Where complex investigations take an even longer period of time, as is often quite reasonable, subsequent interim reports must be submitted every three months until the final report is complete. Where a case is classified as a serious complaint, or else is deemed to be significantly in the public interest, interim reports must be submitted on a monthly basis until completion. Once an interim (or final), report has been received by the IPCC, members can ask any questions pertinent to the investigation and expect a written response from the CAPO. If there are continuing areas of dissatisfaction for IPCC Members with aspects of the investigation and requested remedial action has not been taken, they have the power to recommend that the Investigation Officer be charged with Neglect of Duty.

**Finding 13**

Ensuring adherence to investigation timeframe policy can be a useful function of a police oversight agency.
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Hong Kong: Briefing by representatives of the Independent Commission Against Corruption

In Hong Kong the Chairman and Deputy Chairman also met with Principal Investigator Peter Choi and Chief Investigator Paul Lau of the Independent Commission Against Corruption. Mr Choi and Mr Lau detailed the ICAC’s “three-pronged” approach to the fight against police corruption, which includes law enforcement, corruption prevention and community education to fight corruption. In Hong Kong, the ICAC is the only agency empowered to investigate corruption: any allegations of corruption against police are referred to the ICAC for investigation, while other areas of complaint (such as misconduct or excessive use of force) are dealt with by other agencies.

The ICAC takes a partnership approach in dealing with allegations against the Hong Kong Police. An “operational liaison group” involving ICAC operations staff and police internal investigations staff co-operate in joint operations and cases of mutual interest. It was noteworthy that this type of liaison group was identified as a mechanism for maintaining operational integrity and an appropriate separation of interests in simultaneously investigating corrupt policemen and co-operating in investigations with them. Numerous examples of ICAC investigations into police corruption, in cooperation with Hong Kong Police, were provided to the Committee Chairman and Deputy Chairman. Many years of working together in this way have built up a trust relationship between the two groups. The ICAC also participates in regional commander briefings into relevant corruption issues, the Police Corruption Prevention Group and has training input at Police College and training days. Visits to the ICAC by probationary Inspectors are also accommodated. Great emphasis is therefore placed on the importance of education and training and the ICAC’s input into that.

The ICAC also displayed stringent performance and accountability standards. They must attempt to complete all investigations within one year. If any investigation exceeds one year then it is reviewed every 6 weeks by the Operations Review Committee. Cases of significant public interest are reviewed as a matter of course every 6 weeks without the initial one year period. Once completed or being the subject of an interim review, all aspects of an investigation can be questioned. Any investigation that is discontinued is subject to the same questioning by the Operations Review Committee so that ICAC is accountable for why it may not conclude an investigation as well as all aspects and areas of completed investigations and the outcomes from them.

Inquiries in Melbourne and Sydney, August 2012

In August 2012 the Committee undertook investigative travel to Melbourne and Sydney for briefings in aid of this inquiry. The Committee met with the former Director of the Office of Police Integrity in Victoria, Mr Michael Strong, the Commissioner, Mr Andrew
Scipione APM, and Assistant Commissioners, Mr Paul Carey and Mr Dave Hudson, of the New South Wales Police Force, and the Deputy Ombudsman (Police and Compliance), Ms Linda Waugh, along with Mr Michael Gleeson of the Office of the New South Wales Ombudsman.

**Melbourne: Meeting with Mr Michael Strong**

In August 2012 the Committee met with Mr Michael Strong in Melbourne. Mr Strong served as Director of the Office of Police Integrity Victoria from 2008 until early 2012, and had offered his assistance to the Committee during an informal meeting at the ICAC Symposium in Hong Kong in May – an offer that the Committee was pleased to pursue.

Mr Strong informed the Committee that the single greatest dilemma in the police oversight role was how to get the balance between investigation and prevention right. According to Mr Strong, this balance is perhaps best dictated by the Government, as it was always difficult for those working within anti-corruption agencies to determine which area would reap the greatest community benefit as a result of an investment of extra resources. Mr Strong advised the Committee that his external perception of the CCC was that as an agency it was respected in law enforcement circles as having a good investigative capacity. Mr Strong also added that while debate around the “right balance” is not a new thing, in his time as OPI Director he had increasingly come to believe that there was immense value in prevention and education, owing to the capacity for that particular endeavour to affect significant cultural change. A key exercise conducted by the OPI was to identify policing areas with cultural problems, and then focus OPI resources upon those problems.

**Finding 14**

*Misconduct prevention and education efforts reap significant – albeit difficult to quantify – benefits as a result of affecting significant cultural change for the better within organisations.*

The Committee was informed that throughout Mr Strong’s tenure with the OPI, there had always been complaints about the supposed “failure” to investigate certain things. According to Mr Strong – and effectively in complete support of what the Committee had learned as a result of its briefing by Ms Ilana Rosenzweig in Chicago – unbalanced criticism unfortunately is a part of the nature of the anti-corruption role.

According to Mr Strong, sometimes police have difficulty dealing with problems internally because – as is perfectly understandable – of personal familiarity. When persons under investigation are known to those who are investigating an allegation, truly objective investigation is rendered virtually impossible. Mr Strong added that it is clearly very difficult to dispassionately deal with an allegation of negative behaviour.
Chapter 3

against even an unknown colleague. This, Mr Strong asserted, was the key reason why there is value in including an investigative component within the independent police oversight model.

Mr Strong informed the Committee that over the course of his tenure as OPI Director, it had increasingly become the case that the OPI process would not target prosecutions. This was because experience had proven that successfully prosecuting police officers can be extremely difficult, and that even successful prosecutions were often unlikely to achieve the preferred result of cultural change. Mr Strong said that the media focus upon prosecutions as a measure of success often prevented the public from being aware of the true benefit of the police oversight role, as the actual success of that endeavour is always more nuanced than having someone convicted for a particular crime. Mr Strong added that the extent to which an oversight agency pursues prosecutions is always a matter open to debate, because prosecuting is so hugely resource-intensive. For this reason, Mr Strong said that often a far better outcome for police oversight, if it were possible, is to simply affect the departure of a corrupt officer from the relevant police force, as this would have just as good an effect – Mr Strong added that a corrupt officer can have a poisonous effect within a police force – for far less cost than pursuing a criminal prosecution. In emphasising this point, Mr Strong said to the Committee that his informed view of the Victoria Police internal investigations unit was that it was competent, well-resourced and possessed of a strong fortitude for investigating internal matters properly and fully, and the OPI always sought to assist that unit in whatever way it could to achieve continual enhancement to the integrity of the Victoria Police.

The Committee’s own views regarding the role of police oversight in the overall fight against organised crime were further enhanced when Mr Strong voiced his opinion that maintaining oversight pressure on police has a significant positive effect in the fight against organised crime – especially as organised criminals would always work to cultivate police assistance. Mr Strong said also that this fact demonstrated the significant value in police maintaining an “inappropriate associations register,” as it was a proactive way that police could alleviate the risk inherent to the fight against organised crime.

Cultural issues were also described as an important target in the police oversight role. Mr Strong said that to affect positive cultural change, police oversight agencies ought to look at the police training schedule, and develop an appreciation of police procedures and internal policies. Building a detailed understanding of exactly how police do things, and then identifying any weak links within that chain was, Mr Strong asserted, an excellent strategy that a police oversight agency could take in discharging its functions, as such a strategy would enable these agencies to proactively approach police and offer suggestions based upon their learned knowledge. On this point, Mr Strong added that it is crucially important that the oversight agency has a “great
working relationship with the police,” because this is the single best way of ensuring that any recommendations made are current, realistic and ultimately adopted.

Mr Strong added that it was also very important that all police oversight agencies appreciate that their role is in effect a double-edged sword: while ultimately seeking to implement change for the better, a police oversight agency could not be critical to the point of reducing public confidence in the police, because this would totally undermine the justice system – which ultimately both agencies need to fundamentally defend and enhance.

The Committee was interested to learn that the OPI used to review the file relating to every internal police investigation, before ultimately deciding that this was an inefficient use of resources. Mr Strong said that with time it had been determined that the OPI review function was more beneficial when discharged in response to a specific allegation or complaint from the public, as in many instances this allowed the OPI to reassure concerned persons as to the integrity of the Victoria Police. The Committee was informed that often persons who make complaints about police simply want some affirmation or recognition that they had been ill-treated, and by asking these people what outcome they were seeking the OPI had learned that it was rare that members of the public would seek anything more than an apology from the police as a resolution to a particular grievance. Mr Strong said that he believed that police are able to apologise for some action without leaving themselves open to civil litigation.

The Committee sought Mr Strong’s opinion on the inability for the CCC to make “findings of fact.” In response, Mr Strong voiced concern at the prospect of a duplicated investigative effort between police and CCC, and he described the inability of the CCC to make findings of fact as ridiculous, especially if this meant that the police had to then initiate another investigation into some matter that had been thoroughly investigated by the CCC.

In bringing the briefing to a conclusion, Mr Strong said that the work of a police oversight agency is a highly important component of good governance, but that while it is work that must be done, oftentimes there will not necessarily be very much to show for it. The Committee was very pleased to have had the opportunity to meet and speak with Mr Strong in relation to this inquiry: it was and is abundantly clear that he is a person with very strong and clear ethical beliefs, and his candour, professionalism and commitment for the role and importance of independent oversight of executive power very much enhanced this inquiry.
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Sydney: Briefing by the New South Wales Police Force

In Sydney the Committee had the opportunity to meet with and receive a briefing from the Commissioner of the New South Wales Police Force, Mr Andrew Scipione APM, as well as Assistant Commissioners Dave Hudson APM and Paul Carey APM.

The Committee decided to travel to Sydney to meet with the NSW Police Force after noting the evidence of CCC Commissioner Macknay before the Legislative Assembly Estimates Committee on 30 May 2012, wherein Commissioner Macknay, responding to questions about investigations into allegations of excessive use of force by police officers, had said that:

...alternative dispute resolution methods have been adopted by the New South Wales Police Force to broker allegations of this kind, and it would appear they have brought about excellent results in terms of a diminution of the number of people who are ultimately dissatisfied with their treatment by police. It seems to me that although in this state that would ultimately be a matter of responsibility for Western Australia Police, it would be something that I would be able to make recommendations on it, and so I am most keen to make inquiries in relation to that in particular when I am able to get there.35

Commissioner Scipione informed the Committee that the NSW Police Force had determined that the optimal way to deal with police complaints was to ask complainants what action they expected from police in response to their complaint. According to Commissioner Scipione, in most instances complainants simply seek some kind of apology; this knowledge had enabled the NSW Police Force to move away from punitive-style investigative outcomes, which had been a significant and most positive development in enhancing their internal culture.

The Committee learned that by removing what was described as the “veil of secrecy” from the complaints process, the NSW Police Force was pleased to see around 40% of complaints being generated internally, which was regarded as evidence of a healthy internal police culture. According to Commissioner Scipione, it was clear that police officers around Australia have no appetite for misconduct, as all officers are very keen to see their own police force exemplify the ideals of serving and protecting people through the objective maintenance of law and order in society.

Reference was made to what was described as an old, far more punitive style of internal police investigation and discipline; this system was described as quite disruptive, as officers who had been sanctioned would often become embittered by the experience, and in many cases then become negative influences within the force. Commissioner Scipione told the Committee that his first preference as Commissioner in

The respect of some instance of police impropriety would always be to try to work through mistakes or errors, because he was confident that assisting officers who wanted “to be saved,” represented a far better outcome for those officers, for the culture of the NSW Police Force, and for citizens of New South Wales in general. To emphasize this point, Commissioner Scipione informed the Committee that the single greatest challenge for any law enforcement agency was to create and promote a strong internal culture.

Also on this point, Assistant Commissioner Carey said that the education of NSW Police Force cadets was regarded as a very important component of police culture, and that the NSW Police Force was very proud that their cadet training now includes a tertiary component, conducted by Charles Sturt University, the successful completion of which is a condition of subsequent employment within the NSW Police Force. The Committee was also informed that the NSW Ombudsman and the Police Integrity Commission have complete visibility over the entire police complaints system, and that communication between the police and these agencies is vital. Assistant Commissioner Hudson added that it is very important that each of these agencies knows and respects the role of others, and that the respective management teams are at least broadly familiar with the work being undertaken by each agency, save for matters of which covert investigation is a component.

As the briefing concluded, Commissioner Scipione said that the most important facets of any police complaints resolution process are independence, transparency and visibility. The advice and experience of Commissioner Scipione, along with that of Assistant Commissioners Carey and Hudson very much enhanced the Committee’s understanding of some of the issues faced by police agencies with respect to resolving complaints made against their officers. The Committee came away from the meeting impressed with and encouraged by the professional approach to law enforcement that is exhibited by the NSW Police Force, and was very pleased to have been able to draw upon the professional assistance of these three gentlemen in the course of this inquiry.

**Sydney: Briefing by the NSW Deputy Ombudsman**

In Sydney the Committee also met with the Deputy Ombudsman (Police and Compliance), Ms Linda Waugh, along with Mr Michael Gleeson of the Office of the NSW Ombudsman, both of whom conveyed a keen sense of commitment to and belief in the way that resolving complaints against police officers functions to enhance the police role. The Committee learned that in New South Wales the Office of the NSW Ombudsman plays an important role in the police complaints process, insofar as a significant proportion of complaints against police is dealt with via consultation between the Office of the NSW Ombudsman, the NSW Police Force and the complainant.
Ms Waugh agreed with the notion that the responsibility for misconduct on the part of an officer should rest with that officer’s local commanding officer: according to Ms Waugh, this is the single best way for a police force to continually develop and enhance a positive police culture – an outcome that has immense benefit. For this reason, the Committee was informed that, in general, the Office of the NSW Ombudsman will only launch an investigation in circumstances where they are dissatisfied with some particular aspect of an internal police investigation; in the main, the preference is to have matters dealt with internally by the NSW Police Force. Ms Waugh explained that the Office of the NSW Ombudsman also monitors data pertaining to police activities (including data from Use of Force reports, as well as the register of police complaints) and seeks to identify ‘trends’ in that data. When and if trends are identified, the Deputy Ombudsman will consult with the NSW Police to seek to have any problems addressed.

According to Ms Waugh, the external perception that serious matters are properly dealt with by a police force is very important. As a result, the Office of the NSW Ombudsman does a lot of auditing of compliance by NSW Police with their own policies and key performance indicators, so as to ensure that adequate police resources are devoted to achieving expected targets.

Ms Waugh acknowledged that the timeliness of any investigation was always a key issue. She told the Committee that if an oversight agency did not keep an eye on the timeliness of its investigations then timeframes for these investigations would almost certainly grow, which has the ultimate effect of creating a negative public perception of the process, to the detriment of all.

**Finding 15**
The timeliness of investigations is an important component of public confidence in a police oversight model.

Ms Waugh concluded the briefing by telling the Committee that her strong belief was that all police oversight agencies ultimately exist to build a better police force. This was a sentiment endorsed by every person who spoke with the Committee in aid of this inquiry and – as had been the case in every previous briefing – the Committee was left in little doubt that Ms Waugh’s professionalism and commitment results in incremental achievements of this goal on a daily basis.
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Police oversight in Western Australia

One can’t have it both ways and both ways is the only way I want it

A. R. Ammons

Necessary change

Between August and November 2012, the Committee heard formal evidence from a range of witnesses who attended before a series of public hearings convened in aid of this inquiry. These hearings began on 15 August 2012, when CCC Commissioner Macknay, along with several senior CCC officers, attended before a public hearing and spoke to the CCC’s submission provided in aid of the inquiry.

Prior to this hearing, however, the Committee had become aware that Commissioner Macknay, in the time since his appointment in November 2011, had implemented a series of internal CCC reforms, which reforms had the effect of increasing the CCC’s focus upon its police oversight role. This was made clear in the course of the 30 May 2012 hearings of the Legislative Assembly Estimates Committee, when Commissioner Macknay had said:

...since I have been commissioner, we have devoted some additional resources to police oversight, particularly in relation to allegations of excessive force by police officers. That is as a result of a report from the Joint Standing Committee on the Corruption and Crime Commission and also discussions that I had with various people before I commenced my duties, including the Attorney General. Without denigrating previous work
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done by the commission, it seemed to me that there was perhaps a need to adopt a slightly higher profile within that area.³⁶

Later in the course of that hearing, the Commissioner informed the Estimates Committee that, while the Parliamentary Inspector’s August 2011 report had identified that the CCC had only undertaken independent investigation on one of the 381 allegations of excessive use of force by police received in the course of what was very nearly a two-year window, “since [he had] become commissioner, we have undertaken independent investigations of eight matters over the past six months.”³⁷

There is little doubt that the CCC of 2012 better discharges its police oversight role than was the case previously. Evidence for this can be seen in the raft of procedural changes that have been implemented by Commissioner Macknay with respect to the CCC’s police oversight role since his appointment. These procedural changes were best articulated in the submission of Parliamentary Inspector Steytler, which was received by the Committee on 21 June 2012, and stated that:

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;

4. dedicated experienced officers within the team that deals with allegations and oversees appropriate authority investigations to deal exclusively with police matters;

³⁷ Ibid., p 2.
5. created a police capacity development team for the sole purpose of increasing the capacity of W A 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). [38]

The view of the Committee is that these are positive – albeit necessary – amendments; they have already to a significant extent addressed the concerns that were in part the reason for the Committee resolving to undertake this inquiry. The Committee congratulates Commissioner Macknay for implementing these changes to CCC procedure.

Submissions provided by the CCC, the WA Police and the WA Police Union of Workers in aid of this inquiry

By a series of letters dated 24 May 2012, the Committee wrote to Parliamentary Inspector Steytler, CCC Commissioner Macknay and WA Police Commissioner O’Callaghan to invite the provision of submissions from each of their respective agencies in respect of the inquiry. A similar letter was then also sent to the newly-elected President of the WA Police Union of Workers, Mr George Tilbury, on 18 June 2012.

Thought-provoking and comprehensive submissions were duly received from each of these four entities, with the Committee resolving to both publish each submission on its website and to include them as appendices to this report: arranged in order of receipt, the submission of Parliamentary Inspector Steytler appears at Appendix One, of the CCC at Appendix Two, of the WA Police at Appendix Three and of the WA Police Union of Workers at Appendix Four.

The Committee has elected to include each of these submissions in full as appendices to this report because each articulates aspects of and perceptions based upon the WA police integrity model, and it is the view of the Committee that the value of these

documents is significant. One of the most troubling aspects of this inquiry is that while it has become abundantly clear to the Committee that Western Australia in 2012 boasts a police integrity model that is appropriate, and is being continuously improved, perceptions of this system are generally not in line with this reality. This was perhaps best put by WA Police Commissioner O’Callaghan during an inquiry hearing on 24 October 2012, who acknowledged that there would likely be value in a joint WA Police-CCC effort to enhance public awareness and appreciation of the veracity of the WA police integrity model. The Committee is hopeful that this inquiry and report might provide some impetus for an increased public awareness, and strongly recommends to any person who is unsure or sceptical of the model to read and carefully consider the submission of the CCC at Appendix Two, and of the WA Police at Appendix Three.

The submission provided by the WA Police Union of Workers was also very instructive to the Committee in the preparation of this report. In considering how best to make its submission to the Committee, the Union demonstrated significant initiative in commissioning a survey of its members so as to compose its submission. As a result, the submission provided by the WA Police Union of Workers was based upon a survey of 449 of the Union’s approximately 5700 members. Although a sample of this size is significant in terms of size alone it is, owing to the vagaries of simple random sampling – and as CCC Commissioner Macknay rightly pointed to during the 9 November 2012 hearing – impossible to state whether or not the sample can properly be considered representative. Yet while the Committee appreciates that statistical analysis offered on the basis of survey results must always be regarded with caution, the view of the Committee is that this survey was demonstrative of the wealth of diverse opinion and perception as to the police oversight role of the CCC from the perspective of police officers. The Committee is certain that the insights offered within the Union submission will assist the future discharge of the functions of both the CCC and the WA Police with respect to police misconduct, particularly in relation to misconduct prevention and education efforts.

**Hearings convened in aid of this inquiry: hearing with the CCC**

Formal hearings convened in aid of the inquiry began on 15 August 2012 with a public hearing attended by CCC Commissioner Macknay, as well as the CCC Executive Director, Mr Mike Silverstone, Director of Corruption Prevention, Mr Roger Watson, and Acting Director Operations, Mr Robert Sutton.

The hearing began with an opening address by Commissioner Macknay, who spoke initially about the CCC’s oversight of the use of force by officers of the WA Police, in part responding to the August 2011 report of the former Parliamentary Inspector:

*You will recall, Mr Chairman, that the Parliamentary Inspector made some criticism of the commission in relation to the number of investigations the*
commission had carried out into allegations involving the use of force. Although this was information which was provided by the Commission, I think it is probably fair to say that the Commission provided the information in a way which perhaps did not give proper significance to it, and by doing so, it seems to me that the Commission probably did itself a disservice; and that is, in addition to its investigation function, the Commission, pursuant to section 41 of the Corruption and Crime Commission Act 2003, also has a capacity to review investigations carried out by other agencies. In many cases the difference between a review and an investigation really comes down only to the fact that when the initial investigation is carried out, it is necessary for statements from various witnesses to be taken in order to conduct the investigation. Now, as I am sure you would appreciate, in most cases the taking of statements is what could be described as a mundane task. Once the statements have been taken and the other evidence is assembled and some conclusion is reached, of course, the investigation is completed. The commission, although it did not itself conduct investigations except in the case referred to [in the Parliamentary Inspector’s report – being the investigation in relation to Mr Kevin Spratt], routinely reviewed dozens of such investigations each year. Now, very often a review of an investigation will be equally as revealing as the initial investigation itself.\(^\text{39}\)

Section 41 of the Corruption and Crime Commission Act 2003 states that “The Commission may review the way an appropriate authority has dealt with misconduct, in relation to either a particular allegation, complaint, information or matter involving misconduct or in relation to a class of allegation, complaint, information or matter involving misconduct.” The Commissioner then quantified this point:

*The statistics in relation to section 41 reviews of allegations of excessive use of force are quite revealing. In the 2008 financial year there were 206 such reviews; in the 2009 year there were 77 reviews; in the 2010 financial year there were 60 reviews; and in the 2011 year there were 82 such reviews; and in the year which came to an end on 30 June last there were 85 such reviews. Now, they were all reviews of matters where there had been a notification of allegations of excessive use of force. I should say in relation to the year just gone that, in relation to notifications [in general], there were 1 007 notifications involving police officers, with a total of about 1 500 separate allegations in those 1000-odd notifications... Of those notifications and allegations, there were in total 316 cases which were reviewed. So that is over 40 per cent of the notifications involved a section 41 review by the commission.*\(^\text{40}\)

This evidence perfectly highlighted the challenge faced by the CCC: insofar as nothing further has come of those 316 CCC reviews, it must logically be concluded that either

\(^{39}\) The Honourable Roger Macnay QC, Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, and Mr Robert Sutton, Acting Director Operations, Corruption and Crime Commission, *Transcript of evidence*, 15 August 2012, p 2.

\(^{40}\) Ibid., p 3.
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each reviewed allegation was found to be without merit, or else the relevant internal investigation conducted by WA Police met with the full approval of the CCC. Whatever the case may be, this ought to be regarded as a highly satisfactory outcome for all citizens of Western Australia, as it is demonstrative of the integrity of the WA Police:

Finding 16

The Corruption and Crime Commission regularly reviews a substantial proportion of all WA Police internal investigations of allegations and notifications of police misconduct. Overwhelmingly, these reviews demonstrate a strong internal culture of integrity within the WA Police.

It is most unfortunate that there is far more community awareness of those very few instances where that integrity is compromised in some way.

Commissioner Macknay went on to explain why the CCC prefers to devote resources to reviewing internal investigations carried out by the WA Police:

*We point out at the commencement of our submissions the relevant extract from the Kennedy royal commission, when Hon Geoffrey Kennedy, QC, in his interim report of December 2002, said that —*

... it is generally accepted that Commissioners of Police should bear the primary responsibility for the maintenance of discipline within their police services. That responsibility carries with it the primary obligation to investigate misconduct.

*And, of course, his Honour went on to say, consistent with that approach, the role of an external oversight agency is the oversight of those operations, carrying out its own investigations, of course, where considered appropriate. Section 7B of the Corruption and Crime Commission Act then embodies that philosophy in that statement made by his Honour when it states in subsection (3) that —*

*The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.*

*There is nothing, of course, remotely controversial in that statement of principle, and oversight bodies like the Corruption and Crime Commission throughout Australia, of course, conduct their activities so as to embody that principle that the important thing to do is to have a situation where bodies like WA Police have an effective mechanism and culture which enables them to investigate allegations of misconduct within their own ranks themselves, and that the commission’s job is to build up that*
capacity and at the same time to maintain oversight by investigating and reviewing police investigations where it considers appropriate.\textsuperscript{42}

The Committee accepts, and indeed wholeheartedly subscribes to, this point: there can be absolutely no doubt that the capacity of any agency to resist and deal with internal misconduct is a function of the culture of that agency. That is, human beings are as inherently fallible as they are different, and each individual’s threshold for giving in to temptation will undoubtedly differ from that of others. As such, it is important that organisations invest effort in creating a culture where misconduct is not tolerated, so as to raise the collective distaste for impropriety. It logically follows that the appetite for instilling a positive culture within an organisation is most profoundly demonstrated by the internal systems put in place for dealing with misconduct. While the very existence of the CCC, along with its charter (“to improve the integrity of the Western Australian public sector and [to help] public sector agencies minimise and manage misconduct”\textsuperscript{43}) makes a vast contribution to enhancing this culture in Western Australia generally, overwhelmingly the task of creating and maintaining a positive internal culture rests with each public sector agency itself:

**Finding 17**

Misconduct resistance within any individual Western Australian public sector agency – while enhanced by the existence and work of the Corruption and Crime Commission – is ultimately a function of and a reflection upon the culture within that agency.

The extent to which the CCC independently investigates allegations of police misconduct was then quantified by Commissioner Macknay:

...in the financial year just gone we conducted 33 investigations ourselves [into allegations of police misconduct]—that represented 38 per cent of all section 33 investigations conducted by the commission—and 14 investigations were done by way of preliminary investigation. In relation to the overall operational effort, more than a quarter of the operational effort was focused on dealing with issues of police misconduct. We deal, of course, with how we go about considering a notification—an allegation—when we receive it, but there is a rigorous process which can be understood as a preliminary investigation or inquiry insofar as there is an assessment of the evidence prior to a decision being made as to whether the matter ought be returned [to the WA Police for internal investigation] or not.\textsuperscript{43}

\textsuperscript{41} Ibid.

\textsuperscript{42} As stated on the website of the Corruption and Crime Commission.

\textsuperscript{43} The Honourable Roger Macknay QC, Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, and Mr Robert Sutton, Acting Director Operations, Corruption and Crime Commission, *Transcript of evidence*, 15 August 2012, p 3.
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The Commissioner then explained how the CCC might reach a decision as to whether to itself investigate a particular allegation, or else refer it to the WA Police for internal investigation:

...that decision is guided by various criteria, which include seriousness and complexity, whether our particular expertise or powers are required, the seniority of the police officer involved, whether serious misconduct has occurred and whether there is any reason why it would be inappropriate to return the matter to the WA Police. Commission resources are obviously a relevant factor... where a matter has been referred to the Commissioner of Police for investigation, the Commission can monitor the progress of that investigation through a number of activities, including examination of files, the requirement for, and the provision of, regular reports by the police to the Commission, formal and informal status updates, monitoring of the time taken and meetings with the superintendent in charge of the internal affairs unit where appropriate; and that where we consider such should occur, we can direct the police to discontinue their investigation and take the matter over ourselves.44

Section 42 of the CCC Act empowers the CCC to direct a public sector agency that might be itself investigating alleged misconduct to cease its investigation, so as to enable the CCC to in effect “take over” that investigation. The submission provided to the Committee in aid of this inquiry by the WA Police on 27 July 2012 indicated that the CCC’s issue of these “section 42 notices,” to the WA Police had increased substantially, from two notices in each of the two preceding reporting periods, to ten notices in the most recent (2011/12) reporting period. The WA Police submission added that “The increase in s.42 Notices in the period 2011/12... is a direct result of the engagement of the Commission in the investigation of ‘Use of Force’ incidents.”45 The Committee heard other evidence pertaining to the use of “section 42 notices,” later in the inquiry process; as it stands, the increase in the use of these notices by the CCC in the most recent reporting period is demonstrative of Commissioner Macknay’s stated desire to enhance the CCC’s focus on its police oversight role since his appointment in November 2011.

The Committee was then offered some insight into what is contemplated by a CCC ‘review’ of an internal police investigation:

...some of the matters that can and will be usually addressed [include] whether all relevant issues and areas of inquiry have been addressed; whether all reasonably available evidence and information has been obtained and analysed; whether all relevant witnesses and complainants have been interviewed; whether the evidence has been considered

44 Ibid., pp 3-4.
objectively; what other action has been taken and whether that is appropriate; whether various policies that are relevant have been considered; what systemic issues have been identified and how have they been dealt with, and recommendations and the implementation of recommendations; and we may, pursuant to our review process, refer particular issues back, make further inquiries ourselves or obtain additional evidence.\textsuperscript{46}

Commissioner Macknay also detailed some of the other ways that the CCC works to further enhance the strong culture of misconduct resistance within the WA Police:

\ldots we also undertake various proactive activities ourselves... we conduct systems-based evaluations, and in relation to that we conducted systems-based evaluations and random investigation file audits in all 14 police districts between March 2010 and September last year. We also conducted a similar evaluation and audit of the internal affairs unit and the specialist crime portfolio during that period.

In relation to the reports, they cover the appointment and role of governance officers—they are police officers designated with the task of supervising and seeing that investigations of misconduct are conducted in an orderly way; the management of investigation files referred from the police complaints administration centre—that is, PCAC—through the quality assurance process is applied to completed investigations; the assessment and management of conflict of interest; use and perception of managerial action plans—that is, maps; use of force including prevalence of reporting; the implementation of the Criminal Investigation Act in 2009; allegations of misconduct by non-sworn police staff; and other local issues.\textsuperscript{47}

In support of this point, the Commissioner then offered a specific – previously unknown – example of how the CCC had proactively discharged its police oversight function:

\ldots between 2010 and 2011 we conducted an examination of all closed-circuit television footage for a three-month period in the Northbridge and central business district Perth areas looking for incidents where the police had used force. We found [428] such incidents—police officers, of course, have an obligation to notify where there has been use of force—and we then went to the police files to see what notification had been made in relation to each of those [428] incidents. I should say, with one exception, we found that in fact the reporting of the use of force did occur and was consistent with what was observed on the closed-circuit television footage. And after we examined the case where that had not occurred and

\textsuperscript{46} The Honourable Roger Macnay QC, Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, and Mr Robert Sutton, Acting Director Operations, Corruption and Crime Commission, Transcript of evidence, 15 August 2012, p 4.

\textsuperscript{47} Ibid.
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I viewed the footage, we eventually resolved that no further action would be taken.\footnote{48} The Committee was encouraged by this evidence: it exemplifies the strong and positive internal culture of the WA Police.

The Committee has reported previously that “it is effectively impossible for someone who is not and has never been a police officer to fully appreciate the pressures that bear upon police officers in their everyday duties.”\footnote{49} Notwithstanding this fact, however, it is clear from even a casual consideration of the role played by police in society and the powers commensurate with that role that there is an ever-present risk of police misconduct – especially in circumstances where the discharge of the police function requires the use of force. It is for this reason that there are strict protocols pertaining to the use of force by WA Police officers, and the fact that a prolonged CCC project was able to confirm the unfailing adherence to these protocols is deserving of acknowledgement.

Had the CCC sought to publicise the outcome of this particular operation, the Committee has little doubt that any such effort would have in all probability been roundly ignored by all Western Australian media organisations. The Committee is of the firm view, however, that a CCC report on the outcome of this operation would have been welcomed by all Western Australian citizens, and as such makes the following recommendation:

**Recommendation 5**

The CCC should report to Parliament on the outcome of any operation that it conducts – even when that outcome is not controversial.

As the hearing continued, Commissioner Macknay gave evidence regarding changes that he had implemented within the CCC since being appointed Commissioner in November 2011:

*Since I commenced as Commissioner eight or nine months ago, we have doubled the amount of resources that we have spent in relation to the police oversight area. We have completed eight primary investigations ourselves in relation to allegations of police excessive use of force, and I think we currently have two further such investigations underway; so, that is a total of 10 investigations ourselves. They were undertaken as a result of a decision by me that we ought simply to be seen to be more active in the area, given the criticism that had resulted from our earlier activities, and that we ought to engage in some flag-waving, if you like. I am pleased to say that in none of the cases completed so far did we arrive at the*

\footnote{48} Ibid.
conclusion that there had been an excessive use of force; in other words, in each case we did not find that there was prima facie evidence of misconduct on the part of the police officers who were the persons of interest in each case.  

The Committee was pleased to hear this evidence, which confirmed the evidence in the submission provided by Parliamentary Inspector Steytler. Again, the Committee acknowledges the fact that an increased police oversight effort on the part of the CCC has simply confirmed the integrity of the WA Police. In addition, the Committee is most pleased to be able to report to the Parliament that the citizens of Western Australia can now expect a vastly more avid discharge of the CCC’s misconduct function with respect to the WA Police than was the case at the time of its September 2011 tabling of the Parliamentary Inspector’s Report Concerning the Procedures Adopted by the Corruption and Crime Commission when Dealing with Complaints of the Excessive use of Force by Police:

Finding 18
Since being appointed Commissioner of the Corruption and Crime Commission in November 2011, the Honourable Roger Macknay QC has overseen a vast enhancement to the way in which the Corruption and Crime Commission performs its police oversight role, in response to criticism of the Corruption and Crime Commission contained within the Committee report Parliamentary Inspector’s Report Concerning the Procedures Adopted by the Corruption and Crime Commission when Dealing with Complaints of the Excessive use of Force by Police, which was tabled in Parliament on 8 September 2011.

As the Commissioner drew his opening address to the Committee to conclusion, he gave an outline as to how the CCC believed the performance of its police oversight role enhanced the capacity of the WA Police to deal effectively and appropriately with misconduct:

...as part of our capacity development work we have recently established... a police capacity development team. We are currently conducting an investigation into the WA Police briefcase system, which is the system for recording and progressing charges against alleged offenders. That stems from the identification of the system-wide failures to progress around 9 000 charges involving initially the Newman Police Station but subsequently police stations across police districts. And in partnership with a number of universities and academics, we are also having specific research carried out focused on corruption risks associated with policing and use of force reporting. We consider that this addresses the second of the Committee’s terms of reference. We consider that the Commission’s activities have brought about change by two principal means, firstly, by

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50 The Honourable Roger Macnay QC, Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, and Mr Robert Sutton, Acting Director Operations, Corruption and Crime Commission, Transcript of evidence, 15 August 2012, pp 4-5.
making specific recommendations for change, and in that regard the police complaints administration centre is something that is related to the Commission’s activities. In relation to internal affairs unit investigations, as a result of the Commission’s influence, changes have been made to the IAU charter requiring that particular cases, which previously could be investigated in police districts, are now investigated by the IAU as a matter of course. Further, PCAC review the quality of all investigations conducted by IAU and have a far greater and more effective oversight and review role within WA Police, including overseeing all investigations conducted at the district level and reviewing them on completion. That has improved the general timeliness and quality of investigations conducted by WAPOL and has contributed to transparency and accountability, and there is also more effective communication between PCAC and police districts. A number of changes have been made to the local complaints resolution short format investigation and desktop resolutions in relation to the WA Police’s management of those things through the Commission’s influence. And in regard to disciplinary and managerial action, WAPOL has made changes towards its approach and is increasingly responding to problematic behaviour before it manifests as misconduct or corruption, using disciplinary provisions or managerial options, and again that has flowed from the commission’s activities in the area.51

Commissioner Macknay concluded his opening address to the Committee by addressing the third aspect of the inquiry, being how the CCC’s police oversight practices compare to police oversight bodies in other jurisdictions:

I can say that, having recently returned from a trip to Brisbane and Sydney where I spoke with the relevant agencies in each of those cities, I came away with the view that the work of the Commission in WA compares favourably with the work done in those places, and that we certainly do not lag behind. As is pointed out in a report of the commonwealth Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity, the state-based oversight integrity agencies do differ quite markedly, and of course that makes it difficult to compare the activities of the various agencies. But there is an annex to our submission, which does provide a table taken from 2011 annual reports in relation to allegations of police misconduct, police internal investigations oversighted as a percentage of allegations received and number of police investigations conducted by the oversight agency. I might point out, for example, that in Western Australia we conducted 33 investigations ourselves in the last financial year. That compares, for example, with Victoria where 13 investigations were conducted by the Office of Police Integrity; nine investigations conducted by the Police Integrity Commission in New South Wales; the percentage in Western Australia is 21 per cent; and in Queensland, of course, there is a greater number but there were four times the number of allegations of police misconduct. So, those

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51 Ibid., pp 5-6.
figures would indicate that we are as active as the most active and more active than most in relation to conducting investigations ourselves.52

Other hearings in aid of the inquiry process

The process of hearing formal evidence in aid of this inquiry continued on 12 September 2012, when the Committee convened two separate public hearings attended by Mr Murray Lampard APM and Mr Ron Davies QC. The attendance of Mr Lampard, who was at the time of the hearing an Associate Professor at Edith Cowan University, was sought in relation to his 33 years of service as an officer of the WA Police, in a career that saw him rise to the rank of Deputy WA Police Commissioner prior to his retirement in 2008. Mr Davies – who is a former Crown Prosecutor for the State of Western Australia, and whose attendance before the Committee was recommended by Parliamentary Inspector Steytler – was called so as to offer his perspective on the CCC examination process in relation to its police oversight role. Mr Davies has had multiple experiences in representing WA Police officers – including the Police Commissioner – before a number of these examinations.

In his opening address to the Committee, Mr Lampard underlined the importance of independent police oversight:

Worldwide police, by the mere nature of their profession, will always have a very small number of officers who engage in misconduct and corrupt activities. It has been my experience that the Western Australian police have always demonstrated a committed and professional approach to the investigation of complaints against police, whether they be complaints of misconduct or complaints of corruption.

[...]

Police have sworn and unsworn staff numbering over 7 500 and it is often a never-ending battle to constantly weed out negative behavioural traits and corrupt activity from such a diverse workforce. It has been my experience that officers or unsworn staff who have unblemished records can, through various and numerous circumstances and influences, resort to misconduct or corrupt activity throughout the course of their career. With community expectations so high, and most appropriately so, together with the enormous power that we anoint police officers with, it is essential that we have a number of processes as strategies in place to be able to identify officers particularly at risk. It is my experience that the most significant strategy to negate misconduct and corrupt activities is professional leadership at all levels.53

At the conclusion of his opening remarks, the Committee Chairman asked Mr Lampard whether he would agree with the Committee’s strong view that the CCC’s police

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52 Ibid., p 6.
53 Mr Murray Lampard APM, Transcript of evidence, 12 September 2012, pp 4-5.
Chapter 4

oversight role is a vital component in the overall fight against organised crime, to which Mr Lampard replied vehemently in the affirmative:

Most certainly. Police, by the very mere nature of the work that they do and the fact public confidence is in actual fact so important and that WA Police must be seen conducting themselves at the highest levels, proper oversight is most important. Throughout my police career, even into my senior ranks, I was always very vocal that it is appropriate that police be regulated significantly and our governance should be of the highest order.\footnote{Ibid., pp 4-5.}

Later in the course of the hearing, Committee Member Frank Alban MLA sought Mr Lampard’s response to the suggestion that Operation Red Emperor – a significant, albeit failed, operation conducted by the WA Police through the 1990s – had been “totally undermined by police corruption,” to which Mr Lampard again agreed:

Yes, Sir, that is a matter of public record. I can say to you that we only have to look around Australia to see that police have been dogged by scandal and reported and proved corruption within their ranks. In saying that, I believe that giant strides have occurred here in Western Australia to very much learn from issues such as Red Emperor and to learn from police being able to successfully negate some negative cultures, particularly within the criminal investigations ranks. I think, personally, that they have done a pretty fair job of doing that. Towards the very end of my career, there had been a significant change in attitude to a whole series of things as to what was inappropriate behaviour, unethical behaviour, noble cause corruption, and issues such as this. There has been in my view a very significant shift in officer attitude towards these, and this all in actual fact goes well towards working towards as corrupt-free a police organisation as we can possibly want.\footnote{Ibid., p 7.}

The Committee notes that the “significant change in attitude,” referred to by Mr Lampard as having occurred “towards the very end of [his] career,” roughly coincided with the early years of operation of the CCC. The Committee has no doubt that while the WA Police should be given great credit for the significant cultural improvements that have occurred over the past decade, so too should the CCC be acknowledged for aiding in this process. As the hearing progressed, Mr Lampard concurred with this notion:

When organisations look at risk-management strategy, particularly in regards to corruption within their organisations, they look at how they minimise that percentage. Ten per cent of those [7,500 WA Police] officers, for example, is 750 and one per cent is 75. I always used to say in a lot of my addresses that I only needed 0.1 per cent of our organisation to be corrupt or perform issues of misconduct to be on the front page of The
West Australian. Of course, 0.1 per cent is 7.5 officers... But, in saying that, not one is suitable for Western Australia Police, and this is why they work so hard but are facing a very, very tough battle when you consider that those 7500 people are representative of the community of Western Australia. As I said before, Sir, you can recruit people, you can put them through significant screening, but somewhere along their career path something happens that may cause them to momentarily act corruptly or act with misconduct. It is a tough battle but I think, personally, the WA Police, with the support of the Ombudsman, the Corruption and Crime Commission and others—parliamentary committees—are doing a fairly good job in regards to stamping out corrupt activity within the WA Police.\textsuperscript{56}

**Finding 19**

The fight against internal misconduct is a very complex and difficult undertaking. Efforts by the WA Police to continually enhance their integrity are very much aided by the presence and support of the CCC.

Subsequent to Mr Lampard’s appearance, Mr Ron Davies QC appeared before the Committee. In his evidence before the Committee, Mr Davies was critical of the CCC examination process, making particular reference to what he perceived to be the reluctance of the CCC to divulge material to him as counsel assisting police witnesses who had been called to appear before the CCC. “The [CCC examination] procedures,” according to Mr Davies, “are oppressive.” Of these procedures, he said:

> They are not conducive to a fair go for individuals down there, particularly if those individuals are not represented by someone who knows which way it is likely to head before it is too late. If you go there, you go without any confidence. You are not being given the full picture of what is being said by others and in particular anything favourable that may have been said in relation to your client, because you are entirely in the hands of what they give you.\textsuperscript{57}

Mr Davies said to the Committee that, in the course of the CCC examinations convened in aid of the inquiry into the wrongful conviction of Mr Andrew Mallard in 2007 and 2008 for which he had also served as counsel assisting witnesses, he had written to the then Acting Commissioner, the Honourable John Dunford QC, to ask Mr Dunford if he would “be prepared to receive a detailed written submission from me as to the necessary procedural fairness.” According to Mr Davies this request was granted:

> ...and all the archaic, oppressive methods in the hearings disappeared and the officers were given a fair hearing. They were given access to materials

\textsuperscript{56} Ibid., pp 8-9.

\textsuperscript{57} Mr Ron Davies QC, Transcript of evidence, 12 September 2012, p 2.
Chapter 4

and none of it affected the ability of the CCC to inquire into and come up with the results that it wanted to.58

Subsequent to the hearing, the Committee wrote to the CCC Commissioner Macknay to seek a copy of the letter referred to by Mr Davies. The Committee did not receive a response to that letter, but in the final hearing in aid of this inquiry on 9 November 2012, Commissioner Macknay informed the Committee that:

Mr Davies said to this committee that in the course of the Mallard inquiry, he provided Acting Commissioner Dunford with a letter making submissions. The commission has turned itself upside down trying to find that letter. We cannot find one.

[...]

There is no letter that [the CCC] can produce.59

Rounding out the evidence that was of most significant interest to the Committee, Mr Davies said that:

The difficulty [with the CCC examination process] is that they use a number of ways of gaining information in relation to a particular case. I am talking now in particular—the most dangerous situation is a non-public hearing. They will call other persons before them to give evidence at a private hearing and you will never get access to that in full...They also go out and have investigators speak to witnesses privately and, I assume, record it and produce a transcript. All you will get will be the selected parts that they want to use potentially against you. You have no way of knowing whether that witness—and in the case of the [investigation into the alleged misuse of a corporate credit card by WA Police Commissioner] Dr O’Callaghan one, it was two former ministers of the Crown—you have no way of knowing how they were questioned and you have no way of knowing the context of the answers that they gave. All you get is some selected parts.60

As the matter referred to is presently the subject of a complaint to the Office of the Parliamentary Inspector, the Committee has elected not to make any findings on this evidence at this time. It must be acknowledged that the CCC is a body with exceptional powers of investigation, and these powers are generally most useful in aid of covert investigations. As such, to some extent it is appropriate that the CCC would take great care in disclosing evidence gathered through the exercise of these powers, as oftentimes this evidence is very likely extremely sensitive to the extent that public disclosure would give rise to significant privacy concerns. The Committee reserves its

58 Ibid.
59 The Honourable Roger Macnay QC, Commissioner, Mr Mark Herron, Acting Commissioner, Mr Mike Silverstone, Executive Director, Mr Roger Watson, Director Corruption Prevention, Ms Michelle Harries, General Counsel, and Mr Maurice Hanrahan, Chief Finance Officer, Corruption and Crime Commission, Transcript of evidence, 9 November 2012, p 7.
60 Mr Ron Davies QC, Transcript of evidence, 12 September 2012, pp 3-4.
further consideration of this matter pending the outcome of the Office of the Parliamentary Inspector’s consideration of the aforementioned complaint.

The next hearing in aid of this inquiry took place on 26 September 2012, when the President, Mr George Tilbury, and Vice President, Mr Brandon Shortland, of the WA Police Union of Workers appeared before the Committee. Joining Mr Tilbury and Mr Shortland were Associate Professors Judith Fordham and Stephen Roast, who had assisted the Union in the preparation of what is a comprehensive submission in aid of the inquiry, drawn from a survey of 449 Union members.

In his opening address to the Committee, Mr Tilbury began stating that the “community of Western Australia should be demanding to know whether the Corruption and Crime Commission is effective and whether or not this organisation is giving them value for money.” Notwithstanding this assertion, Mr Tilbury concluded his opening remarks by voicing the Union’s support for independent police oversight:

Our view is that an oversight body is required, but its roles and responsibilities need to be clearly defined. This body should be solely focussed on investigating high-level corruption and criminality within the public sector and not delving into low-level matters than can be dealt with appropriately by an agency’s internal disciplinary process.  

To some extent the Committee agrees with this assertion: certainly the Committee supports the notion that an independent oversight body – that the CCC – is a fundamental component of good Western Australian governance; in addition, the Committee is supportive of the notion that the roles and responsibilities of the CCC should be more clearly defined. It has been most unfortunate for the CCC that during its existence successive governments have ignored persistent calls to make a series of relatively minor amendments to the Act, amendments that would vastly enhance the role and discharge of functions by the CCC. It is unfortunately owing to a lack of clarity around the CCC’s role that perceptions that the CCC somehow does not provide “value for money,” – a perception that the Committee understands, but wholeheartedly rejects – are able to persist. If the Government is properly committed to the goal of ensuring that the Western Australian public sector acts with the highest standards of integrity, then the Government should demonstrate this commitment by amending the CCC Act so as to properly define the specific role and responsibilities of the CCC. The Committee considers that this would be best achieved by enacting Recommendation 1 of this report.

To revisit a particular example from Mr Tilbury’s evidence, it was asserted to the Committee that “a prime example,” of poor CCC performance was the “three-month

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61 Mr George Tilbury, President, Mr Brandon Shortland, Vice-President, Associate Professor Judith Fordham and Associate Professor Stephen Roast, WA Police Union of Workers, Transcript of Evidence, 26 September 2012, p 2.
investigation involving the scrutiny of CCTV in the Perth CBD and Northbridge in an attempt to identify anything untoward occurring, involving police officers,” which Mr Tilbury described as having “had no substance,” before concluding that the exercise “was a significant waste of valuable taxpayers’ money.” Though the Committee can appreciate the basis for this evidence, it is an assertion rejected by the Committee. In responding to this evidence, CCC Commissioner Macknay explained that the project was “not an investigation but rather was an on-going research project into unreported use of force.” That is, it was somewhat similar in scope to the CCC’s 2007-2009 research project into the use of taser weapons as an alternative force option by the WA Police – a project that bore a wealth of positive outcomes for the community of Western Australia.

What would turn out to be the penultimate hearing convened in aid of this inquiry occurred on 24 October 2012, when the WA Police Commissioner, Dr Karl O’Callaghan APM, attended before the Committee, alongside the Assistant Commissioner (Professional Standards), Mr Dominic Staltari APM, and Inspector Greg Young of the WA Police Professional Standards portfolio. As the submission provided in aid of this inquiry by the WA Police is comprehensive and useful, the Committee was able to use the hearing to examine specific matters pertaining to the submission.

One of those matters was the notion that the preferred model of police oversight requires the Police Commissioner to in effect “assume responsibility” for dealing with police misconduct. On this point, Commissioner O’Callaghan said that:

...it has been said by the Corruption and Crime Commission, and it is a point that I agree with, that primarily complaints against police and internal investigations should be the responsibility of the agency in the first instance. Now, we have a process where, obviously, we notify the CCC on investigations that we are doing, but one of the things I think we need to preserve as we move forward is the responsibility of the agency to manage in the first instance its affairs, because as much as it would be easy for me to say, “Let’s let the CCC manage oversight and inquiry of all police investigations”, the potential is that the agency can then abrogate its responsibility and actually not take an active interest in what is going on.  

Assistant Commissioner Staltari backed up this assertion:

the responsibility to investigate police officers rests with WA Police, because we are far better positioned to deal with those police officers

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63 Dr Karl O’Callaghan APM, Commissioner, Mr Dominic Staltari APM, Assistant Commissioner (Professional Standards), and Inspector Greg Young, WA Police, *Transcript of evidence*, 24 October 2012, p 6.
through engaging in behavioural modification, managerial intervention, or even if we actually remove them from the agency. We are best placed to do that, and the legislation affords us to deal with that.64

Commissioner O’Callaghan conceded, however, that there was not broad public awareness of the police complaints handling process:

So I think that what needs to be made clear to the community is that the first port of call for a complaint is the WA Police, if it is a complaint against a police officer. There is nothing stopping people from going directly to the CCC, but what they need to know is that any notification that we get becomes a notification to them anyway. Maybe that is not clear to the general community, that the CCC will get notified.

[...]

I do not think it is understood, and I think they might see the CCC as a more remote oversight body that dips in occasionally and has a bit of a look, but I think what needs to be made clear is if you make a complaint to me; the CCC will know about it, and there is a mechanism for doing that.65

This evidence prompted Committee Member Hon Matt Benson-Lidholm MLC to question Commissioner O’Callaghan as to whether there might be benefit in efforts aimed at increasing public awareness of the police complaints handling process:

Hon MATT BENSON-LIDHOLM: Maybe there is a need, perhaps through some sort of an educative function that the CCC might have, for instance, to perhaps promote that in the broader community, because, to my way of thinking, that confusion leads to a lot of dissatisfaction. As members of Parliament, for instance, apart from your own professional occupation, it is the sort of thing that we field questions on literally all the time, and certainly they also come through this particular joint standing committee.

Dr O’Callaghan: Yes; and I think the onus is probably on both agencies to do the education, not just the CCC. So, if that is a confusion and we are concerned about it, we ought to step forward and do some more to advise the community exactly what the process is.66

In response to this evidence, Assistant Commissioner Staltari took the opportunity to point out that the WA Police had in recent times made a significant investment in technology to assist in the police complaints process:

Just getting back to the point about the public being confused on how to make a complaint, we have made a significant investment in technology. If you go to the website—the Western Australia Police website—it says in there, “If you want to make a complaint against police, just click here”.

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64 Ibid., p 8.
65 Ibid., pp 7-8
66 Ibid., p 8.
Chapter 4

and a police complaint form comes down, and you can make a complaint, and email it and send it to us. It is that simple. 67

The Committee has (short of actually lodging a “complaint”) confirmed this point: the WA Police website contains a wealth of useful information pertaining to the police complaints process, and it also includes an online form for lodging a complaint. In addition, the Committee is pleased to note that the same area of the WA Police website contains a similar form to assist those who wish to lodge a compliment regarding an interaction with an officer of the WA Police.

As the hearing progressed, the Committee Chairman sought advice as to whether there might be a preferable role for the CCC to play in the police complaints handling process:

Is there any circumstance where it is better off to have an external agency handling the investigation themselves?

[...]

...in what circumstances should the WA Police be saying, “No, we shouldn’t independently investigate this. Actually, the CCC should do that”? Is there a level of complaint where it just would be best if it was done independently?

In response to this question, Assistant Commissioner Staltari suggested that it would perhaps make sense for the CCC to investigate complaints against “very senior officers in the agency,” by which he then clarified as meaning at the level of “Assistant Commissioner or above.” 68 Assistant Commissioner Staltari then put this suggestion into context:

...we are well positioned to investigate an assistant commissioner, but in terms of the perception and conflict that arises, it may well better be that you have some independence there. But have we got capacity to do it? Yes, we have. Have we got the will to do it? Yes, we have. 69

The Chairman then took this point further:

**The CHAIRMAN:** Commissioner, can I just take this a little bit further. I quite like the idea that, in general principle, complaints with regard to Assistant Commissioner and above are the types of matters that the CCC should independently investigate. I just want to know: would you also agree that any complaints in relation to the internal affairs unit, if I have used that terminology correctly, should also be independently investigated by the CCC?

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67 Ibid., p 9.
68 Ibid., p 8.
69 Ibid., p 9.
Dr O’Callaghan: Yes; and I think that is probably similar to the Parliamentary Inspector model, where, if there is a complaint about the CCC, it has got to go to them. So I think if it is internal affairs, definitely. There would not be anybody qualified then to do the investigation if the investigation was into internal affairs itself.

The CHAIRMAN: What about—and excuse my ignorance here—the support structures for Assistant Commissioners? I can imagine each of you gentlemen are very busy, but you would have some support staff, maybe some executive support assistants and things like that. What about complaints in relation to any of their conduct? Where would that be best placed?

Dr O’Callaghan: I still think that can be handled internally by an alternative portfolio. It obviously would not be done by the line manager in those circumstances, but they are the options, and in fact, if it was about the staff member of an assistant commissioner—maybe a staff officer or something like that, or an executive assistant—that could be done by the internal affairs unit.70

The basis of this misconduct model was then very well-articulated by Assistant Commissioner Staltari:

The managerial intervention model that we apply, which is the foundation on how we deal with police misconduct, so to speak—the concept is that if you have got a bunch of people working for you, you are responsible for them; and, if they do something wrong, you are going to have to investigate them. So make the investment so you do not have to investigate them. It is predicated on that model—right—and when we had an internal investigations unit, and all the police complaints were dealt with by them, people just never made that level of investment. As soon as the complaints went out to the districts and divisions, “If your people do something wrong, you will have to investigate it.” That is why we have got the Police Complaints Administration Centre. They quality assure all the investigation to make sure that all the facts and issues have been identified and have been mitigated by inquiry, and the outcome that is achieved is reasonable.71

Commissioner Staltari also explained the education provided to new WA Police recruits regarding integrity and the risk of misconduct:

My people go out to the police academy and lecture to all new recruits. There is a three-hour lecture; they talk about our complaint management system, they talk about doing the right thing, and they talk to them about the obligation placed on them to report adverse conduct, so if they are working with a colleague and they engage in adverse conduct, they need to report that. If they do not feel overtly comfortable doing that, they can

70 Ibid.
71 Ibid.
use blue line. They talk to them about the supported witness program, the internal witness program that we have, and we talk to them about the managerial intervention model, what that means, and what the deliverables are of that. So we actually paint a picture early in people’s careers, and we also go to in-service training courses; we attend the supervisors’ course, and we remind them of the same thing. Initially, you spoke about two police regulations; there is, in fact, a third: 605(1)(j), relating to a police officer’s obligations, and it reads —

report any corrupt, criminal, unlawful, dishonest or unethical conduct or breach of discipline which he knows, or suspects on reasonable grounds, that a member or cadet is committing or has committed;

That is relatively new; it was implemented in 2009, so it actually corners what they have to report.72

The Committee was very encouraged by this evidence: it is abundantly clear that the WA Police are committed to the goal of promoting and enhancing integrity within their ranks, and that this is reflected in the appropriate allocation of resources to the Professional Standards portfolio. There can be no doubt that the citizens of Western Australia are well served by the police force whose professionalism is a function of what is an impressive police integrity model:

Finding 20
The police integrity model that exists in Western Australia in 2012 is appropriate and comprehensive.

Subsequent to the hearing, the Committee provided copies of the transcript of this evidence to CCC Commissioner Macknay and the Acting Parliamentary Inspector, Mr Craig Colvin SC, and requested feedback on the proposal that an appropriate model for misconduct investigations conducted by the CCC pertaining to officers and other staff of the WA Police, might be usefully restricted to ‘senior’ officers (at or above Assistant Commissioner level) and any officers working within the Internal Affairs Unit of the WA Police. The Committee duly received responses from both the CCC Commissioner and the Acting Parliamentary Inspector, both of which voiced concern at the proposal. The letter from Mr Colvin, which appears at Appendix Five to the report, in particular gave insight into the inherent difficulty of the police oversight role.

Both responses pointed out that section 34 of the CCC Act already requires the CCC Commissioner to give regard to the seniority of the officer against whom an allegation is made in determining whether to investigate the matter itself, or else refer it to an appropriate authority for investigation. Mr Colvin also stated that he “would be concerned about any public education process that suggested to the community that all complaints had to be directed to WA Police,” before continuing that:

72 Ibid., pp 10-11.
It is important for the purposes of oversight and integrity that the public is aware of the avenue of making complaint directly to the Commission in respect of the conduct of staff and officers of WA Police. There may be instances in which complaints would not be forthcoming if the position promoted to members of the public was that complaints needed to be made to WA Police in the first instance.

[...]

In short, the ability of members of the public to raise complaints with either the Commission or WA Police is an important part of ensuring the integrity of the WA Police.73

In concluding his letter to the Committee, Mr Colvin reaffirmed evidence that the Committee had heard from every single witness who assisted in this inquiry:

It is appropriate that primarily complaints against staff and officers of WA Police should be the responsibility of WA Police in the first instance. As is presently the case, all such complaints should be notified to the Commission. The Commission should only remove matters into its own jurisdiction (or retain them) for investigation where there is a particular and compelling reason for doing so. Seniority of the officer involved may be such a reason; as may be the fact that the officer is a member of the Internal Affairs Unit. A mandatory rule as to when the Commission should be involved in an investigation would compromise proper oversight. However, ongoing cooperation between the Commission and the WA Police as to guidelines concerning the circumstances in which the Commission is likely to take over an investigation is important.74

The Committee concurs completely, and is hopeful that this inquiry – irrespective as to whether the resulting recommendations are enacted – will in time prove to have aided further enhancement to what is already an excellent police integrity model.

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74 Ibid., p 2.
Appendix One

Submission provided by the former Parliamentary Inspector

On 21 June 2012 the Committee received a letter from the then Parliamentary Inspector, the Honourable Chris Steytler AO QC, in response to an invitation to provide the Committee with a submission in aid of the inquiry.
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, 1,038 (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;
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
Appendix Two

Submission provided by the Corruption and Crime Commission

On 20 July 2012 the Committee received a letter and enclosed submission from the CCC Commissioner, the Honourable Roger Macknay QC, in response to an invitation to provide the Committee with a submission in aid of the inquiry.
Our Ref: 01512/2012 MS:KE.

20 July 2012

The 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

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 of 24 May 2012 regarding the inquiry by the Joint Standing Committee on the Corruption and Crime Commission (“the Committee”) into how the Corruption and Crime Commission (“the Commission”) handles allegations of Police misconduct and notifications of reviewable police action.

I note the Committee will inquire into and report on three particular areas. These are:

- how the Commission deals with allegations and notifications of Western Australia Police (WAPOL) misconduct;
- the impact of the Commission’s practices in this regard on the capacity of WAPOL to deal effectively and appropriately with WAPOL misconduct; and
- how the Commission’s practices in this regard compare to Police oversight bodies in other jurisdictions.

With respect to the three areas the subject of your inquiry I can advise you that, first and foremost, the Commission deals with issues of WAPOL misconduct in accordance with the Corruption and Crime Commission Act 2003 (“the CCC Act”). The Commission’s processes, procedures and practices in this regard accord with, and are informed by, the recommendations and findings of the Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct By Any Western Australian Police Officer (the Kennedy Royal Commission) and current research, literature and industry practice.

The Commission’s approach can be characterised as one whereby the Commissioner of Police is appropriately and effectively held to account by the
Commission for issues of police behaviour, conduct and discipline. The Commission achieves accountability by two principal means. First, by conducting investigations into allegations of police misconduct under sections 32 or 33 of the CCC Act and secondly, by way of the Commission’s various oversight activities. These activities include inquiries conducted under sections 22 and 41 of the CCC Act, the conduct of specific research focussed on corruption risks associated with police and corruption prevention initiatives.

In addition to causing the Commissioner of Police to have ultimate responsibility for matters of police misconduct, including responsibility for investigating particular incidents of suspected misconduct, the Commission’s approach has brought about significant changes to WAPOL systems, policies and procedures of WAPOL and has caused long-term, sustained organisational and cultural change within WAPOL.

Comparisons with other jurisdictions’ approaches to, and outputs arising from, oversight of police require care. By way of simple example, at the end of the 2010-2011 financial year the Office of Police Integrity (OPI) had a staff of 146 with an annual budget of $22 million to oversight 15,500 sworn and unsworn members of the Victorian Police Force. While its legislative scheme differs markedly from that of Western Australia, the resources available to it are very similar to those available to the Commission for dealing with a jurisdiction of 149,000 public officers.

To the extent that it is possible to make relevant and meaningful comparison between the Commission’s oversight of WAPOL and that of other similar bodies in other jurisdictions, the Commission’s practices compare favourably.

Enclosed for your information are more detailed submissions concerning the three areas to be considered by the Committee. I thank you for the opportunity and trust that these submissions will be of use to the Committee.

Yours faithfully

Roger Macknay QC
COMMISSIONER

Encl.
SUBMISSIONS TO THE INQUIRY BY THE JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION INTO HOW THE CORRUPTION AND CRIME COMMISSION HANDLES ALLEGATIONS OF POLICE MISCONDUCT AND NOTIFICATIONS OF REVIEWABLE POLICE ACTION

Introduction

A point accepted generally and by the Corruption and Crime Commission (“the Commission”) is that policing, by its very nature, brings with it the increased opportunity for misconduct and the transgression of imposed standards by individuals who exercise the exceptional authority and extraordinary discretion given to them for the purpose of policing. In western democratic societies, police officers are empowered by the government and the community to maintain public order, quell civil disobedience and enforce the law. In this context, they may lawfully impose upon people’s basic civil liberties and have what has been described as “the monopoly on the legitimate use of physical force”, including deadly force. Frontline police officers in particular deal with issues of crime and anti-social behaviour which is often the result of, and driven by, complex social factors, not easily resolved by police intervention. In doing their jobs police officers are frequently required to respond swiftly to rapidly changing and frequently dangerous events. They are expected, and required, to exercise considerable initiative. This, combined with the wide range of discretionary powers available to police, can create circumstances in which the appropriateness of the police response to a particular situation is challenged.

Along with these inherent complexities it is recognised that the delivery of effective policing services in Australian jurisdictions, generally, is a difficult and challenging undertaking. With respect to Western Australia, there are some additional and unique policing challenges posed by the physical, geographical and cultural environment. Western Australia is the world’s largest single police jurisdiction, covering 2.5 million square kilometres with a population of 2.5 million people. To meet the demand for a disparate range of policing services Western Australia Police (WAPOL) has approximately 8,620 sworn and unsworn employees located across three police regions, 14 police districts and 157 police stations. The Western Australian jurisdiction extends to physically isolated, remote and regional centres, many of which are expanding rapidly. It also includes engaging with a variety of culturally and linguistically diverse communities as well as disenfranchised and vulnerable populations. For these reasons WAPOL is, necessarily, a complex and large organisation, particularly when compared with other Australian policing jurisdictions.

The unique nature of WAPOL, coupled with the nature of policing itself, requires a sophisticated and long-term view of the question of oversight of police by the Commission. The Commission’s activities are concerned with, and produce, two types of change within WAPOL. First, focus is given to the policies, procedures and practices of WAPOL in order to reduce the risk of misconduct occurring and going undetected and/or unreported. This focus relates broadly to how police officers perform their work. The second aspect relates to the organisational culture that provides a context to their work. Whereas the first deals with more tangible and immediate outcomes, the task of producing enduring and meaningful changes in police culture is a far more complex and long-term undertaking.
This submission deals with the inquiry by the Joint Standing Committee on the Corruption and Crime Commission (“the Committee”) into how the Commission handles allegations of police misconduct and notifications of reviewable police action in three parts.

PART 1

How the Corruption and Crime Commission deals with allegations and notifications of WA POL misconduct

Background

The principle that underlies the Commission’s handling of allegations of police misconduct and notifications of reviewable police action is that the Commissioner of Police is, and must be, responsible for dealing with issues of police misconduct. This principle is founded on the recommendations of the Royal Commission Into Whether There Has Been Corrupt or Criminal Conduct By Any Western Australian Police Officer (“the Kennedy Royal Commission”). The Kennedy Royal Commission Interim Report of December 2002 recommended that the Commission be established as an oversight body in an arrangement where “the Commissioner of Police should retain the primary responsibility for managing the discipline of the Police Services”.1 In the Interim Report it is stated that:

… it is generally accepted that Commissioners of Police should bear the primary responsibility for the maintenance of discipline within their police services. That responsibility carries with it the primary obligation to investigate misconduct. Appropriately, police services investigate complaints about police conduct and conduct investigations for the purposes of identifying and profiling high risk areas and officers. Consistent with that approach, the role of an external oversight agency is the oversight of those operations within the police service. Such oversight involves the scrutiny of the processes adopted by the police service in general, and individual investigations in particular. It also involves the external agency carrying out its own investigations into particular areas or officers. To enable such a system to operate, it is necessary to have a process whereby the Commissioner of Police advises the external agency of its internal operations, the complaints received and the progress and the outcome of its investigations into them. The external agency could then discharge its function by identifying the conduct it wishes to investigate and by otherwise maintaining supervision of the investigations carried out by the police service. Such a system would preserve the primary responsibility of the Commissioner of Police to maintain discipline in the police service, but also puts in place a mechanism whereby the external agency can ensure that this responsibility is being properly discharged.2

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1 Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct By Western Australian Police Officers, Interim Report, December 2002, pp.44-45.
This principle was subsequently enshrined in section 7(B) of the CCC Act which states how the two purposes of the Act are to be achieved. In section 7(B)(3) it is stated that:

*The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.*

**Overview of the Commission’s Approach**

There are two main ways the Commission holds the Commissioner of Police to account for issues of police misconduct and gives effect to the Kennedy Royal Commission recommendations. First, after having conducted its own preliminary inquiries, the Commission may direct the Commissioner of Police to conduct an investigation into specific allegations determined by the Commission. The investigative activities undertaken are oversighted by the Commission at a number of key stages and/or come to form part of its organisational audit processes known as Systems-Based Evaluations. ³

The second main way the Commission may hold the Commissioner of Police to account for issues of police misconduct is by conducting an investigation itself under either section 32 or section 33 of the CCC Act. Generally speaking, what distinguishes an investigation conducted by the Commission under these sections of the CCC Act from an investigation conducted by the Commissioner of Police is largely the relative complexity of the investigation. In circumstances where the matters are serious and complex, and/or require particular technical expertise, or the particular powers are only available to the Commission, the investigative activities in their entirety will be undertaken by the Commission. In matters which are less complex (though they may still be serious) and which do not require the particular investigative expertise or powers of the Commission, the bulk of the investigative activities will be conducted by WAPOL at the discretion of the Commission. A recent, partial exception to this principle is matters involving allegations of excessive use of force.

With respect to all matters it deals with a significant portion of the Commission’s operational efforts are expended on issues of police misconduct and these efforts are considerable. In the 2011-2012 financial year the Commission dealt with 1,500 allegations concerning police misconduct. This accounted for 35 per cent of all allegations received by the Commission concerning Western Australian public authorities. Twenty-six per cent of the allegations received in relation to WAPOL were reviewable police actions. In the 2011-2012 financial year the Commission conducted 33 investigations under section 33 of the CCC Act into allegations of police misconduct. This represented 38 per cent of all section 33 investigations conducted by the Commission, including investigations concerned with allegations of excessive use of force. Furthermore, 14 investigations were conducted under

³ The Corruption and Crime Commission’s Systems-Based Evaluations (SBEs) examine the management of allegations of misconduct and reviewable police action by police districts and organisational units. The SBE process can be understood as an audit and allows the Commission to assess the capacity of individual organisational units and districts within Western Australia Police (WAPOL), as well as WAPOL generally, to deal with misconduct and reviewable police action. They provide a useful “health check” of the police organisation and culture.
section 32 of the CCC Act into alleged police misconduct. With respect to the Commission’s overall operational effort, more than a quarter of that effort was focussed on dealing with issues of police misconduct

In order to cause the Commissioner of Police to take responsibility for misconduct, the Commission prefers to provide direction to and closely oversight the way in which WAPOL conducts its investigative activities; but it will not hesitate to investigate itself particular matters when the circumstances merit such action.

The decision about how allegations of misconduct will be dealt with, including those involving police misconduct, occurs after an inquiry conducted under section 22 of the CCC Act. This process is rigorous and can be understood as a preliminary investigation/inquiry insofar as there is a gathering and assessment of evidence. The extent of this process and what it involves is commensurate with the nature and circumstances of the matter. If the Commission decides to direct the Commissioner of Police to conduct an investigation, then it may closely monitor the progress of that investigation. The outcomes are subject to an inquiry process under section 41 of the CCC Act prior to the Commission accepting the matter as finalised.

The Commission provides key inputs at the beginning, throughout and at the conclusion of the investigative process. For ease, these have sometimes been referred to as the assessment, monitoring and review stage. However, the simplicity of these terms belies the nature of what occurs during these stages and the rigour involved. The Commission accepts, however, that some of these processes are not necessarily well understood or appreciated. This has perhaps contributed to a misappreciation about the degree to which the Commission holds WAPOL to account for police misconduct.

**Section 32 and 33 Investigations**

Matters investigated by the Commission under sections 32 and 33 of the CCC Act (“section 32 and 33 investigations”) are typically more serious and complex requiring the Commission’s considerable technical expertise and capacity and/or investigative powers not available to WAPOL. The Commission has conducted 33 section 33 investigations in the 2011-2012 year representing 38 per cent of its total investigative effort. Typically, the number of section 33 investigations varies from year to year depending on the investigative complexity and resource intensiveness of the particular matters involved.

Although there is an argument that any matter involving an allegation of misconduct by a police officer is “serious” by virtue of the discretionary authority and trust placed in them by the government and community, which the Commission understands, it does not follow that by virtue of this appropriate investigative outcomes can only be reached by the Commission investigating all such allegations under sections 32 or 33 of the CCC Act. In the Commission’s view, the intent of the CCC Act, as stated in its purpose and functions, is to cause appropriate action to be taken and to provide appropriate oversight of it. An alternative, and in the longer term more effective, approach to investigating matters itself can be achieved through the range of the Commission’s oversight activities, which include inquiries conducted under sections 22 and 41 of the CCC Act.
Section 22 and 41 Inquiries

Investigations undertaken by the Commissioner of Police are subject to appropriate inquiries by the Commission. These inquiries are conducted under sections 22 and 41 of the CCC Act.

(a) Section 22 Inquiries

Upon receipt of information suggesting possible misconduct by a police officer, including reviewable police actions, the Commission conducts an inquiry pursuant to section 22 of the CCC Act (“section 22 inquiries”). The purpose of this action includes determining whether the allegations fall within the jurisdiction of the Commission, the seriousness of the allegations involved and the relative complexity of the matter from a practical investigative point of view.

When the Commission’s inquiries determine that the matter is to be investigated further the decision about whether the investigation is to be conducted by the Commission or the Commissioner of Police is guided by certain criteria. Those include: the seriousness and complexity of the matter; whether the particular expertise or powers of the Commission are required; the seniority of the police officer to whom the matter relates; whether serious misconduct (as defined by section 3 of the CCC Act) has or may have occurred; and whether there is any reason why the Commissioner of Police is unable to, or should not, conduct the investigation.

The availability of Commission resources is, as a matter of course, factored into the decision-making process. In this regard it is important to note that the Commission can, and does, draw on and utilise the outcomes of investigations whether they be conducted by WAPOL or the Commission. Often it is more efficient and effective to utilise the resources of WAPOL so that Commission resources are available for more complex (but no less serious matters) in which particular technical expertise and/or specific statutory powers are required.

(b) Monitoring Police Investigations

Once a matter has been referred to the Commissioner of Police for investigation the Commission may monitor its progress through a number of activities. In addition to individual Commission case officers assigned to monitor particular matters that have been referred to the Commissioner of Police for investigation, the Commission’s internal governance arrangements and processes ensure appropriate attention is given to their progress.

The Commission’s monitoring includes, but is not limited to:

- examining WAPOL investigation files;
- the provision of regular reports by WAPOL to the Commission specifying the actions taken and the timeframes involved;
- regular formal and informal status updates to the Commission;
- monitoring the time taken by WAPOL to complete the investigative tasks; and

4 “Reviewable police action” is defined by section 3 of the Corruption and Crime Commission Act 2003. The Commissioner of Police is required to notify the Corruption and Crime Commission of such action by a police officer.
where necessary, regular meetings with the Superintendent in charge of the WAPOL Internal Affairs Unit (IAU), by whom verbal briefings are provided.

Should the Commission consider at any stage of an investigation that the Commissioner of Police should no longer have responsibility for the investigation, or that the expertise and powers of the Commission are needed in order for an appropriate investigative outcome to be achieved, the Commission may direct WAPOL to discontinue its investigation. It is not uncommon for the Commission to take this action. In such cases the Commission assumes responsibility for the investigation in its entirety.

(c) Section 41 Inquiries

At the completion of an investigation referred to the Commissioner of Police the Commission may conduct an inquiry as to the adequacy and appropriateness of the investigation under section 41 of the CCC Act (“section 41 inquiries”). This stage is important not only for finalising the particular matter and providing independent assurance as to its adequacy, but also in terms of the Commission’s overall intelligence, profiling and analytical activities. The information and outcomes gathered during inquires inform future Commission activities and operations.

Section 41 inquiries address the following considerations:
• whether all the relevant issues and lines of inquiry have been addressed, which includes the specific allegations identified for investigation and any issues or further matters identified during the investigation;
• whether all reasonable available evidence and information has been obtained and analysed;
• whether any complainant(s) and all relevant witnesses have been interviewed;
• whether the evidence has been considered in an objective way, free from bias or influence;
• what other action (such as disciplinary action) has been taken and the appropriateness of such action;
• whether all relevant policies and procedures have been considered;
• whether any systemic issues have been identified and how they have been dealt with;
• what recommendations have been made to improve shortcomings in processes or practices revealed during the course of investigations; and
• whether any recommendations made have been implemented.

The Commission routinely conducts very comprehensive inquires during which it often identifies areas where further inquiry is needed. This may be undertaken by the Commission or the Commissioner of Police depending on the circumstances.

As a result of the section 41 inquiry process, the Commission may take the following action. It may:
• refer particular issues back to the Commissioner of Police for additional action if shortcomings have been identified in the way in which the matter has been dealt with;
• make further enquiries and/or interview witnesses;
• gather additional evidence;
• refer the matter for possible further investigation by the Commission under sections 32 or 33 of the CCC Act;
• refer systemic issues arising from the review for consideration by the Commission’s research and/or prevention arms; and/or
• finalise inquiries and advise the Commissioner of Police of the Commission’s opinion as to the appropriateness of the manner in which the investigation was managed and the outcomes reached.

Subsequent Activities
Many of the Commission’s activities are proactive, that is, non-allegation driven undertakings. The data and outcomes collected for all “closed” investigations and inquiries are used for sector profiling, case studies, research and education and corruption prevention activities. The Commission has a considerable store of data and intelligence concerning WAPOL and police officers, much of which has been gathered from routine preliminary inquiries and monitoring and review inquiries.

Police Use of Force Matters
Since Commissioner Roger Macknay QC commenced as Commissioner, he has caused a number of changes to be made to the procedures the Commission adopts in dealing with allegations of excessive use of force by police. Furthermore the Commission’s Corruption Prevention and Education Directorate has been reorganised to allow a greater emphasis to be placed on the oversight and capacity development of WAPOL, as well as allowing for more police-related research to be conducted. Since this reorganisation, it has been estimated that the percentage of overall effort directed toward WAPOL misconduct matters has increased by around 100 per cent.

Capacity Development
Section 7(A) of the CCC Act defines the Commission’s two main purposes. One of these is:

    to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

To give effect to this purpose with respect to WAPOL, the Commission assists the Commissioner of Police in developing and enhancing WAPOL’s capacity to prevent, identify and deal with misconduct. This is achieved through a number of Commission oversight activities already identified, namely section 32 and 33 investigations, section 22 and 41 inquiries, research and projects related to police and other oversight activities.

• The Commission recently established a dedicated Police Capacity Development Team that deals with WAPOL-related matters. This includes consideration of all allegations of excessive use of force, the conduct of police SBEs and the identification and conduct of specific projects and research. The Commission is also undertaking a number of projects and research related to WAPOL and policing more generally.

• Among the Commission’s current projects is an investigation into WAPOL’s Briefcase system, this is, the system for recording and progressing charges against alleged offenders. This investigation stems from the identification of
system-wide failures to progress around 9,000 charges. Of concern to the Commission are the issues of systems failure, neglect of duty, failure in supervision and potential misconduct by individual officers. The Commission’s investigation includes, but is not limited to, the adequacy of WAPOL’s response to the issues.

- In partnership with a number of universities and academics the Commission is also conducting specific research focussed on corruption risks associated with policing and use of force reporting. Such research contributes to and allows for an informed, evidence-based approach to dealing with issues of policing and police misconduct. It will inform future operations, targeted investigations, and prevention and education activities.

**Conclusion**

Directing the Commissioner of Police to conduct many of the routine investigations into police misconduct, which do not involve a particular degree of complexity or require the specific technical expertise or powers of the Commission, achieves a number of things.

(a) It makes the Commissioner of Police ultimately responsible for issues of police misconduct and holds him to account for this responsibility.

(b) It allows the same investigative outcomes to be reached without Commission resources being expended on routine cases.

(c) It ensures that the Commission’s technical expertise and considerable invasive powers are not “misdirected” toward matters that are serious but are not so complex as to warrant that degree of Commission involvement.

(d) It allows investigative outcomes to be strategically used to inform the Commission’s targeted operations and activities and research program as they relate to police corruption and misconduct.

In many respects the true extent and nature of what is involved in the Commission’s section 22 and section 41 inquiries and other oversight activities, as they relate to police misconduct, is not always fully appreciated. This has contributed to a misconception within some sections of the community that the Commission does not effectively deal with or investigate matters of police misconduct. This is simply not the case. Although the Commission for the most part will not conduct the bulk of investigative tasks involved in all of the misconduct matters that come to its attention, this should not be mistaken for failing to investigate or inquire into issues of police misconduct.

**PART 2**

*The impact of Corruption and Crime Commission practices on the capacity of the WAPOL to deal effectively and appropriately with police misconduct*

**Background**

The Commission assesses the capacity of the Commissioner of Police and WAPOL to deal effectively and appropriately with misconduct in two ways. The first is in regard to WAPOL’s ability to effectively investigate and regulate itself, that is, its internal mechanism for dealing with issues of misconduct, including internal
investigations into specific allegations of misconduct. The second is the ability of its organisational systems and cultures to withstand and resist misconduct generally.

The Commission has brought about change in these two areas by two principal means. First, it has made and overseen specific recommendations for change. These recommendations are contained in Commission reports made to the Parliament of Western Australia or the Committee or a Minister under the CCC Act. Second, the Commission has effected and brought about change to WAPOL’s organisational systems and cultures. It has done this for the purpose of improving WAPOL’s ability to prevent, identify and deal with misconduct, and includes oversighting WAPOL’s implementation of the recommendations of the Kennedy Royal Commission.

Since the Commission’s establishment in 2004 there has been discernible improvement in WAPOL’s capacity to prevent, identify and deal with misconduct. Without the Commission’s oversight many of these improvements would not have occurred.

The following section of this submission considers the two ways the effectiveness of the Commission’s oversight can be assessed.

**WAPOL’S Internal Misconduct Management Mechanism**

Before considering the changes made to WAPOL’s internal misconduct management mechanism as a result of the Commission’s activities it is useful to explain how this mechanism functions.

The mechanism itself consists of a number of interventions. This is because there is a spectrum of behaviours and conduct that can be understood as “inappropriate”, some of which potentially lead to misconduct. The goal of organisations such as WAPOL should be to identify and deal with those behaviours before they manifest as, or result in, misconduct and corruption. Consequently, WAPOL’s disciplinary/internal investigation system works in conjunction with the wider system for managing performance and conduct.

WAPOL’s internal investigations into allegations of misconduct typically focus on more serious allegations such as discharge of firearms, excessive use of force or deaths in custody. They are conducted by the IAU and in police districts. Internal investigations conducted in police districts are oversighted and subject to quality control processes⁵ by the Police Complaints Administration Centre (PCAC). Both IAU and PCAC are part of the Professional Standards Portfolio.

WAPOL uses a range of management interventions to deal with low-level performance/conduct issues, allegations of less serious misconduct and police reviewable action, such as breaches of policy and complaints about service delivery. These interventions may include: Local Complaints Resolution; Desktop Resolution; and Short Format Investigations.

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⁵ The “quality control process” refers to the process by which Western Australia Police review internal investigations to ensure that, in relation to a matter, all the allegations have been identified and dealt with appropriately, all the evidence has been gathered and considered, and that the investigation outcomes are appropriate.
Reforms Made to WAPOL’s Internal Misconduct Management Mechanism

As a result of the Commission’s activities and influence a number of reforms have been made to WAPOL’s internal misconduct management mechanism. Some of these were a direct result of recommendations made by the Commission and the Kennedy Royal Commission. Others were generated from within WAPOL, reflecting the increased maturity of WAPOL’s misconduct mechanism and the organisation’s attitude toward issues of conduct and integrity generally.

Reforms include the following.

- **IAU Investigations** – as a result of the Commission’s influence, changes have been made to the IAU Charter requiring that particular cases, previously able to be investigated in police districts, are now investigated by IAU as a matter of course. These include matters involving:
  - high-level use of force i.e. persistent Taser use, use of serious force after surrender, or discharge of a firearm;
  - deaths in custody;
  - deaths in police presence;
  - shootings involving deaths;
  - discharge of firearms;
  - emergency driving resulting in death; and
  - deaths in which police involvement was a contributing factor.

Furthermore, PCAC review the quality of all investigations conducted by IAU to ensure that the matters have been investigated fully and properly, and that the outcomes reached are appropriate.

These changes have brought increased centralised management and mandatory investigation of particular matters by IAU. This has resulted in improved processes and higher quality outcomes.

- **PCAC oversight and review** - following recommendations made by the Commission PCAC have a far greater and more effective oversight and review role within WAPOL. This includes oversighting all investigations conducted at the district level and reviewing them upon completion. Enhanced oversight has improved the general timeliness and quality of investigations conducted by WAPOL. It has also contributed to improved transparency and accountability with respect to internal investigations.

Greater and more effective communication has also been achieved between the PCAC and police districts. This has allowed for more effective oversight and assurance of internal investigations by District Governance Officers located within district offices, in collaboration with PCAC.

- **Local Complaints Resolution, Short Format Investigations and Desktop Resolution** – as a result of the Commission’s oversight and influence, a number of changes have been made to WAPOL’s management of those
matters which do not involve more serious misconduct allegations. These changes include:
  o the development of an internal investigations manual;
  o the development of shortened format for investigation reports;
  o improvements to the Desktop Resolution process; and
  o improvements to the handling of allegations of a “minor” nature.

These changes have brought increased consistency, accountability and transparency to the management of disciplinary and conduct matters. They have also enabled more timely and appropriate responses to complaints to be made.

- **Criminal Versus Disciplinary Matters** - with the oversight and input of the Commission, WAPOL has amended its procedures to better deal with disciplinary/internal investigations in which criminal conduct is alleged. When criminal conduct is alleged the criminal aspects to the matter are investigated as crimes, separately to the other conduct.

Related to this overall approach internal investigations that involve allegations of unauthorised access to and the release of confidential information now address the issue of the potential criminality of the conduct.

- **Loss of Confidence** - following the recommendations of the Kennedy Royal Commission, provisions were introduced allowing “loss of confidence action” to be taken by the Commissioner of Police when officers are identified, through an internal investigation, as having engaged in misconduct. Such action enables the termination of an officer’s employment. Since 2004, loss of confidence action has been taken against 198 officers. The employment of forty-nine officers has subsequently been terminated as a result of this action or disciplinary action (see below).

The introduction, and appropriate use of, the loss of confidence provisions has provided an important tool for the Commissioner of Police, allowing him to respond to misconduct swiftly and effectively.

- **Disciplinary and Managerial Action** - with greater understanding of the relationships and possible connections between performance and general conduct issues and incidents of misconduct and corruption, WAPOL has made changes to its approach toward disciplinary and managerial action. The organisation is increasingly responding to problematic behaviour before it manifests as misconduct or corruption using disciplinary provisions or managerial options.

Additionally, there is greater organisational preparedness by WAPOL to take disciplinary action where necessary. Since 2004, 199 disciplinary charges have been preferred against 127 officers. Additionally, 5,670 managerial actions have been taken against 3,126 officers.6

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6 “Managerial action” covers a range of actions including counselling, training, close supervision and the implementation of employee action plans.
The significance of the reforms made in the key areas identified above is that they have brought:

- greater transparency and accountability to internal investigations;
- increased centralised oversight and review of internal investigations;
- improved investigative practices;
- better management of matters involving criminal conduct;
- effective early intervention in conduct and behaviour issues before they manifest as misconduct;
- improved timeliness in the management of investigations and complaints resolution; and
- greater organisational focus on issues of misconduct and professional standards.

**WAPOL’s Misconduct and Corruption Resistance**

As a result of the Commission’s oversight, improvements have occurred in WAPOL’s overall ability to resist misconduct and corruption. WAPOL has made the following major changes.

- **Early Intervention Program** - this program was recommended by the Kennedy Royal Commission, with its implementation overseen by the Commission. The program monitors a number of behavioural and environmental indicators to identify those officers most at risk of engaging in corruption or misconduct.

- **Integrity Testing Program** - in conjunction with its early intervention program, WAPOL introduced an integrity testing program in order to target officers most at risk of engaging in corruption or misconduct. The program continues to be an effective risk management tool enabling officers prone to engaging in corrupt conduct to be detected and removed if necessary.

- **Random Drug and Alcohol Testing** - recommendations made by the Kennedy Royal Commission included recommendations for random drug and alcohol testing. Following continued encouragement by the Commission, WAPOL has recently introduced such a program.

- **Property Management Framework** - as a result of a joint WAPOL and Commission investigation, and recommendations made by the Commission, WAPOL made significant changes to its systems and procedures for property management, movement and recording. The misconduct and corruption risks associated with property management were significantly reduced as a result of these changes.

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7 See “Two Years Out”: A Report of the First Two Years of the Western Australia Police Reform Program, (tabled in the Parliament of Western Australia (“the Parliament”) on 3 August 2006).
• **Improved Taser Weapon Use** - the Commission’s investigative and research activities\(^9\) concerning Taser use, conducted over a considerable period, brought about change to WAPOL’s procedures, policies and practices for Taser weapon use. They also contributed to an important cultural shift in terms of how the organisation and its people regard use of force generally. This is reflected in the reduction in Taser weapon use generally and the degree to which such use of force is now subjected to review and scrutiny by the organisation.

These initiatives have contributed to WAPOL’s misconduct and corruption resistance by:

- enabling WAPOL to detect and remove officers engaging in misconduct or corrupt conduct at an early stage;
- enabling WAPOL to deal with issues of general conduct and professionalism before they manifest in acts of corruption or misconduct;
- reducing the extent to which police organisational systems and cultures are exposed to specific and general misconduct risks; and
- placing a high organisational and cultural emphasis on issues of good conduct and professionalism.

**PART 3**

*How the practices of the Corruption and Crime Commission' compare to police oversight bodies in other jurisdictions*

**Background**

Australian police oversight bodies have the same broad approach, and share a similar philosophical starting point, with respect to police misconduct, that is, that Commissioners of Police have ultimate and primary responsibility for issues of police behaviour, conduct and discipline. The purpose and functions of police oversight bodies, therefore, is to appropriately and effectively hold Commissioners of Police to account for this responsibility. The manner in which this is achieved by the various oversight bodies is, at a broad level, common. However, because of differences in the origins, operating environments, roles and statutory arrangements of police oversight bodies, meaningful comparison is difficult. A cautious approach to comparing the practices of police oversight bodies is needed. However, to the extent that useful comparisons can be made, the Commission’s practices and outputs compare favourably.

In 2009 the Commonwealth Parliamentary Joint Committee on the Commission for Law Enforcement Integrity (“the Commonwealth Committee”) *Inquiry into Law Enforcement Integrity Models* reported on its examination into various state-based

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\(^9\) These are detailed in the report on *The Use of Taser® Weapons by Western Australia Police* (tabled in the Parliament of Western Australia (“the Parliament”) on 4 October 2010). See also, *Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser® Weapons by Officers of the Western Australia Police and the Department of Corrective Services* (tabled in the Parliament on 16 April 2012).
police oversight integrity models.\textsuperscript{10} The inquiry noted some of the similarities between the Commonwealth body, the Australian Commission for Law Enforcement Integrity (ACLEI) and those of New South Wales, Queensland, Victoria and Western Australia. It noted that the four states have external law enforcement integrity agencies in place and, that like ACLEI, operate according to an inquisitorial investigative system.\textsuperscript{11} Importantly the Commonwealth Committee reported that, while sharing some fundamental features with respect to misconduct, prevention and education, and organised crime, “these agencies vary in terms of function and breadth of jurisdiction”.\textsuperscript{12}

Of note, the Commonwealth Committee reported on the distinction emerging between anti-corruption agencies, like the Commission, and complaint management agencies which fundamentally inform the practices of agencies. The Commonwealth Committee was told that:

\textit{Complaint management agencies are generally process focussed. They are about ensuring that each individual has meaningful recourse to the misapplication of authority. Management systems in the subject agency may improve on account of an effective complaints management process, but this is a secondary issue to ensuring that a worthwhile complaint process is in place and operating effectively.}

\textit{Anti-corruption agencies are more outcomes focussed. They are about impacting on the standards of integrity of designated agencies. Their actions may be based on complaints made to them, but these are a resource for them, not their raison d’être. They are not required to deal with all complaint matters/information sources equally. Rather, they steer their resources to where they can maximise their impact on integrity standards.}\textsuperscript{13}

The purpose of the next section of this submission is to provide some comparison between the Commission, and the jurisdiction of Western Australia, and other state-based integrity and police oversight bodies. A considerable issue in this regard is the problematic use of terms. There is no common language between bodies providing a basis for comparison of practices. Furthermore, how the various bodies report on their practices and outputs differ.

By way of simple example, the New South Wales Ombudsman reports annually on the number of formal and informal complaints made about police. For 2010-2011, this figure was 5,000. However, this figure appears to include informal enquiries or contact with the agency, rather than what the Commission might term “complaints”. Of the figure provided by the New South Wales Ombudsman only 60 per cent were “directly assessed” by the Ombudsman.

With respect to annual report figures provided by the Queensland Crime and Misconduct Commission for the 2010-2011 financial year, the agency reported on the

\textsuperscript{10} Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity report on the \textit{Inquiry into Law Enforcement Integrity Models} (tabled in the Commonwealth Parliament, February 2009).

\textsuperscript{11} Ibid, p.9.

\textsuperscript{12} Ibid.

\textsuperscript{13} Ibid, p.8.
number of allegations of police misconduct investigated, which was 280 allegations, not the number of investigations conducted into allegations of police misconduct, which was 96. This example demonstrates that caution is needed in trying to use terms such as “complaints”, “allegations” or “matters” interchangeably or assuming that they refer to the same thing. Similar problems are encountered with terms like “closely reviewed”, “oversighted”, “case reviewed” and “reviewed but not subject to oversight” which are variously used by oversight bodies.

The Commission works closely with Australian oversight bodies generally, liaising and exchanging ideas and exploring alternative approaches. For this reason the Commission is aware of the similar practices between bodies, particularly with respect to corruption prevention and education, research and capacity development activities. Arenas such as the Australian Anti-Corruption Commissions Forum and the Australian Public Sector Anti-Corruption Conference provide useful opportunities for this exchange. However, there is insufficient published data enabling a useful comparison to be made between the Commission’s police capacity development and research programs and those of other jurisdictions.

Western Australia

In the 2011-2012 financial year the Commission received 1,007 notifications or reports containing 1,500 allegations of police misconduct. This accounted for 35 per cent of all allegations received by the Commission concerning Western Australian Public Authorities. Twenty-six per cent of the WAPOL-related allegations were reviewable police actions.

The following table provides a breakdown of the eight highest categories of allegations of police misconduct:

<table>
<thead>
<tr>
<th>Allegation Category</th>
<th>Percentage of Total Allegations Concerning WAPOL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assault – Physical/Excessive Use of Force</td>
<td>15</td>
</tr>
<tr>
<td>Neglect of Duty</td>
<td>13</td>
</tr>
<tr>
<td>Unprofessional Conduct – Demeanour/Attitude/Language</td>
<td>11</td>
</tr>
<tr>
<td>Breach of Code of Conduct/Policy/Procedures</td>
<td>11</td>
</tr>
<tr>
<td>Failure to Act</td>
<td>6</td>
</tr>
<tr>
<td>Misuse of Computer System/Email/Internet etc.</td>
<td>5</td>
</tr>
<tr>
<td>Bullying/Intimidation/Harassment</td>
<td>5</td>
</tr>
<tr>
<td>Breach of Confidentiality/Misuse of Information/Improper Disclosure</td>
<td>4</td>
</tr>
</tbody>
</table>

Table 1: 2011-2012 Police Misconduct Allegations By Category

In the 2011-2012 financial year the Commission undertook:

14 This table provides figures for the eight highest categories of allegations which amount to 70 per cent of all allegations of police misconduct.
• 33 section 33 investigations into police misconduct, which constituted 38 per cent of all section 33 investigations conducted by the Commission;
• 14 section 32 investigations into police misconduct;
• section 22 inquiries in relation to 1,500 allegations of alleged police misconduct; and
• section 41 inquiries in relation to 316 cases of police misconduct.

The Commission has an establishment of 154 staff to oversight approximately 149,000 public officers. Of those, 8,620 are sworn and unsworn WAPOL employees. WAPOL employees represent around six per cent of the total public sector. However, WAPOL misconduct constitutes 38 per cent of the Commission’s section 33 investigations and 40 per cent of the effort of the Corruption Prevention and Education Directorate. In all, this employee group, which represents six per cent of the sector, receives around a quarter of the Commission’s total operational effort.
## Comparison of Australian Oversight Bodies

The below table contains data for Australian oversight bodies. The data for the Commission relates to the 2011-2012 financial year and the data for all other bodies is taken from 2010-2011 Annual Reports.

<table>
<thead>
<tr>
<th>State</th>
<th>State Population '000</th>
<th>Oversight Agency</th>
<th>Jurisdiction</th>
<th>Oversight FTE</th>
<th>Police FTE</th>
<th>Allegations of Police Misconduct</th>
<th>No of Police Internal Investigations &quot;Oversighted&quot;</th>
<th>Investigations Oversighted as a Percentage of Allegations Received</th>
<th>No of Police Investigations Conducted by Oversight Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Western Australia</td>
<td>2,387.2</td>
<td>Corruption and Crime Commission</td>
<td>Police and wider public sector</td>
<td>154</td>
<td>8,620</td>
<td>1,500</td>
<td>316³</td>
<td>21%</td>
<td>33</td>
</tr>
<tr>
<td>Queensland</td>
<td>4,513.0</td>
<td>Crime and Misconduct Commission</td>
<td>Police and wider public sector</td>
<td>337</td>
<td>15,149</td>
<td>6,430</td>
<td>205⁴</td>
<td>3%</td>
<td>96¹⁰</td>
</tr>
<tr>
<td>Tasmania</td>
<td>511.7</td>
<td>Tasmania Integrity Commission</td>
<td>Police and wider public sector</td>
<td>17</td>
<td>1,635</td>
<td>Data not available.</td>
<td>Data not available.</td>
<td>Data not available.</td>
<td>Data not available.</td>
</tr>
<tr>
<td>Victoria</td>
<td>5,574.5</td>
<td>Office of Police Integrity</td>
<td>Police only</td>
<td>146</td>
<td>15,555</td>
<td>651¹</td>
<td>156⁵</td>
<td>24%</td>
<td>13</td>
</tr>
<tr>
<td>New South Wales</td>
<td>7,247.7</td>
<td>Police Integrity Commission</td>
<td>Police only</td>
<td>105</td>
<td>1,226¹</td>
<td>65²</td>
<td>Data not available.</td>
<td>Data not available.</td>
<td>Data not available.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ombudsman</td>
<td>Police and wider public sector</td>
<td>185</td>
<td>7,078</td>
<td>1,645⁰</td>
<td>Data not available.</td>
<td>23%</td>
<td>Data not available.</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>370.7</td>
<td>Australian Commission for Law Enforcement Integrity</td>
<td>Police, Customs and Australian Crime Commission</td>
<td>26</td>
<td>6,898</td>
<td>Data not available.</td>
<td>Data not available.</td>
<td>Data not available.</td>
<td>Data not available.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ombudsman</td>
<td>Police and wider public sector</td>
<td>174</td>
<td>349¹</td>
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<td>Data not available.</td>
<td>Data not available.</td>
<td>Data not available.</td>
</tr>
<tr>
<td>South Australia</td>
<td>1,645.0</td>
<td>Police Complaints Authority</td>
<td>Police only</td>
<td>12</td>
<td>5,707</td>
<td>1,250¹</td>
<td>105⁵</td>
<td>8%</td>
<td>0</td>
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Table 2: Comparison of Australian Police Oversight Bodies

1. Reported in Annual Reports as "complaints", not "allegations.
2. Reported in Annual Report as "matters", not allegations.
3. Oversight via section 41 inquiries.
4. Reported as “case review”.
5. Reported as “oversight”.
6. Fifty-one reported as referred to police and subject to "oversight" and 50 reported as "reviewed but not subject to oversight”.
7. Reported as "closely reviewed”.
8. Reported as “reviewed”.


2 August 2012

The 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

COMMITTEE INQUIRY INTO HOW THE CORRUPTION AND CRIME COMMISSION HANDLES ALLEGATIONS OF POLICE MISCONDUCT AND NOTIFICATIONS OF REVIEWABLE POLICE ACTION – AMENDMENT TO THE COMMISSION’S SUBMISSIONS

I refer to submissions provided by the Corruption and Crime Commission (“the Commission”) dated 20 July 2012 regarding the inquiry by the Joint Standing Committee on the Corruption and Crime Commission (“the Committee”) into how the Commission handles allegations of police misconduct and notifications of reviewable police action.

It has come to my attention that an error was made in relation to a figure provided in Table 2 of the Commission’s submissions. Enclosed is an amended table with the relevant figure highlighted for the Committee’s information.

Yours faithfully

[Signature]

Mike Silverstone
EXECUTIVE DIRECTOR

Encl.
Comparison of Australian Oversight Bodies

The below table contains data for Australian oversight bodies. The data for the Commission relates to the 2011-2012 financial year and the data for all other bodies is taken from 2010-2011 Annual Reports.

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<td>1,226&lt;sup&gt;1&lt;/sup&gt;</td>
<td>101&lt;sup&gt;6&lt;/sup&gt;</td>
<td>8%</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ombudsman</td>
<td>Police and wider public sector</td>
<td>185</td>
<td>7,078</td>
<td>1,645&lt;sup&gt;7&lt;/sup&gt;</td>
<td></td>
<td>23%</td>
<td>Data not available</td>
</tr>
<tr>
<td>Commonwealth</td>
<td>22,688.2</td>
<td>Australian Commission for Law Enforcement Integrity</td>
<td>Police, Customs and Australian Crime Commission</td>
<td>26</td>
<td>6,898</td>
<td>53&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Data not available.</td>
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<tr>
<td></td>
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8. Reported as "reviewed".
Appendix Three

Submission provided by the WA Police

On 27 July 2012 the Committee received a letter and enclosed submission from the WA Police Assistant Commissioner (Professional Standards), Mr Dominic Staltari APM, in response to an invitation to provide the Committee with a submission in aid of the inquiry.
Joint Standing Committee on the Corruption and Crime Commission

WA Police Submission

Committee Inquiry into how the Corruption and Crime Commission handles allegations of police misconduct and notifications of reviewable police action

Professional Standards
Western Australia Police

July 2012
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1.0 INTRODUCTION

On 24th November 2010, the Joint Standing Committee on the Corruption and Crime Commission (the Commission) resolved to undertake an inquiry into how the Commission handles allegations of police misconduct and notifications of reviewable police action. The inquiry has the following terms of reference:

The Committee will inquire into and report on:

- How the Corruption and Crime Commission deals with allegations and notifications of WA Police misconduct;
- The impact of the Corruption and Crime Commission’s practices in this regard on the capacity of the WA Police to deal effectively and appropriately with WA Police misconduct; and
- How the Corruption and Crime Commission’s practices in this regard compare to Police oversight bodies in other jurisdictions.

On the 24th May 2012, the Hon. Nick Goiran MLC wrote to Commissioner of Police Karl O'Callaghan inviting a submission on behalf of the Western Australia Police (WA Police) to the Committee pertaining to the terms of reference of the inquiry.

This submission addresses the second dot point, “the impact of the Corruption and Crime Commission’s practices in this regard on the capacity of the WA Police to deal effectively and appropriately with WA Police misconduct”, by focussing on the various business areas that comprise the Professional Standards portfolio, their role and function, and concludes with a discussion on aspects of the Commission’s practices that affect the ability of WA Police to effectively and appropriately deal with police misconduct.

Whilst the Corruption and Crime Commission Act 2003 (the Act) defines Misconduct and Reviewable Police Action, in an endeavour to ensure complaint reporting occurs in every instance within the agency, WA Police has further defined what is to be reported and that is all behaviour amounting to ‘Unprofessional Conduct’. The Managerial Intervention Model defines unprofessional conduct as follows:

“Unprofessional Conduct – refers to behaviour, actions and conduct as defined in Sections 3 and 4 of the Corruption and Crime Commission Act 2003, notably ‘Reviewable Police Action’ and ‘Misconduct’; conduct which contravenes the ‘General Rules Relating to Discipline in Part VI of the Police Force Regulations 1979’; conduct which contravenes the WA Police Code of Conduct; conduct which is prima facie, criminal conduct; and conduct which has the potential to cause damage to agency reputation and or erosion of public confidence in WA Police.”

There remains conjecture between WA Police and the Commission on whether the Commission has issued guidelines under s.30 of the Act for matters that are defined as Reviewable Police Action as read with s.21A of the Act. WA Police has no record of receiving such guidelines and the Commission has no record of sending them to WA Police. Following inquiry by WA Police in this regard, the Commission has recently provided to WA Police a Notification Guidelines document titled “Dealing
with Reviewable Police Action and Misconduct in the Western Australia Police Service - as at August 2004”. Putting aside the latter, WA Police have agreed to work together to develop a new set of guidelines to compliment contemporary business and functional practices.

The WA Police reporting responsibilities to the Commission with respect to matters amounting to Reviewable Police Action have not been adversely affected by not being in receipt of the document described above.

2.0 HISTORY OF COMPLAINT MANAGEMENT AND INVESTIGATION IN WA POLICE

In 1978, the Internal Investigation Section (IIS) was established within the (then) Criminal Investigation Branch to investigate complaints against police.

In July 1985, amendments to the Parliamentary Commissioners Act 1971 brought the jurisdiction of oversight into police investigations under the responsibility of the Parliamentary Commissioner for Administrative Investigations - Ombudsman.

In 1986, a restructure occurred and the IIS was renamed the Internal Investigations Branch (IIB). During this period, management responsibility for discipline throughout the police force was vested in the Chief Superintendent (Discipline).

In 1988, the Internal Affairs Unit (IAU) was established in response to the Queensland Fitzgerald Royal Commission. The Unit was originally staffed by two officers with responsibility for investigating allegations of corruption against police officers. IIB retained responsibility for other matters, including discipline provisions.

Following the establishment of the Official Corruption Commission (OCC), in August 1989, under the authority of the Anti-Corruption Commission Act 1988, a reporting relationship was created between IAU and the OCC, who would oversight select IAU investigations of ‘public interest’.

In 1992, the IIB was restructured, with centralised investigative personnel consisting of eight Superintendents, sixteen Chief Inspectors/Inspectors, and five Senior Sergeants as assistant investigators. The IIB was comprised of five investigative teams, each lead by a Superintendent.

In May 1994, a further review of IIB resulted in a number of strategies being implemented, including civilianisation of positions, introduction of improved investigative standards and management practices; better analysis of statistics to identify complaint trends, upgrade of equipment and computerisation, restructure of investigative teams and introduction of audio taping of all internal investigation interviews.

The Professional Standards portfolio was established in 1996 as part of the Delta Program’s cultural and sweeping reform agenda. The principal philosophy was to support the devolution process of integrated command and control and allocating local accountability for officer conduct.
The (then) Office of the Inspectorate, IIB, IAU, Public Sector Investigations Unit and Standards Development Unit had little synergy and it was considered grouping these areas would better integrate their roles, responsibilities and complaint/investigation outcomes.

The Professional Standards portfolio provided specialist investigative expertise for complaints of a serious nature and provided internal investigation support to the districts. The portfolio developed investigative standards for internal investigations for consistency, transparency and thoroughness, together with the effective coordination of complaints against police, both external and internal. The portfolio was placed under the command of an Assistant Commissioner who held a direct reporting relationship to the Commissioner of Police.

An agency ‘Statement of Common Values’, including honesty, respect, fairness, empathy, openness and accountability was developed and promoted to underpin decision making within WA Police.

In August 1996, the OCC was re-named the Anti-Corruption Commission (ACC) as a recommendation of the ‘Select Committee on the WA Police’ known as the Tomlinson Report. The ACC commenced oversight of all complaints made against police. Subsequent to this change, the Ombudsman only reviewed and monitored complaints received by IIB and investigated.

In late 1996, the IIB changed its name to the Internal Investigations Unit (IIU). It still remained the primary disciplinary enforcement arm of the Professional Standards portfolio, but was re-positioned to emphasise the changes brought about by the Delta Program, reflecting the ‘customer focus’ and ‘service delivery focus’ and encouraging the public to come forward and make complaints against police.

The Tomlinson Report was critical of IAU and IIB in regard to the overlap of responsibilities and duplicity of roles which it considered impeded the corruption prevention potential of the Units. It was also critical of inquiry file prioritisation, complaint and information management. At that time, strategies arising out of the Queensland Fitzgerald Royal Commission and the New South Wales Wood Royal Commission were examined and incorporated into WA Police internal/complaint investigative practices.

The structure of IIU during this period was altered to reflect a more functional and operational approach in keeping with the general principles of devolution arising out of the Delta Program and the Wood and Fitzgerald Royal Commissions. The recommendations also supported regionalisation and the need for District/Divisional Superintendents to take greater ownership of disciplinary matters, including internal investigations. The intent was to engender professionalism and reinforce ethics and integrity in daily business.
The Kennedy Royal Commission\(^1\) was established in December 2001, following persistent public concern over several controversial investigation outcomes by WA Police and by reason of abiding public doubt over the integrity of the WA Police.

Following the Kennedy Royal Commission in 2004, there was a general re-focus on corruption prevention. In August 2004, to reflect the agency’s commitment towards this philosophy, the name of the portfolio was changed to Corruption Prevention and Investigation.

The Commission was also created by Government to replace the ACC, with broader coercive powers to oversee all public sector agencies.

The Kennedy Royal Commission took cognisance of the 2003 review by the Hon. William Kenneth Fisher AO, QC into the professional standards of the Australian Federal Police (AFP). In his review, Mr Fisher made three key recommendations which also had relevance to the WA Police management of unprofessional conduct, these being:

1. That minor complaint matters be resolved at the local area using non-reviewable managerial processes;
2. The abolition of the AFP Discipline Tribunal and repeal of the AFP Discipline Regulations and Complaints Act; and
3. That cases involving serious breach of criminal law, serious abuse of power, serious neglect of duty and matters giving rise to a consideration of employment suitability be dealt with centrally.

The Kennedy Royal Commission recognised the relationship between WA Police and the community was of paramount importance in maintaining a joint partnership in crime prevention. It was also recognised that the nature of the relationship between the Commissioner of Police and members of the (then) Police Service was different from that of other public sector agencies.

Consequently, the Kennedy Royal Commission concluded, it was essential to have appropriate mechanisms in place to speedily resolve customer-service complaints and to investigate and deal with more serious matters of alleged misconduct, and made the following recommendations that:

1. WA Police adopts the managerial based model of complaints handling and discipline as advocated by the Fisher Review;
2. Sections 23 (Discipline) and 33E (Police Appeal Board) of the Police Act 1892 be repealed and replaced with a contemporary management-based system, without prejudice to the fair treatment of police officers. Implementation of this recommendation would effectively remove the Commissioner’s Examination Process totally. It would see a full reliance on complaint matters being effectively dealt with by managerial intervention in respect to minor complaint matters,

\(^1\) The Kennedy Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian Police Officer January 2004
which includes the ability to implement a range of ‘non-reviewable’ actions, criminal investigation in respect to more serious matters, and Loss of Confidence (LOC) removal process under s.8 of the Police Act 1892;

3. There be true devolution of minor complaints management to District and Portfolio level, provided that allegations of criminality and corruption would be investigated by the Internal Affairs Unit or under its direction; and

4. The procedures for referring investigation reports be streamlined to reduce the number of administrative delays that do not add value to the final outcome.

A major review was subsequently undertaken by WA Police and in 2007, resulted in WA Police introducing the Managerial Disciplinary Model now known as Managerial Intervention Model (MIM). The model was designed to shift the agency’s mindset from a reliance on a predominately punitive discipline framework towards a contemporary managerial approach, with emphasis on improving conduct and changing future behaviour through agreed improvement strategies.

The rationale for this approach was then based on the premise the Commissioner of Police recognised officers do make mistakes from time to time and when they do occur (and they are not of a serious nature), an attempt at behavioural modification should be facilitated in the first instance.

It was thought at this time, that conduct of a more serious nature could not be dealt with by way of behavioural modification and accordingly, the disciplinary provisions of both the Police Act 1892 and the Police Force Regulations 1979, were retained, in effect creating a hybrid model of that proposed by Fisher.

In October 2009, the Corruption Prevention and Investigation portfolio was renamed the Professional Standards portfolio, as it was considered the agency had significantly matured following the Kennedy Royal Commission and the responsibility for corruption prevention and investigation was one that needed to be shared by all in the agency and not reflected by name, at least, to be the responsibility of one portfolio.

In recent years, contested disciplinary offence matters have become consumed by legal argument and legal particularisation on matters of law, significantly complicating the process and bringing into question the value of the process in achieving a timely outcome.

In late 2010, with a significant question mark over the value and benefit of pursuing disciplinary offences, the Commissioner of Police requested a holistic review of the hybrid managerial/disciplinary intervention model. The review was completed in late 2011 and the outcome incorporated a legislative reform agenda that would effectively remove all disciplinary provisions moving to the purist Fisher model. The legislative reform agenda also included the required legislative amendment to support the introduction of alcohol and drug testing and affording the Commissioner
of Police with additional options in dealing with officers the subject of an LOC on a decision to retain them.

The recommendations of the review were approved in early December 2011. As part of the review, the following actions have been completed:

The Managerial Intervention Model has been improved by:

1. A rewrite to improve understanding and application;
2. Removal of the Right of Review – to reinforce the need for a participative/communicative approach; and
3. The implementation of an Assistant Commissioner’s Warning Notice.

Outstanding actions are those that are connected to the legislative reform agenda and are summarised as follows:

1. Repeal Section 23 Police Act 1892 (to be replaced in policy by a “show cause” process – managerial intervention based – not a punitive sanction);
2. Repeal Part IIA – Police Appeal Board – Police Act 1892 – consequential to repeal of Section 23 Police Act 1892;
3. Create a head of power provision to allow the Commissioner of Police to demote permanently or for a period of time – permanent only by the Commissioner of Police’s hand – for a period of time by authorised officers (currently the Commissioner of Police can promote – no specific provision to demote) – to also premise show cause managerial provisions in policy (demotion – removal/deferment of increment);
4. Create head of power legislation to allow the Commissioner of Police to dismiss/remove an officer who tests positive for an illicit drug – on a confirmatory test;
5. Create head of power provision to allow the Commissioner of Police to suspend with or without pay – to include as a consequence – suspension of police powers – to be applied in significant circumstances/for significant reasons (eg remanded in custody by a Court; sentenced to a term of imprisonment; preliminary positive drug test; and regulatory licence cancellation/suspension) – which may significantly limit a member’s capacity to perform his/her role/duty/functionality; and
6. Retain Part VI – General rules relating to discipline – Police Force Regulations 1979 - with the exception of Regulation 625 – Disciplinary proceedings. Retained provisions to be amended to make contemporary in terms language and clarifying various rules relating to discipline.”

A legislative reform proposal was subsequently submitted to the (then) Minister for Police. The proposal remains in abeyance for consideration by the Minister and by Government.
3.0 PROFESSIONAL STANDARDS

3.1 Role and Responsibility

Professional Standards' primary role and responsibility is to establish, maintain and influence ethical and professional standards of behaviour and conduct. This is undertaken through benchmarking, complaint management and related policy, processes and practices, maintaining the WA Police Code of Conduct, managing disciplinary processes and practices, and investigating serious criminal and unprofessional conduct allegations against police officers.

The primary drivers are acceptance of responsibility and accountability at all levels within WA Police, willingness to internally report unprofessional conduct, timeliness and quality of investigations, cultural change to self regulation and positive peer pressure and achieving self sustaining ethical health.

The portfolio comprises the following business areas as depicted in Figure 1 below.

![PROFESSIONAL STANDARDS Organisation Chart](image)

*Figure 1: Professional Standards Organisation Chart*
Case Management/Recording System - Internal Affairs Professional (IAPro)

IAPro is a secure and restricted case management database system capable of recording a wide variety of information categories linked to police employees. The system, first implemented in WA Police in January 2007, collects data from various sources including complaints received, secondary employment applications, use of force reports, pursuit data, police crash data, early intervention actions, risk assessments, discipline and loss of confidence files. Other data types such as files, photographs and video information linked to a specific case can also be uploaded into IAPro. Additional data file categories can also be created and added to IAPro as required.

In addition to its database management functionality, IAPro has an early intervention capability, where automated alerts are activated if pre-set thresholds are breached aimed at identifying at-risk behaviours to allow early intervention and the application of remedial action before escalation occurs.

IAPro also incorporates an extensive analytical component capable of generating automated charts and reports for research and reporting purposes and for the identification of themes and trends in behaviour and culture.

Demonstrated benefits of IAPro include:

- Improved quality assurance in incident creation;
- Faster incident recording;
- Numerous information types are recorded in one central repository;
- Alerts are set on individuals and information categories to ensure key issues are not overlooked;
- Analysis of the incidents using charts and reports;
- Reduction in administrative tasks;
- Improved and accountable case management; and
- Ability to link and attach relevant investigative materials to the file for recall as necessary.

The Commission has online access to IAPro and it forms the basis of the agency’s reporting responsibilities to the Commission.

3.2 Police Complaint Administration Centre (PCAC)

The PCAC is responsible for the management and quality assurance (QA) of all complaints received by the agency. Complaints considered serious are referred to the IAU for examination, investigation and management.

PCAC are considered the gatekeepers for the agency with respect to complaints that fall within their area of responsibility to achieve and influence quality and timeliness
of investigations. Liaison with District and Divisions occurs on a daily basis in the ordinary course of business.

The PCAC has a total strength of 19 personnel headed by a Superintendent with a team of police officers and police staff.

PCAC assesses complaints and determines the manner in which they will be investigated, utilising a ‘Categorisation of Complaints’ document which has been agreed to by WA Police and the Commission (refer to Corruption and Crime Commission WA Police Categorisation of Complaints Valid at 01/07/2011 at Appendix 1).

This document provides a consistent basis for how allegations against officers are classified and recorded, and is a guide for the reporting of files at the conclusion of investigations.

The PCAC complaint assessment process is managed by the PCAC Complaints Management Team, consisting of an Inspector and a Senior Sergeant. This team assesses new complaint matters, categorises allegations and determines what action is to be taken (i.e. send to District/Division for inquiry or refer them to the PCAC Complaint Assessors for resolution).

Complaint allegations are classified into the following broad categories:

1st Level – Serious Misconduct – (matters primarily related to criminality including assault, stealing, corruption, drugs and information security (such as unauthorised access). These matters must be investigated using the fully assessable formal file format report).

2nd Level – Reviewable Police Action – (complaints relating to a breach of Equal Opportunity, lack of accountability, missing property/drugs/firearms, escape custody and use of force. These matters are referred to Districts/Divisions and are reported using the Short Format report template).

3rd Level – Reviewable Police Action - includes allegations of minor neglect of duty and/or professionalism (including things such as manner, procedure, and the attitude of officers). This category of complaint, whilst classified as a Reviewable Police Action, may be of a sufficiently minor nature that it may be reported upon using either the Short Format or Local Complaint Resolution (LCR) template. The required reporting format is determined in each instance by PCAC.

4th Level - Non-Reportable - by agreement with the Commission, these matters are considered non-reportable to the Commission and include breaches of the Emergency Driving policy, loss of accoutrements, etc.

Complaint investigation findings are classified according to the following categories:

- **Sustained:** The investigation disclosed sufficient evidence to clearly prove the allegation/s made in the complaint.
• **Not Sustained:** The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegation/s made in the complaint.

• **Unfounded:** The investigation indicates that the act/s complained of did not occur, or failed to involve police personnel.

• **Exonerated:** The act complained of did occur but was justified, lawful and proper.

A brief overview of the roles and areas of responsibility of PCAC is provided below.

### 3.2.1 Complaints Management

Processes are in place to provide the community with confidence to submit service delivery and officer conduct complaints against any police employee. All complaints received, whether internal or external, are initially recorded on a Complaint Advice Note (CAN)\(^2\), uploaded into IAPro and then managed and administered accordingly.

As part of the administration process, an assessment and triage of the complaint is undertaken with a view to quickly resolve those complaints of a minor nature utilising the desktop resolution process. Complaints are classified and allocated to Districts and Divisions for investigation.

Following the completion of the investigation and a QA process, investigation findings and outcomes are recorded against the subject officer’s complaint history in IAPro. Applicable actions can range from managerial intervention, to disciplinary charges and in some instances, a Commissioner’s LOC action.

Additionally, the Complaints Management area is also responsible for providing investigation files to the Commission for review upon request.

### 3.2.2 Early Complaint Assessment Team (ECAT)

The ECAT is a dedicated call taking facility comprising of five experienced police officers who deal direct with callers to PCAC. All complaints received are recorded in IAPro noting the nature of the complaint/extent of inquiry and outcome. The ECAT resolve approximately 50 percent of all minor complaints to the satisfaction of the caller. Serious complaints requiring further examination are referred by the ECAT for further investigation.

The ECAT, in the ordinary course of business, will conduct desktop investigations, requiring contact and liaison with Districts/Divisions to assist in the appreciation, conciliation and resolution process.

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\(^2\) A Complaint Advice Note is a document that records the complaint and details the alleged unprofessional conduct. The form is located on the Professional Standards intranet page for access by WA Police Employees.
3.2.3 Quality Assurance - Assessable Investigations

To ensure the uniform application of investigative standards and outcomes, a quality assurance review of completed investigations is undertaken for complaints where the alleged unprofessional conduct has been assessed as serious misconduct or reviewable police action.

This process also involves assessment on whether the investigation outcome is valid and when a complaint has been sustained, the appropriateness of the managerial intervention/suggested action. Should an issue not be resolved by the QA officer, the Superintendent PCAC will directly engage in discussions with the relevant District/Divisional Superintendent. Matters not resolved at that level are referred to the Assistant Commissioner Professional Standards for resolution.

A nomination for the issue of either an Assistant Commissioner’s Warning Notice or Commissioner’s LOC, requires the approval of the Assistant Commissioner Professional Standards to ensure consistency in application.

3.2.4 Liaison with the Corruption and Crime Commission

Senior officers within PCAC maintain regular liaison with the Commission on a range of issues of mutual interest and to ensure a high level of quality assurance is maintained and reporting obligations under the Corruption and Crime Commission Act 2003 are complied with.

3.2.5 Training and Consultancy Services

PCAC officers maintain regular contact with Districts and Divisions on matters relevant to the timeliness and quality of complaint investigations, providing advice, development and guidance to investigators, District/Divisional Superintendents and to local Governance Officers. Officers in Districts and Divisions are also encouraged to make contact with PCAC for advice and support. The relationships established enabled PCAC to not only positively influence and motivate effort toward the quality and timeliness of investigations, but also affords the opportunity to reinforce reporting obligations with respect to identified and reported unprofessional conduct.

In addition, PCAC provides lectures and instruction to Districts and Divisions and in training courses at the Police Academy, including various supervisor management courses.

3.2.6 Reporting Responsibility

PCAC and the Commission have collaborated to develop a reporting framework to ensure the reporting provisions and obligations, as legislated in the Act, are complied with [refer to Police Complaint Administration Centre (PCAC) – Complaint Management and CCC Notification Flowchart at Appendix 2].
3.3 Internal Affairs Unit (IAU)

The IAU has both an overt and covert investigative capability and in summary, is responsible for:

1. The receipt, assessment and investigation of reports of Unprofessional Conduct, Critical Incidents and Reviewable Police Action where the conduct is of a corporate and/or public significance;
2. Identifying and investigating allegations of Corruption and Serious Unprofessional Conduct and the development and implementation of strategies to minimise opportunities for corruption. Investigations include, but are not limited to allegations of criminality, deaths in police custody, and the unauthorised release of information, improper use of computers, drug use and improper associations;
3. The investigation of all discharges of firearms (other than in training); and
4. Active oversight of investigations outsourced from IAU to Districts and Divisions for investigation, including investigations by the Major Crash Unit into emergency driving deaths.

These activities are complimented by the Behavioural Assessment Unit and the Personnel Security Vetting Unit. Other areas of the portfolio such as the PCAC and the Management Audit Unit provide administrative, intelligence and investigative assistance to the Unit.

3.3.1 Behavioural Assessment Unit (BAU)

The BAU is primarily responsible for proactively identifying behavioural issues and trends of police officers, police staff, or any business units, through its Early Intervention Program (EIP). Where an adverse pattern of integrity, honesty, behaviour, performance and/or ethical issue is identified, BAU will develop an early intervention and or risk management strategy to mitigate and manage the at risk behaviour.

In addition to its EIP responsibilities, BAU undertakes a number of other proactive activities and strategies to improve and enhance the ethical and professional culture of the agency by:

- Undertaking pre-employment and contractual integrity checks of all prospective recruits, employees and contractors accessing WA Police sites;
- Management of BlueLine - the confidential internal complaints reporting system;
- Management of the Supported Internal Witness Program;
- Management of Public Interest Disclosure requirements;
- Management of the Declarable Associations Policy;
- Provision of complaint histories for use in the internal investigation process;
- Preparation of employee Early Intervention Reports;
• Conducting random, mandatory or targeted alcohol or drug testing of police officers; and
• Management of IAPro.

3.3.1.1 Early Intervention Program (EIP)

In July 2011, BAU formally introduced its EIP. Early intervention concerns the identification of individuals and business units at risk of likely, or demonstrated unprofessional conduct and/or corruption and taking positive steps to intervene in mitigating and managing the identified risks. The intent is to also reinforce managerial accountability and acceptance of responsibility and accountability at the local level.

It is important to note the EIP does not rely solely on complaint data alone to premise effort and actions in this regard. For an EIP to be relevant, it must act as an “early warning system” that can identify emerging trends in unprofessional conduct from a wide range of indicators. This enables a proactive investigative effort to be directed to the areas and issues of greatest risk.

EIP has contributed to an increase in internal reporting and improved confidence by agency personnel to internally report, on demonstration that such reports are actioned and subject officers held accountable.

Early intervention consists of:

1. Identifying behavioural traits/conduct indicative of or that may perpetuate into unprofessional conduct and/or unethical culture; and
2. Assisting individuals and business units in preventing or reducing unethical conduct through intervening early.

WA Police is committed to enhancing its ethical health and has developed a four stage approach to early intervention which comprises the following steps.

1. Identifying present, emerging and/or potential at risk behaviours that may amount/contribute to unprofessional conduct;
2. Assessing those behaviours with key stakeholders;
3. Intervening with individuals or business units to develop appropriate strategies to correct behaviours inline with the WA Police Code of Conduct and the Agency’s core values; and
4. Reviewing the outcomes of strategies implemented.

The BAU has identified, implemented and monitors a number of behavioural and environmental performance indicators that include:

• Alcohol and Drug Use;
• BlueLine;
• Complaints against WA Police employees;
- Conduct Information Reports;
- Declarable Associations;
- Early Intervention Risk Indicator Reports;
- Emergency Driving incident data;
- WA Police Gift Register;
- Incidents of Death/Injury in Custody;
- Police crash data;
- Positive correspondence;
- Professional Conduct Checks;
- Results of internal audits;
- Results of Internal Affairs Investigations;
- Secondary employment information; and
- Use of Force (UOF) data.

Analysis of the behavioural/performance indicators is continually undertaken by BAU to determine and identify emerging trends or issues at an individual, business area or agency level that require intervention. When risks are identified, causal/contributory factors underpinning the conduct in question, are analysed to assist in the implementation of appropriate intervention. Issues identified may include:

1. A lack of understanding of WA Police policy/procedure by an individual/business area.
2. Individual/group behavioural issues.
3. Aspects of individual ethics, integrity, professionalism or the ethical health of WA Police.
4. Conflicts of interest.
5. Policy and standard operating procedures that require amendment.

The information and intelligence gathered by BAU is integrated with the other activities within the portfolio and often forms the basis for other covert and overt investigative effort. Figure 2 hereunder depicts the proactive effort being undertaken by BAU.
The implementation and promotion of the EIP throughout the agency has had a noticeable impact on the willingness of WA Police personnel to identify and report unprofessional conduct. In the last three years, internally generated reports have significantly increased, whilst external reports exhibited a downward trend. This is indicative of the success of the EIP and a reflection of the maturing ethical health of the agency. Figure 3 clearly demonstrates the increasing trend in this regard.
3.3.1.2 Alcohol and Drug Testing

The Police Force (Member Testing) Regulations were enacted in 2011. The Regulations allow for random, mandatory (high risk business areas) and targeted tests, and to date, no officer has tested positive to alcohol or drugs following a critical incident.

A targeted test may be conducted when there is credible information, intelligence or suspicion that a selected member may be affected or impaired by alcohol or drugs, or may have taken or ingested targeted drugs at any time. The authority enables police officers to be recalled to duty for the purpose of testing.

Testing of police officers and auxiliary officers commenced in November 2011. As at 22 July 2012, 1,329 officers have been subject to alcohol and drug testing. Two officers tested positive to illicit drugs and three to alcohol in excess of 0.02%. One officer resigned after tampering with a sample.

3.3.1.3 BlueLine

The BlueLine is a confidential, dedicated telephone line for WA Police personnel who are seriously concerned about the unprofessional conduct of any WA Police member/employee.

Callers are electronically offered the choice of direct communication or anonymous reporting. Calls to the BlueLine are not traced and information is treated with the highest possible degree of confidentiality. Calls are free and may be made 24 hours a day.

The facility is also available for police personnel seeking advice on ethical issues they feel they are unable to discuss with a senior officer or a colleague.

Personnel accessing the BlueLine will:

- Receive a randomly selected Caller Code Number which they can quote if they make subsequent calls to the BlueLine; and
- Be afforded personal support and assistance, for example, referral to the Supported Internal Witness Program, if required.

Figure 2 at page 15 depicts the success of BlueLine which shows a significant increase in the number of reports made in the last three years.

3.3.1.4 Supported Internal Witness Program

It is agency policy to assist and support WA Police personnel who report unprofessional conduct.

The purpose of this Program is to influence, promote, encourage and demonstrate that WA Police will support and assist its employees to report unprofessional conduct, no matter what the issue might be or who it might involve. Employees involved in the Program are afforded the confidence that their personal safety and
future in the agency will be protected and the reported matter both fully examined and investigated.

3.3.2 Internal Affairs Covert Services

IAU has developed and maintains a covert investigation capacity independent of the State Intelligence Division. IAU regularly consults with the Commission to ensure there is no duplication of effort and to mitigate risk against the possibility of operations being compromised by the activities of both organisations.

Both the Commission and IAU have the capability to undertake integrity testing, albeit the Commission has the legislative authority to employ strategies and undertake certain acts that IAU have no such authority to do. The Criminal Investigation (Covert Powers) Act 2011 (when enacted) will however, enable IAU to enhance and extend its integrity testing program.

The use of integrity testing by IAU is becoming more frequent, rising from one test in 2009/10 to six in 2011/12. The Commission has had no impact upon or involvement in these operations. During the period 2011/12, there have been no joint Commission and IAU covert investigations.

WA Police is not advised on integrity testing conducted by the Commission.

Integrity testing is a useful tool in verifying or refuting unsubstantiated reports/allegation/rumours of serious unprofessional conduct and it has been successful in causing the voluntary resignation of officers suspected of having engaged in serious unprofessional conduct. Material and evidence gained through the conduct of integrity tests, may form the basis for a Commissioner’s LOC action.

3.3.3 Personnel Security Vetting Unit

The Kennedy Royal Commission recommended the introduction of security vetting as a corruption prevention strategy. The Unit undertakes this activity for personnel assigned to designated high risk areas and officers in senior executive level positions.

The vetting process incorporates an extensive and intrusive examination of an applicant’s financial and personal affairs. Information provided that is considered a corruption risk is populated into the intelligence cycle for formal investigation. Such risks include inappropriate associations, extent of gambling habits, financial stress, extra marital/relationships and sexual affairs all of which may render an officer susceptible to corruption or other serious unprofessional conduct.
3.4 Ethical Standards Division (ESD)

The primary role of ESD is to manage the Commissioner’s LOC process and to prepare and manage disciplinary charges. The ESD is headed by a Superintendent and staffed primarily with Inspectors who conduct formal reviews of LOC nominations in accordance with legislative provisions. On completion of formal reviews, recommendations are referred to the Assistant Commissioner Professional Standards before referral to the Commissioner of Police.

3.5 Management Audit Unit (MAU)

The MAU is a small, dynamic, and multi-disciplinary team of 12 personnel, established to independently and impartially appraise the activities, operations and systems of the WA Police.

Section 53(1)(d) of the Financial Management Act 2006 (FMA) requires the Commissioner of Police, as the Accountable Authority, to maintain the function inter alia of:

“...developing and maintaining an effective internal audit function for the agency...”

The establishment of the MAU discharges the obligations of Commissioner of Police under the FMA and plays an important role in providing independent advice to management with regard to the agency’s efficient, effective and economic operation. The MAU assists management to achieve sound managerial practice over all aspects of the agency’s activities and operations by undertaking key audit functions including:

- Assurance and Control Audits;
- Comprehensive Audits and Reviews;
- Coordination of the Business Area Management Review (BAMR) Program; and
- Other associated audit activities.

During 2011, the work of the Unit was further enhanced by the return of the Unit to the Professional Standards portfolio. This placement recognised the intrinsic link between the governance and assurance roles of MAU with the broader standards of agency professionalism and integrity.

Greater synergies have been achieved through a bi-partisan working relationship with other portfolio business areas linking common goals, objectives and outcomes. The pooling of resources and expertise in joint investigations/reviews has contributed to enhancing governance and professional ethical behaviour across the agency. For example:

- Referral of BAMR audit reports to the BAU for recording and profiling purposes;
• Specific audit issues identified and MAU Internet usage reports are referred to the IAU for further investigation where appropriate; and
• Joint examination of malpractice allegations from an auditing and police complaint perspective.

The Unit’s current form and business model is strategically placed to augment the intent and deliverables of the portfolio and accordingly make a significant joint contribution to the ethical health of the agency. In turn, the combined efforts of the portfolio’s business areas is achieving greater personal acceptance for “doing the right thing” and “doing things right”.

In order to maintain the independence of the internal audit function, the Unit has an administrative reporting relationship to the Assistant Commissioner Professional Standards and a functional reporting relationship to the Commissioner of Police and the Audit and Risk Management Committee.

4.0 INTERNAL INVESTIGATION, QUALITY ASSURANCE AND COMPLAINT MANAGEMENT

WA Police has a highly developed internal investigative framework primarily undertaken by PCAC and IAU, which is supported by a robust quality assurance process. Central to this capacity is the IAPro case management system.

4.1 Police Complaint Administration Centre

4.1.1 Receipt of Complaints

Complaints against police officers and police staff (both internal and external) can be made by either writing, attending at police stations, by telephone, electronically by email, and by on-line reporting via the WA Police website. WA Police place significant importance on providing community members easy and convenient ways to make and communicate complaints against police.

Complaints may also be made to BlueLine or direct to the Commission, whom after assessment, may refer the complaint to WA Police for investigation.

Once received, complaints are recorded on a Complaint Advice Note (CAN) with the relevant information captured electronically in IAPro. As previously detailed, the Commission has restricted access and visibility over the database contents. All complaints are referred electronically to the Commission as part of the official notification process.

4.1.2 Assessment of Complaints

All complaints received by PCAC are assessed by a ‘Triage Team’ which is managed by the Complaints Manager who is an officer at the rank of Inspector. All complaints are categorised utilising a classification schedule (as agreed to by the Commission and WA Police) and allocated for investigation in accordance with allocation protocols detailed in the MIM. Allegations received involving corruption and/or serious unprofessional conduct, are referred to IAU.
4.1.3 Investigation of Complaints

PCAC categorises complaint investigations in accordance with the following categories:

1. Reviewable Police Investigation
   Due to the serious nature of these types of complaints a formal and comprehensive investigation is undertaken. (Fully Assessable Investigations).

2. Short Format Report
   A Short Format type of investigation is a less comprehensive investigation utilising the short format report template. These types of investigations may include all internally generated complaint files concerning police officers and those external complaints that according to PCAC categorisation are above the requirement of a Local Complaint Resolution or below that required for a serious unprofessional conduct matter.

3. Local Complaint Resolution (LCR)
   These types of investigations include complaints related to communication and customer service issues involving matters such as rudeness, poor attitude and practice, careless and inadequate service, or a failure to adequately explain lawful police procedures. The method used for these types of complaints is less formal in nature and usually involves conflict resolution and local management solutions. This approach maintains an effective means of dealing with these types of complaints, while maintaining the required level of thoroughness and accountability.

All investigations must align with the WA Police Complaints against Police Investigation Guidelines\(^3\). Investigations are subject to strict time frames and are monitored and managed by PCAC. There is a timeframe of 60 days for fully assessable and short format inquiries and 30 days for the LCR process. Any extension in time must be approved by the respective Assistant Commissioner. Approval may only be granted for periods of 7, 14 or 21 days.

4.1.4 Quality Assurance of Investigations

On completion of investigations, investigation files are returned to PCAC for Quality Assurance (QA) and review by senior officers. The QA process examines the quality and standard of the investigation and the appropriateness of findings and outcomes. Should the QA identify issues of a substandard nature, the investigation file is returned to the respective district/division for remedial action. On satisfactory completion, all relevant materials are scanned into IAPro. All investigation files and complaint matters may be subject to further review/examination by the Commission.

4.1.5 Investigation Doctrine

The WA Police Investigation Doctrine introduced by the WA Police in 2010, provides clear guidance on the style and manner in which all investigations are to be conducted and is a key platform in standardising quality investigative practices

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\(^3\) Guidelines are on WAPOL Professional Standards intranet site.
across the agency. It provides practical guidance and instruction on investigative process to facilitate common standards for all WA Police investigations. It provides an enhanced methodology ranging from simple to indictable offences and introduces the CRIME Model:

1. Contact
2. Respond
3. Investigate
4. Manage
5. Evaluate

The doctrine is applied to the investigations of ‘Unprofessional Conduct’ and introduced The Five Key Investigative Strategies (The 5Kl'S) which are a practical means of identifying investigative actions and ensuring a thorough investigation in a structured framework. The 5KI’S detail investigative strategies in the areas of:

1. Physical Material
2. Witnesses
3. Intelligence
4. Public Awareness
5. Suspects/Persons of Interest (POI)

The strategies assist the investigator to:

1. Minimise the potential for ‘tunnel vision’ and/or premature closure.
2. Identify all possible avenues of inquiry.
3. Collate and prioritise investigative actions in each area.
4. Determine resource requirements such as the number of investigators and levels of expertise required.
5. Brief the investigative team and/or supervisors on the investigation status.

4.1.6 Investigations Generally

A police officer remains both responsible and accountable for his/her conduct and behaviour whether on duty or not and managerial and behavioural interventions will occur for unprofessional conduct in every instance, no matter where the conduct and behaviour occurs, whether in Western Australia or not.

The same approach is applied to internal investigations. Should a complaint against police allege criminality, the investigation will take the form of a criminal investigation and outcomes will be considered in the context of the agency’s Prosecution Policy.

Should criminal charges be preferred, managerial intervention/behavioural modification to either manage or deal with unprofessional conduct will occur
simultaneously to the criminal matters. Neither is dependent on the other, nor should one influence the other in any way.

Both processes rely on the same facts in issue albeit criminal matters are judged on the basis of the criminal proof whilst managerial/behavioural matters are judged on the civil proof. It is common for managerial/behavioural considerations to occur well before the outcome of a contested criminal matter is known.

In its recent report into misconduct handling practices in WA Health, the Commission acknowledged that:

“Western Australia Police is an organisation that is also under constant public scrutiny. It has a long standing, generally highly effective misconduct management mechanism.”

When comparing the WA Health Department and WA Police misconduct management systems, the Commission outlined that in WA Police:

“There is a sophisticated internal quality assurance process at the centre of the organisation that seeks to ensure equitable outcomes, and attends to policy and procedural issues highlighted by internal investigations. The central quality assurance process is sufficiently resourced and maintains sufficient information to identify trends and issues.

Western Australia Police initially commenced with a centralised model similar to Department of Education and evolved to the decentralised approach at a point when their misconduct management mechanism was mature enough to do so with confidence”.

4.2 Internal Affairs Unit (IAU)

4.2.1 Investigation Sources

The IAU sources investigations from three areas.

1. Public Sources - in addition to direct public complaints, these sources include Crime Stoppers, the media, referrals from the Commission, Coroner and other agencies. The Unit engages in human source management as a means of identifying officers and business areas engaged in misconduct and serious misconduct.

2. Internal Sources – refers to employees and sources within the agency and includes BlueLine reports, audit results and referrals from the PCAC Complaints Administration Centre. The Unit monitors the day to day business activity reports (District Alert System and other reports) to identify instances of misconduct and reviewable police action requiring intervention and investigation.

3. Critical Incidents – refers to any contact between police and the public where the act/omission of police may have contributed to death or serious injury. Such instances include deaths in police custody or police presence; emergency driving; and/or the use of force application.

4.2.2 Critical Incident Investigations

Upon receipt of information that a critical incident has occurred, the IAU applies the following actions:

1. The ‘golden hour’ rule applies with efforts made to exercise command and control over the scene within an hour. IAU provides a 24 hour, 7 day a week on call investigative service.

2. Command and control of those incidents occurring in Regional WA is exercised in the first instance by remote communication with senior officer/s responsible for the District in which the incident occurs. IAU will then attend as soon as it is possible to do so.

3. There are no after hours reporting protocols with the Commission. In respect to a critical incident resulting in death, the office of the State Coroner is immediately advised.

4. In all instances the critical incident and/or report of misconduct, serious misconduct is entered onto IAPro and email advice is provided to the Commission.

As the Commission has visibility over IAPro, it has the capacity to intervene and engage with any investigation recorded by IAU. There are no known examples of the Commission exercising ‘active oversight’ of critical incident investigations conducted by IAU.

In respect to critical incident investigations, IAU have adopted and apply the principles published in the report ‘Review of the Investigation Process following a Death Associated with Police Contact’ produced by the Victorian Office of Police Integrity in June 2011.

In the 2011/12 reporting period, there have been no adverse reports by the State Coroner in respect to the quality of IAU investigations in this regard.

4.2.3 Quality Assurance of Investigations

The IAU undertakes its own QA processes throughout an investigation (refer to Internal Affairs Unit Investigation Management Workflow at Appendix 3) and will provide status reports to the Commission when requested. The Commission plays no role in the quality assurance processes during the life of an investigation and undertakes a review upon completion of the investigation.

All information and Incident Reports received are assessed and additional analytical work undertaken to assist with determining what action needs to be taken. Critical incidents are responded to immediately.
On completion of the assessment process, the matter is referred to the Tasking and Coordinating Group and allocated for investigation. Throughout the life of the investigation, the methodology and evidence is frequently reviewed and assessed to ensure all pertinent and known avenues of inquiry are followed and the conclusions and recommendations consistent with the evidence and relevant facts in issue. The frequency of these reviews may alter depending upon the urgency and criticality of the incident/information, but at a minimum, occur weekly.

The IAU selects contemporary experienced and trained investigators, commencing at the rank of Detective Sergeant. Investigation oversight occurs at all supervisory (Detective Senior Sergeant position) and management levels (Detective Inspector positions) and the Detective Superintendent conducts the final review of all investigations. The Unit is unique with respect to the levels and extent of the supervisory and management oversight applied.

The quality assurance of IAU investigations remains a routine and regular process of review throughout the life of an investigation. Modifications and improvements to IAU procedures and practices are now internally driven and are not reliant on Commission intervention and/or oversight.

Criticisms of IAU by the Commission arising from the 2008 Perth Watch House investigation (Spratt), are to be balanced against recent Commission observations indicating significant improvements in the IAU quality assurance process.

In the Systems Based Evaluation Audit undertaken by the Commission during the 2011/12 reporting period, IAU was found to have a 100% adequacy rate.

### 5.0 MANAGERIAL INTERVENTION MODEL (MIM)

It is the policy of the WA Police that all managers and supervisors will in the first instance, adopt a managerial approach to the resolution of demonstrated and identified unprofessional conduct.

The MIM (refer to HR-31 Management Intervention Model WA Police Policy at Appendix 4) is a remedial/developmental approach which recognises that officers will make honest mistakes and provides for a ‘fair go’ approach to changing behaviour and conduct and to achieve improvement in both individual and organisational performance. The MIM involves development of local management intervention strategies to rectify/modify at risk behaviours or other unprofessional conduct/performance traits, with a remedial/developmental focus, rather than the imposition of traditional punitive sanctions.

A guidelines document has also been established and is published on the WA Police Intranet site to assist supervisors and managers with the MIM policy.
For serious breaches of unprofessional conduct and for those matters that cannot be reasonably dealt with by way of managerial intervention and behavioural modification, disciplinary charges and Commissioner’s LOC action may be considered. Both are considered high end outcomes and both are premised by legislative provisions under the *Police Act 1892* and the Police Regulations 1979. Prior to progressing either disciplinary charges or Commissioner’s LOC action, the approval of the Assistant Commissioner Professional Standards is required to ensure consistency of application.

### 6.1 Discipline

On a disciplinary charge being laid, the material facts and charge/s are presented to the subject officer who has the option to plead guilty or not guilty. In the case of a guilty plea, the matter is referred before the Deputy Commissioner who presides over a Defaulter Parade. The subject officer can address the Deputy Commissioner in mitigation and an outcome in accordance with provisions of s.23 of the *Police Act 1892* is considered. The legislated options include a reprimand, fine, demotion, reduction in salary, suspension or dismissal.

In the case of a not guilty plea, the Commissioner of Police will appoint an Investigative Examining Officer (which over time has become known as a Hearing Officer), usually an Assistant Commissioner, to hear and consider all the material evidence and relevant facts in issue before coming to a decision. Contrary to what was originally intended by the legislation, the process has taken a criminal court setting and criminal law procedures are applied when what was intended was a review process by a senior police officer.

Additionally, the process has been hijacked by legal argument and legal particularisation and accordingly, disciplinary charges are now fewer in number. The value of disciplinary charges is also now in question in terms of the capacity for them and the process, to modify behaviour and conduct, being punitive by intent and design. The outcome of a disciplinary charge/s may be appealed to the Police Appeal Board which is enacted by the *Police Act 1892*.

### 6.2 Commissioner of Police Loss of Confidence

Should a matter be referred to the Commissioner’s LOC process, an ESD Inspector is appointed as the Review Officer in accordance with the provisions of the *Police Act 1892*. This officer independently and objectively reviews the available evidence and material contained within the internal investigation file. Following review and analysis, the Review Officer formulates a recommendation for consideration.

The review outcome is first presented to the Commissioner’s Legal Counsel for an opinion. The Review Officer personally briefs the Assistant Commissioner Professional Standards for consideration by him to ensure consistency in application and to ensure the recommendation is reasonably premised. Subject to the action being supported by the Assistant Commissioner Professional Standards, the
submission is forwarded to the Commissioner of Police for consideration and determination.

Part IIIB of the *Police Act 1892* articulates the various stages and processes in the Commissioner’s LOC process. Should an officer be removed from WA Police, an avenue of appeal exists in law to the WA Industrial Relations Commission.

The independence of the ESD, together with legal validation from the Commissioner’s Legal Counsel and consideration by the Assistant Commissioner Professional Standards, are the key to ensure validation and consistency of the process and outcomes. Ultimately, it is the Commissioner of Police who makes the final decision and he should not be influenced by anything other than the materials that give rise to the LOC and relevant legal advice.

6.3 Outcome of Statutory (Criminal) Charges

All District and Divisions have the capacity to prefer criminal charges against police officers. The following depict the number of statutory and criminal charges preferred by IAU and Districts/Divisions.

**Statutory Charges Preferred by IAU**

<table>
<thead>
<tr>
<th>Outcome</th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty Plea</td>
<td>3 0 1</td>
<td>5 1 3</td>
<td>8 1 3</td>
</tr>
<tr>
<td>Convicted at trial</td>
<td>3 0 1</td>
<td>5 1 3</td>
<td>8 1 3</td>
</tr>
<tr>
<td>Acquitted at trial</td>
<td>5 0 1</td>
<td>2 1 0</td>
<td>2 0 0</td>
</tr>
<tr>
<td>Yet to appear in Court</td>
<td>4 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td>8 0 2</td>
<td>7 1 1</td>
<td>14 1 4</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>10 9 19</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Figure 4: Statutory Charges Preferred by IAU*

**Statutory Charges Preferred by Districts/Divisions**

<table>
<thead>
<tr>
<th>Outcome</th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty Plea</td>
<td>6 6 2</td>
<td>9 2 1</td>
<td>2 1 1</td>
</tr>
<tr>
<td>Convicted at trial</td>
<td>6 6 2</td>
<td>9 2 1</td>
<td>2 1 1</td>
</tr>
<tr>
<td>Acquitted at trial</td>
<td>0 0 0</td>
<td>4 1 1</td>
<td></td>
</tr>
<tr>
<td>Yet to appear in Court</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td>6 6 2</td>
<td>14 2 2</td>
<td>4 1 1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>14 18 6</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Notes: Acquitted at trial includes matters Discontinued, Dismissed and Not Proven.*

*Other personnel include Traffic Wardens, Custodial Officers and members of the public.*

*Figure 5: Statutory Charges Preferred by Districts/Divisions*
6.4 Outcome of Section 23 Disciplinary Charges

Section 23 of the *Police Act 1982* provides for the preferring of internal disciplinary charges' as outlined in the Police Force Regulations 1979.

6.4.1 Disciplinary Charges Preferred by Districts and Divisions

The following is a summary of District/Division preferred disciplinary charges.

**Section 23 Charges Preferred by Districts/Divisions**

<table>
<thead>
<tr>
<th></th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Police Officers</td>
<td>Police Officers</td>
<td>Police Officers</td>
</tr>
<tr>
<td>Guilty Plea</td>
<td>7</td>
<td>5</td>
<td>1</td>
</tr>
<tr>
<td>No Hearing Held</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Yet to be Heard</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>9</strong></td>
<td><strong>6</strong></td>
<td><strong>1</strong></td>
</tr>
</tbody>
</table>

*Figure 6: Section 23 Charges Preferred by Districts/Divisions*

Part IIIB of the *Police Act 1892* provides for the Commissioner Loss of Confidence provisions, which allows the to review the allegations made against the officer and to determine if confidence can be retained to remain in the agency.

The following is a summary of District/Division PCAC managed files resulting in referral to the Commissioner's Loss of Confidence process by the Assistant Commissioner Professional Standards.

**Commissioner’s Loss of Confidence Process**

<table>
<thead>
<tr>
<th></th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Police Officers</td>
<td>Police Officers</td>
<td>Police Officers</td>
</tr>
<tr>
<td>LOC Nomination</td>
<td>13</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Dismissed</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Resigned</td>
<td>6</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Returned to Duty</td>
<td>3</td>
<td>4</td>
<td>3</td>
</tr>
</tbody>
</table>

*Note: Officers 'returned to duty', are those officers who, following review of relevant materials by the Commissioner of Police, (including the officer's response to the LOC grounds), the Commissioner of Police has retained confidence in the officer's ability to remain a member of the WA Police Force. In such cases, the Commissioner of Police can refer the matter for an internal discipline charge and/or impose relevant behavioural modification actions as available through the Managerial Intervention Model or alternatively, impose no sanction at all. The officer then resumes normal duties.*

*Figure 7: LOC referrals by Districts and Divisions for consideration by Commissioner of Police*
6.4.2 Disciplinary Charges Preferred by Internal Affairs

The following is a summary of IAU managed files resulting in disciplinary charges.

Section 23 Charges Preferred by IAU

<table>
<thead>
<tr>
<th>Outcome</th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guilty Plea</td>
<td>Police Officer</td>
<td>4</td>
<td>9</td>
</tr>
<tr>
<td>No Hearing Held</td>
<td>Police Officer</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Withdrawn</td>
<td>Police Officer</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Yet to be Heard</td>
<td>Police Officer</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>5</td>
<td>11</td>
<td>3</td>
</tr>
</tbody>
</table>

*Figure 8: Section 23 Charges preferred by IAU*

Following is a summary of IAU managed files resulting in referral for the Commissioner's Loss of Confidence process by the Assistant Commissioner Professional Standards.

Nominations for Commissioner’s Loss of Confidence Process by IAU

<table>
<thead>
<tr>
<th>Outcome</th>
<th>2009/10</th>
<th>2010/11</th>
<th>2011/12</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOC Nomination</td>
<td>Police Officer</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Dismissed</td>
<td>Police Officer</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Resigned</td>
<td>Police Officer</td>
<td>4</td>
<td>6</td>
</tr>
<tr>
<td>Reinstated</td>
<td>Police Officer</td>
<td>6</td>
<td>6</td>
</tr>
</tbody>
</table>

*Note: Officers ‘returned to duty’, are those officers who, following review of relevant materials by the Commissioner of Police, (including the officer's response to the LOC grounds), the Commissioner of Police has retained confidence in the officer’s ability to remain a member of the WA Police Force. In such cases, the Commissioner of Police can refer the matter for an internal discipline charge and/or impose relevant behavioural modification actions as available through the Managerial Intervention Model or alternatively, impose no sanction at all. The officer then resumes normal duties.*

*Figure 9: LOC referrals by IAU for consideration by Commissioner of Police*
7.0 IMPACT OF THE CORRUPTION AND CRIME COMMISSION’S PRACTICES ON THE CAPACITY OF WA POLICE TO DEAL WITH POLICE MISCONDUCT

7.1 The Impact of Closed Commission Hearings on the Capacity of WA Police to Deal with Unprofessional Conduct

The Commission, from time to time, conducts closed hearings on matters relative to WA Police. These are conducted in the absence of any communication or consultation, leaving WA Police exposed in terms of its ability to managerially deal with officers who may have engaged in unprofessional conduct.

By way of example, in 2010, the Commission undertook closed hearings into a historic matter (1990) involving the discharge of a firearm by police, resulting in serious injury to Mr Ian Quartermaine. Seven officers were called to give evidence and the Commissioner of Police was not accordingly informed.

The officers were not permitted to communicate the fact the Commission was holding a hearing and the evidence given on policy and practices, was not challenged and was later found to be erroneous. Involving WA Police in such matters would assist the Commission in sourcing accurate, contemporary information, whilst at the same time affording WA Police the opportunity to manage both the subject officers and any operational risks that may present.

In the example above, had the Commission communicated with the WA Police and sought a submission, or indeed extended an invitation for a representative to observe, the probative value of the hearing would have been enhanced. Additionally, WA Police would have been able to assess the extent to which the involved subject officers posed a risk both operationally and from a health and welfare perspective.

Additionally, the Commission did not disclose the names of the officers and made recommendations for changes to procedures that existed 20 years previously and which no longer applied. The hearings failed to examine then current practices, rendering the recommendations meaningless and irrelevant.

The Parliamentary Inspector undertook his own examination into the adequacy of the Commission response to the complaints of Mr Quartermaine and commented;

“I should also mention that in this report I quote from a letter addressed by the CCC to the Commissioner of Police which is critical of police procedures. I should make two comments in that respect (arising from the Commissioner’s submission to me). The first is that WAPOL was not a party to, or an observer at, the CCC hearings that led to those criticisms and is consequently in no position to assess their validity. The second is that the Commissioner of Police has informed me that, in any event, since the events considered in this report (which took place as long ago as 1990), WAPOL has taken significant steps to improve its response to and investigation of ‘critical incidents’ arising from the discharge of firearms.”
The practice of isolating the Commissioner of Police from such hearings inhibits his ability to make proper assessments about the conduct of individual officers. Whilst the Commission may form opinions and make recommendations pursuant to s.53 of the Act, the same legislation provides the findings cannot be used by the Commissioner of Police to form an opinion as to the suitability of a police officer to remain a member of the WA Police, or indeed to take any other action. In effect, WA Police then has to conduct another investigation to achieve the same outcome. Accordingly, misconduct findings are limited and questionable in terms of value and practical application.

In the past, the Commission has conducted three audit type reviews of WA Police and in draft reports that followed, significant criticism was responded to by WA Police in absolute terms. The process of responding and subsequent engagement with Commission officers proved exhaustive if not frustrating. The three reports were eventually amalgamated into one report which WA Police further responded to.

It remains unclear to WA Police whether the audits were conducted under the provisions of s.17 (prevention and education function) or s.18 (misconduct function) of the Act. The Commission argued the audits were conducted in accordance with the latter provision with WA Police offering a counter argument. In any event, putting aside the findings and recommendations, they were mostly out of date by the time they were published and of limited value.

WA Police argues the Commission does not sufficiently invest in the prevention and education function and when an adverse matter is identified, it should be immediately communicated to WA Police so that remedial action can occur, not simply left to make a point in a report that will not be published for two to three years as in the case above.

A further example of the indifference that occurs from time to time with the Commission is in the Spratt/Perth Watch House Taser matter. In a draft report on the Commission Review on Tasers, a notation was included that WA Police had adequately investigated the matter, a position the Commission later withdrew from. The withdrawal was particularly disappointing to WA Police given the history and consequences of that matter.

7.2 Communications between the Commission and IAU

Whilst the relationship between IAU and the Commission at the operational level can be described as professional and cooperative, there are instances in which the Commission will issue a s.42 Notice prohibiting IAU from investigating a matter, undertake their own investigation for a period of time and then refer the inquiry back to WA Police without explanation or advice as to the nature of the inquiries conducted and the evidence found.

In these circumstances, IAU is required to commence its own investigation, often duplicating the work of the Commission. This results in lost effort and time and is counter productive.
7.3 Joint Investigations

The IAU is open to the concept of undertaking joint investigations with the Commission, and believes there is value in conducting joint protracted and complex investigations. However, in the preceding three years, there has only been one such joint operation. That operation resulted in the successful criminal prosecution of a police officer then attached to the Telephone Intercept Unit for releasing information to an organised crime group.

Ultimately, the decision to undertake a joint investigation lies with the Commission.

7.4 Impact of Section 42 Notices (Commission may direct appropriate authority not to take action)

Under s.42 of the Act, the Commission may, by written notice, direct WA Police to either not commence an investigation of a misconduct matter or, if an investigation has already commenced, to discontinue the investigation. It is the firmly held view of WA Police that in cases such as these, WA Police needs to be engaged to ensure officer management with respect to managerial and risk management intervention occurs.

With the exception of those ‘misconduct matters’ subject of a Notice issued pursuant to s.42 of the Act and investigated by the Commission itself, each and every report made to it, is returned to IAU for investigation pursuant to s.33 and s.37 of the Act.

![CCC Section 42 Notices Issued to WA Police](image)

Figure 10: Commission Section 42 Notices Issued to WA Police 2009/10 – 2011/12

The increase in s.42 Notices in the period 2011/12 outlined in Figure 10, above, is a direct result of the engagement of the Commission in the investigation of ‘Use of Force’ incidents (Reviewable Police Action). There has been no change in the Commission’s level of involvement in critical incident or serious misconduct investigations.
8.0 CONCLUSION

WA Police recognise that like every police jurisdiction both nationally and internationally, it is not immune from corruption, criminality and/or serious misconduct by its people. WA Police is however, confident that it has in place sufficiently robust and proven policies, practices and processes to identify, report and investigate incidents of unprofessional conduct.

The agency has also heavily invested in building corruption resistance, positive peer pressure and self regulation through initiatives such as the Early Intervention Program and Alcohol and Drug testing. Organisational maturity has been achieved in identifying, reporting and investigating incidents of unprofessional conduct, a position recognised by the Commission and demonstrated by the content of this submission. The challenge remains to sustain and improve in this regard, further building on the ethical health of the agency.

The submission has raised and commented on a number of Commission practices that are adversely impacting on the capacity of the WA Police to effectively deal with and respond to incidents of unprofessional conduct and procedural matters, in a timely manner.

WA Police welcomes fair and balanced comment from the Commission in all forms that may be provided. Although this submission includes comment that may be perceived to be critical of the Commission, WA Police nevertheless remains committed to working with the Commission and other oversight authorities to continue to improve the ethical health of the agency.
Appendix 1

Corruption and Crime Commission

WA Police

Categorisation of Complaints

Valid at 01/07/2011

This document is to be used for the categorisation of all matters received at either PCAC or IAU. Consideration needs to be given to the seriousness of the matter, which category best suits the issues and the level of inquiry required. For matters which appear to be of a very minor nature guidance is available within the Parliamentary Commissioner Act 1971 Section 18(1) which provides for no investigation to be conducted into matters which fall under the following points:

- The matter raised in the complaint is trivial;
- The complaint is frivolous or vexatious or is not made in good faith;
- The person aggrieved has not sufficient personal interest in the matter raised in the complaint (consider interviewing the person affected by the alleged police behaviour);
- Having regard to all the circumstances of the case, the investigation, or the continuance of the investigation of the matter raised in the complaint, is unnecessary, unjustifiable or unwarranted.

The following are dictionary definitions and synonyms of the terms used in these matters for assistance in assessing complaints (reference Concise Oxford dictionary, Chambers pocket dictionary):

- **Trivial**: small value of importance; trifling (raised trivial objections), unimportant, inconsequential, minor, insignificant, slight, petty, marginal
- **Frivolous**: paltry, trifling, trumpery, lacking seriousness, silly, unimportant, inconsequential
- **Vexatious**: not having sufficient grounds for action and seeking only to annoy

The above points should not be seen as a strategy to rid the WA Police of persons who may have minor complaints, as the complaints may not be minor to these people. Even though it may be decided not to investigate their matters efforts should be made wherever reasonable to provide the person with advice, assistance and/or a resolution of the matter. In all cases persons are to be advised that no investigation will be instigated and the reasons why.
1st level inquiry types – matters that must be reported upon utilising a fully assessable file. These are matters which fall into the **SERIOUS MISCONDUCT** category as defined by s.29 of the Corruption and Crime Commission Act 2003.

**Inquiry Type: EXT; COP; IR; Folio; Info – IAU Only**

<table>
<thead>
<tr>
<th>CRIMINALITY</th>
<th>Allegation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Breach of Move On Notice</td>
</tr>
<tr>
<td></td>
<td>Breach of Police Order</td>
</tr>
<tr>
<td></td>
<td>Breach of Restraint Order</td>
</tr>
<tr>
<td></td>
<td>Breach of Violence Restraint Order</td>
</tr>
<tr>
<td></td>
<td>Burglary (members have entered premises without consent and have intent to commit an offence or committed an offence therein Crim Code 402)</td>
</tr>
<tr>
<td></td>
<td>Cruelty to Animals</td>
</tr>
<tr>
<td></td>
<td>Damage – unlawful or criminal</td>
</tr>
<tr>
<td></td>
<td>Deprivation of Liberty (Unlawfully detain another person Crim Code Sect 333)</td>
</tr>
<tr>
<td></td>
<td>DV Assault – Intent to Cause Grievous Bodily Harm</td>
</tr>
<tr>
<td></td>
<td>DV Assault – OBH</td>
</tr>
<tr>
<td></td>
<td>DV Breach of Family Court Order</td>
</tr>
<tr>
<td></td>
<td>DV Breach of Move On Notice</td>
</tr>
<tr>
<td></td>
<td>DV Breach of Police Order</td>
</tr>
<tr>
<td></td>
<td>DV Breach of Restraint Order</td>
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<tr>
<td></td>
<td>DV Breach of Violence Restraint Order</td>
</tr>
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<td></td>
<td>DV Burglary (members have entered premises without consent and have intent to commit an offence or committed an offence therein Crim Code 402)</td>
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<td></td>
<td>DV Common Assault</td>
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<td></td>
<td>DV Cruelty to Animals</td>
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<td></td>
<td>DV Damage – unlawful or criminal</td>
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<td></td>
<td>DV Deprivation of Liberty (Unlawfully detain another person Crim Code Sect 333)</td>
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<tr>
<td>DV Fraud</td>
<td></td>
</tr>
<tr>
<td>------------------------------</td>
<td></td>
</tr>
<tr>
<td>DV Grievous Bodily Harm</td>
<td></td>
</tr>
<tr>
<td>DV Impersonate Police (non sworn members)</td>
<td></td>
</tr>
<tr>
<td>DV Indecent Assault</td>
<td></td>
</tr>
<tr>
<td>DV Intimidation/Harassment</td>
<td></td>
</tr>
<tr>
<td>DV Manslaughter/Murder (Crim Code S.280, 278)</td>
<td></td>
</tr>
<tr>
<td>DV Other (Matters not otherwise specified)</td>
<td></td>
</tr>
<tr>
<td>DV Serious Assault</td>
<td></td>
</tr>
<tr>
<td>DV Service of Misconduct Restraining Order</td>
<td></td>
</tr>
<tr>
<td>DV Service of Violence Restraint Order</td>
<td></td>
</tr>
<tr>
<td>DV Sexual Assault</td>
<td></td>
</tr>
<tr>
<td>DV Stalking - Breach of Statute Law (Pursue another person or third person Crim Code 338E)</td>
<td></td>
</tr>
<tr>
<td>DV Stealing</td>
<td></td>
</tr>
<tr>
<td>DV Threats (To kill-injure and other Crim Code 338A &amp; 338B)</td>
<td></td>
</tr>
<tr>
<td>DV Trespass (members have entered a place without consent)</td>
<td></td>
</tr>
<tr>
<td>DV Unlawful Killing</td>
<td></td>
</tr>
<tr>
<td>DV Unlawful Wounding</td>
<td></td>
</tr>
<tr>
<td>Fraud</td>
<td></td>
</tr>
<tr>
<td>Impersonate Police (non sworn members)</td>
<td></td>
</tr>
<tr>
<td>Manslaughter/Murder (Crim Code S.280, 278)</td>
<td></td>
</tr>
<tr>
<td>Other (Matters not otherwise specified)</td>
<td></td>
</tr>
<tr>
<td>Stalking - Breach of Statute Law (Pursue another person or third person Crim Code 338E)</td>
<td></td>
</tr>
<tr>
<td>Threats (To kill-injure and other Crim Code 338A &amp; 338B)</td>
<td></td>
</tr>
<tr>
<td>Trespass (members have entered a place without consent)</td>
<td></td>
</tr>
<tr>
<td>Unlawful Killing</td>
<td></td>
</tr>
<tr>
<td>Unlawful Wounding</td>
<td></td>
</tr>
<tr>
<td><strong>ASSAULT</strong></td>
<td>Allegation</td>
</tr>
<tr>
<td>-------------</td>
<td>------------</td>
</tr>
<tr>
<td>Assault Bodily Harm</td>
<td>(Unlawful assault resulting in injury or harm Crim Code Sect 317)</td>
</tr>
<tr>
<td>Assault Common</td>
<td>(Unlawful assault, Crim Code Sect 313)</td>
</tr>
<tr>
<td>Assault Grievous Bodily Harm</td>
<td>(Causing injury that endangers or is likely to endanger life, or cause or be likely to cause permanent injury to health Crim Code Sect 294)</td>
</tr>
<tr>
<td>Assault Indecent</td>
<td>(Assault of an indecent nature, with or without medical evidence)</td>
</tr>
<tr>
<td>Assault Intent to Cause Grievous Bodily Harm</td>
<td>(Crim Code Sect 317A(b))</td>
</tr>
<tr>
<td>Assault Serious</td>
<td>(Assault with intent to: commit or facilitate the commission of a crime; do grievous bodily harm; resist or prevent lawful arrest; or assault a public officer or person from doing his/her lawful function or any person attempting to help the public officer carry out his function Crim Code Sect 318)</td>
</tr>
<tr>
<td>Assault Sexual</td>
<td>(Assault of a sexual nature, with or without medical evidence)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>STEALING</strong></th>
<th>Allegation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government</td>
<td>(Government property or money, includes theft of donations, petty cash etc)</td>
<td></td>
</tr>
<tr>
<td>Money</td>
<td>(Stealing cash, currency or negotiable bonds)</td>
<td></td>
</tr>
<tr>
<td>Prisoner</td>
<td>(stealing from persons in custody)</td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>(stealing items other than money, not including drugs)</td>
<td></td>
</tr>
<tr>
<td>Search</td>
<td>(seized property stolen, missing or misappropriated)</td>
<td></td>
</tr>
</tbody>
</table>
### CORRUPTION

<table>
<thead>
<tr>
<th>Allegation</th>
<th>Conspiracy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Evidence (Fabricate, destroy or tamper with evidence, provide false testimony)</td>
</tr>
<tr>
<td></td>
<td>Perjury (Give evidence that is not true – note usually identified by judiciary)</td>
</tr>
<tr>
<td></td>
<td>Prosecution (Fail to prosecute, or malicious prosecution)</td>
</tr>
<tr>
<td></td>
<td>Records (falsify,fabricate,destroy)</td>
</tr>
<tr>
<td></td>
<td>Witnesses (influence, intimidate or interfere)</td>
</tr>
</tbody>
</table>

### DRUGS

<table>
<thead>
<tr>
<th>Allegation</th>
<th>Conspiracy Drugs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Drugs Theft (Theft of drugs - seized or during search)</td>
</tr>
<tr>
<td></td>
<td>Manufacture/Culture</td>
</tr>
<tr>
<td></td>
<td>Possession (possession of illicit drugs, home or workplace)</td>
</tr>
<tr>
<td></td>
<td>Sell/Supply</td>
</tr>
<tr>
<td></td>
<td>Use (consumption of illicit drugs)</td>
</tr>
</tbody>
</table>

### INFORMATION SECURITY

<table>
<thead>
<tr>
<th>Allegation</th>
<th>Divulge (Disclose information obtained in the course of the officer's duties to an unauthorised person)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unauthorised Access (Accessing computer systems without proper authorisation, for reasons unrelated to the officer's required tasks and duties)</td>
</tr>
<tr>
<td></td>
<td>Unlawful (Censorship Act. Electronic non-work related unlawful material likely to cause offence, transmitted or accessed)</td>
</tr>
</tbody>
</table>
2nd level inquiry types – matters that may be reported upon utilising a short format file. These are matters which fall into the REVIEWABLE POLICE ACTION category. At any time during the investigation the inquiry officer may report upon the matter using fully assessable format to reflect the complexity of the inquiry.

<table>
<thead>
<tr>
<th>Inquiry Type: BAMR; EXT; COP; PCAC Investigation; Information; Information Report; Folio; Firearm; Information – IAU Only</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EQUAL OPPORTUNITY</strong></td>
</tr>
<tr>
<td>Matters arising from complaints about breaches of the Equal Opportunity Act 1984, lodged with WA Police Service Equal Employment Opportunity Section or not</td>
</tr>
<tr>
<td>Allegation</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>ACCOUNTABILITY</strong></td>
</tr>
<tr>
<td>(Records and systems to be kept in accordance with FAA, BAMR and Regulations)</td>
</tr>
<tr>
<td>Allegation</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>MISSING</strong></td>
</tr>
<tr>
<td>-------------</td>
</tr>
<tr>
<td><strong>Allegation</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>STORAGE</strong></td>
</tr>
<tr>
<td><strong>Allegation</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td><strong>COMPUTERS</strong></td>
</tr>
<tr>
<td><strong>Allegation</strong></td>
</tr>
<tr>
<td><strong>ESCAPE CUSTODY</strong></td>
</tr>
<tr>
<td><strong>Allegation</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Allegation</td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td><strong>FIREARM DISCHARGE</strong></td>
</tr>
<tr>
<td>Accidental</td>
</tr>
<tr>
<td>Intentional</td>
</tr>
<tr>
<td><strong>FIREARM DRAW</strong></td>
</tr>
<tr>
<td>Draw</td>
</tr>
<tr>
<td><strong>FIREARM LOSS</strong></td>
</tr>
<tr>
<td>Loss</td>
</tr>
<tr>
<td>Theft Firearm</td>
</tr>
<tr>
<td><strong>OHSW</strong></td>
</tr>
<tr>
<td>Bullying</td>
</tr>
<tr>
<td>Workplace</td>
</tr>
<tr>
<td><strong>USE OF FORCE</strong></td>
</tr>
<tr>
<td>Baton</td>
</tr>
<tr>
<td>Handcuff</td>
</tr>
<tr>
<td>Physical</td>
</tr>
<tr>
<td>Restraint</td>
</tr>
<tr>
<td>Spray</td>
</tr>
<tr>
<td>Taser – deploy</td>
</tr>
<tr>
<td>Taser – draw</td>
</tr>
<tr>
<td>Use of Force Other</td>
</tr>
</tbody>
</table>
3rd level inquiry types – matters that may be reported upon utilising a short format file or as an LCR file (PCAC determination giving consideration to seriousness of complaint). These are matters which fall into the REVIEWABLE POLICE ACTION category. At any time during the investigation inquiry officer may report upon the matter using fully assessable format to reflect the complexity of the inquiry.

<table>
<thead>
<tr>
<th>Inquiry Type: EXT; COP; PCAC Investigation; Information; Information Report; Folio; Firearm; Information – IAU Only</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CONDUCT</strong></td>
</tr>
<tr>
<td>Allegation</td>
</tr>
<tr>
<td><strong>Damage</strong> (Substantial damage caused to property during search and/or seizure)</td>
</tr>
<tr>
<td><strong>Drive</strong> (DUI, Dangerous Driving, Breaches of Road Traffic Act)</td>
</tr>
<tr>
<td><strong>Improper</strong> (matters that are grave or weighty)</td>
</tr>
<tr>
<td><strong>Improper Association</strong></td>
</tr>
<tr>
<td><strong>Secondary Employment</strong> (Unauthorised, inappropriate, or conflict of interest)</td>
</tr>
<tr>
<td><strong>Sponsorship/Donation</strong> (Breach of policy regarding sponsorship or donations, material or money)</td>
</tr>
<tr>
<td><strong>Unbecoming</strong> (Behaviour that detracts from officer’s appearance, character, or reputation, creating unfavourable impression of officer and Police Service)</td>
</tr>
<tr>
<td><strong>NEGLECT</strong></td>
</tr>
<tr>
<td>Allegation</td>
</tr>
<tr>
<td><strong>Custody</strong> (Failure to provide the required duty of care for a person in custody)</td>
</tr>
<tr>
<td><strong>Duty</strong> (Failure to carry out the direction or lawful order of another officer)</td>
</tr>
<tr>
<td><strong>Investigate</strong> (Failure to carry out further inquiries or take action on a complaint)</td>
</tr>
<tr>
<td><strong>Job</strong> (Failure to attend to a task or take a complaint)</td>
</tr>
<tr>
<td><strong>Report</strong> (Fail to submit an offence report or arrange the correct procedural write-off of a task attended)</td>
</tr>
<tr>
<td>Allegation</td>
</tr>
<tr>
<td>--------------------</td>
</tr>
<tr>
<td>Abuse</td>
</tr>
<tr>
<td>Abuse authority/position</td>
</tr>
<tr>
<td>Attitude</td>
</tr>
<tr>
<td>Force</td>
</tr>
<tr>
<td>Harass</td>
</tr>
<tr>
<td>Intimidation</td>
</tr>
<tr>
<td>Law</td>
</tr>
<tr>
<td>Manner</td>
</tr>
<tr>
<td>Minor Damage</td>
</tr>
<tr>
<td>Minor Traffic</td>
</tr>
<tr>
<td>Negligence</td>
</tr>
<tr>
<td>Procedure</td>
</tr>
<tr>
<td>Racial</td>
</tr>
</tbody>
</table>
4th level inquiry types – matters that are NON-REPORTABLE to the CCC and are not reviewable (with exceptions listed below).

<table>
<thead>
<tr>
<th>Inquiry Type: COP; Police Crash; Death/Injury; PCAC Investigation; Information; Information Report; Folio; Information – IAU Only</th>
</tr>
</thead>
</table>

**RESTRAINING ORDERS**

<table>
<thead>
<tr>
<th>Sub-Classification</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Service of Misconduct Restraining Order</td>
<td></td>
</tr>
<tr>
<td>Service of Violence Restraint Order</td>
<td></td>
</tr>
</tbody>
</table>

**COMPUTER MISUSE**

<table>
<thead>
<tr>
<th>Allegation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Inappropriate</td>
<td>Breach of policy, unlikely to cause offence, non-work related material accessed or transmitted</td>
</tr>
</tbody>
</table>

**DRIVING**

<table>
<thead>
<tr>
<th>Allegation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Drive Policy</td>
<td>Breaches of policy eg failure to have assistance when reversing, Not ED</td>
</tr>
<tr>
<td>Emergency Driving Breach</td>
<td>Breach of Emergency driving policy as identified in CAN submitted by POC</td>
</tr>
</tbody>
</table>

**CRASH - POLICE**

<table>
<thead>
<tr>
<th>Allegation</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ED Regulations</td>
<td>Breach of COPS Manual relating to ED driving</td>
</tr>
<tr>
<td>Police Regulations</td>
<td>Breach of COPS Manual relating to driving</td>
</tr>
<tr>
<td><strong>DEATH/INJURY</strong></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>------------------</td>
</tr>
<tr>
<td><strong>Sub-Classification</strong></td>
<td><strong>Includes Self Harm - No Allegations for this Inquiry Type</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Attempted Suicide in Custody</strong> <em>(Person apprehended, self-harm)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Attempted Suicide in Police Presence</strong> <em>(not apprehended, self-harm)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Death in Custody</strong> <em>(Person apprehended not apparent self-harm, eg heart attack)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Death in Police Presence</strong> <em>(Person not apprehended, eg vehicle pursuit)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Death of Serving Officer</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Fatal Police Shooting</strong> <em>(Review by CCC)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Injury in Custody</strong> <em>(Person apprehended, not apparent self-harm, eg fall, accident)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Suicide in Custody</strong> <em>(Person apprehended, self-harm)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Injury in Police Presence</strong> <em>(Person not apprehended, eg vehicle pursuit)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Injury Police Shooting</strong> <em>(Review by CCC)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Sudden Illness in Custody</strong> <em>(Person apprehended, eg heart attack)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Suicide in Police Presence</strong> <em>(Person not apprehended, self-harm)</em></td>
</tr>
<tr>
<td><strong>EQUIPMENT</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Allegation</strong></td>
<td><strong>Police Equipment issued to and/or used by police personnel</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Accoutrements</strong> <em>(Loss of batons, handcuffs and other issued equipment by theft or misplacement through carelessness, not BAMR)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Assets</strong> <em>(Loss of items such as computers, laptops, by theft or misplacement or through carelessness, not identified by BAMR)</em></td>
</tr>
<tr>
<td></td>
<td><strong>Police ID</strong> <em>(loss of Police Identification card, by theft or misplacement through carelessness, Not BAMR)</em></td>
</tr>
</tbody>
</table>
Police Complaints Administration Centre (PCAC) – Complaint Management and CCC Notification Flowchart

All complaints of Unprofessional Conduct

Complaints via telephone

Complaint dealt with by the Early Complaint Assessment Team (ECAT)

Complaint not resolved by ECAT

Data entry on IAPro

Complaints Manager conducts Triage & classifies

Data entry on IAPro and file allocation

Investigation by District / Division – findings & recommendations

Received at PCAC for Q/A

File write off including update on IAPro

Returned to District for further work / attention

Completed to required standards

File to CCC if required

PCAC Q/A

Complaints via correspondence, email or the CCC (CCC notified)

Serious matters and corruption referred to IAU

District advised of complaint and outcome

Approved by Complaints Manager to file

Data entry on IAPro

CCC notified as required

Complaint dealt with as a PCAC Investigation or Information Only file - Matter resolved

District advised of complaint and outcome

Approved by Complaints Manager to file

Data entry on IAPro

CCC notified as required

Appendix 2
Appendix 3

Internal Affairs Unit Investigation Management Workflow

Critical Incident Arising from Contact Between Police and Community (Death/Serious Injury)

- Includes deaths and serious injuries arising from custody, suicide, or police use of force

Inspector Investigations

Investigation

Case Management Through Regular Meetings Between Investigators and Weekly TAC Meeting with Superintendent

Union with Counsel, Assisting Coroner

Quality Assurance by Investigation Team Leader Against 5 Key Investigative Strategies

Outsourced Investigation

Overt Investigations

Reviewerable Police Action/Misconduct/Serious Misconduct Report

WAU Analytical Coordinator (Senior Sergeant)

WAU Consort Services Inspector

Tasking & Coordinating Group

Further Inquiry

Investigation

Case Management of Investigation Through Regular Meetings Between Investigators and Weekly TAC Meeting with Superintendent

Quality Assurance by Investigation Team Leader Against 5 Key Investigative Strategies

Further Inquiry

Quality Assurance by Inspector

Quality Assurance by Superintendent

Meeting to Notify Recommendations and Outcomes

To Governor, State Solicitors, OPF, CCC, FIC or other for progression of recommendations or external review
Best Practice

The Western Australia Police (WA Police) are committed to the development and implementation of best practice policy for the management of demonstrated and identified unprofessional conduct by Police personnel. The primary objectives of the Policy are to improve the ethical health of the agency; demonstrate openness and accountability; reinforce and improve corruption resilience and to maintain and improve public confidence in WA Police.

In order to maintain best practice and consistency of application, managers and supervisors at all levels within the agency, are expected to demonstrate and live the established standards of behaviour, conduct and professionalism and accept both responsibility and accountability for their personal conduct and for the conduct of the personnel they may supervise and lead during the ordinary course of business. This approach reinforces the discretion and flexibility leaders, managers and supervisors need to effectively manage human and general resources and work areas.

The policy has been developed in the context of Government policy and direction, the WA Police Strategic Plan, the reform agenda of the WA Police and the changing cultural environment of policing.

POLICY

It is the policy of the WA Police that all managers and supervisors will, in the first instance, adopt a managerial approach to the resolution of demonstrated and identified unprofessional conduct.

The policy also commits the WA Police to ensuring the procedures and practices employed to deal with concerns and complaints against police assist in building the trust and confidence of the community, oversight bodies and key stakeholders. Within the WA Police the managerial approach is known as the Managerial Intervention Model (MIM).

The MIM is a remedial/developmental approach which recognises that officers will make honest mistakes and provides for a “fair go” to change behaviour and conduct to achieve improvement in both individual and organisational performance. To this end, a learning and developmental approach will be adopted.

The mechanisms for the management of complaints are not enough on their own to bring about significant changes to organisational culture. Complaints management mechanisms need to be linked to and integrated with other initiatives including training, professional development, performance management, corruption prevention, risk management, and performance reporting.

While managerial intervention may be appropriate for most incidents of unprofessional conduct managed by the WA Police, the MIM approach also recognises the need for more serious incidents to be dealt with by other means, more notably by:
• Preferring criminal/statutory charge/s;
• Preferring disciplinary charge/s (dealt with by section 23 of the Police Act 1892); and/or
• Commencing Commissioner’s Loss of Confidence action (pursuant to section 8 of the Police Act 1892).

Further to the above, in those instances where a criminal investigation is undertaken, investigators will need to refer to the Complaints against Police Investigation Guidelines and where applicable, the WA Police Investigation Doctrine.

Effective Date

This policy and associated guidelines are effective as from the 3rd October 2006 with amendments effective from the 24th January 2007, 20th August 2008, 9th September 2009, 21 April 2010 and December 2011.

PURPOSE

The purpose of this policy is to ensure:

• All managers/supervisors first adopt a managerial approach to the resolution of all incidents and complaints of unprofessional conduct.

• All managers/supervisors are responsible and accountable for the management of unprofessional conduct.

• All managers/supervisors are required to discuss with subject officers the outcome of internal complaint investigations; make clear how demonstrated and/or identified unprofessional conduct failed to meet the standards set by the WA Police Code of Conduct, and how the identified unprofessional conduct will be addressed through either managerial intervention and/or by other means.

• All WA Police employees are aware of the principles and key responsibilities that underpin the managerial approach (the MIM).

• All managers/supervisors and senior leaders model behaviour, conduct, performance and decision-making that supports the cultural change sought by the agency and this policy.

• WA Police recognises the need to build on the ethical health of the agency and achieve a high level of professionalism and integrity to further build on community trust and confidence and that by oversight bodies and key stakeholders.

• To create an environment and management system to make clear, to reinforce and to promote the acceptance of roles, responsibilities and accountabilities.

• To create balance and equity in the rights and responsibilities of all interested and involved parties, including those lodging a complaint and those who are subject of a complaint.
The policy intent is also to embody and maximise the agency’s commitment to valuing and developing all employees in order to maximise potential and commitment to performance.

Definitions

**Aboriginal Police Liaison Officer** – refers to Aboriginal Police Liaison Officers appointed under Part IIIA of the Police Act 1892 (Police Act), employed by the Commissioner of Police (Commissioner).

**Assistant Commissioner’s Warning Notice** – refers to a formal notice issued and delivered by an Assistant Commissioner to a subject officer to demonstrate the seriousness of unprofessional conduct and to detail the consequences should such conduct continue. It is the highest form of management intervention and places a subject officer on notice to correct behaviour and conduct. The ‘Warning Notice’ reinforces the premise that a subject officer’s continued employment with the agency may be at risk should any form of unprofessional conduct be further demonstrated and or identified.

**Custody Officer** – refers to persons employed under the Public Sector Management Act 1994 who have specific provisions in their Certificate of Appointment that enables them to perform the custody role as Special Constables under Section 36 of the Police Act.

**Delegated Officer** - for purposes of this policy, refers to the Assistant Commissioner Professional Standards or person acting in that capacity, delegated by the Commissioner to determine key decisions, actions and outcomes.

**Delegations** - The levels to which authority has been delegated in relation to the management of complaints and discipline are contained in the Delegation Schedule published within the Corporate Knowledge Database, Manuals and Guidelines (ADS-1 Human Resource Management and Administration).

**Employee** – for the purposes of this Policy and respective Guidelines, refers to Police Officers, Aboriginal Police Liaison Officers, Police Auxiliary Officers, Police Staff (including Police Cadets and Custody Officers) and wages staff.

**Equity or Equitable** - refers to the Macquarie Dictionary definition of; 1. the quality of being fair or impartial, fairness, impartiality; 2. that which is fair and just and; 3. Law - the application of the principles of natural justice.

**Management Action Plan (MAP)** - refers to an instrument to record and manage a behavioural modification action as recommended and agreed following an internal investigation where unprofessional conduct is sustained.

**Managerial Intervention** - refers to behavioural modification actions/strategies including MAP’s, Managerial Notice and/or Assistant Commissioner’s Warning Notice, all designed to address unprofessional conduct/behaviour, and/or work performance deficiency/ies.

**Managerial Notice** – refers to a formal notice which is the second highest form of managerial intervention, to demonstrate to a subject officer the seriousness of the unprofessional conduct engaged in and the consequences that may follow should any form of unprofessional conduct re-occur.
**Officer/s** – refers to Police Officers and Aboriginal Police Liaison Officers appointed under the *Police Act*.

**Police Auxiliary Officer** – refers to employees who are employed under *Section 38C of the Police Act* with their own set of terms and conditions (limited police powers) who are employed to assist police officers and be used in specific support roles where full police powers or police training is not required.

**Police Staff** - refers to employees (including Police Cadets employed as trainees) employed under the *Public Sector Management Act 1994* (and various wages awards) by the Commissioner.

**Procedural Fairness** - refers to those principles which ensure that decision-making is fair and reasonable (that is, industrially defensible) and in accordance with the *WA Police Code of Conduct*.

**Subject Officer** - refers to officers or employees appointed under the *Police Act* and/or the *Public Sector Management Act* against whom a complaint is lodged or investigation conducted.

**Unprofessional Conduct** – refers to behaviour, actions and conduct as defined in Sections 3 and 4 of the *Corruption and Crime Commission Act 2003*, notably ‘Reviewable Police Action’ and ‘Misconduct’; conduct which contravenes the ‘General Rules Relating to Discipline in Part VI of the Police Force Regulations 1979’; conduct which contravenes the *WA Police Code of Conduct*; conduct which is prima facie, criminal conduct; and conduct which has the potential to cause damage to agency reputation and or erosion of public confidence in WA Police.

**Verbal Guidance** – is the lowest form of managerial intervention and is intended to bring to a subject officer’s attention, identified and sustained low level unprofessional conduct; the remedial action required; and to remind a subject officer of the required standards of behaviour and conduct.

**Explanatory Notes:**

(1) An Assistant Commissioner’s Warning Notice may also be issued in circumstances where an officer fails to comply with a previously agreed management intervention and in circumstances of a repeated failure to correct behaviour and conduct.

(2) A Managerial Notice is neither a sanction nor a penalty but rather a notice documenting unprofessional conduct and creating a mechanism for formal acknowledgement. The Managerial Notice stands in its own right in terms of an outcome to an internal investigation. A Managerial Notice may also be accompanied by behavioural modification actions as a joined up approach to address unprofessional conduct.

(3) Accountability for managing a MAP, resides with the relevant Commander/Superintendent/Branch Head, whilst responsibility for day-to-day administration of a MAP resides with the officer-in-charge and manager/supervisor of the officer subject of the MAP.
(4) The more common managerial interventions and actions include the following:

- Coaching
- Mentoring
- Re-training and re-education
- Personal development
- Increased supervision
- Verbal guidance
- Counselling
- Improvement strategies
- Restricted duties
- Re-assignment of duties
- Change of shift
- Transfer
- Managerial Notice
- Assistant Commissioners Warning Notice

Source: Fisher Review (page 67)

HR-31.1. APPLICATION

HR-31.1.1. Introduction

The Managerial Intervention Model (MIM) applies to all officers within the WA Police irrespective of rank, although it is recognised the majority of complaints about police involves officers below the ranks of Commander and Superintendent. The Policy does not preclude the application of the MIM to the ranks of Commander and Superintendent and above and where that is the case, a reference within the Policy to Commander/Superintendent/Branch Head is to be read as a reference to the rank/police staff classification immediately senior to that of the officer subject of the MIM.

The MIM is an approach adopted by the WA Police to deliver managerial intervention in response to identified and demonstrated unprofessional conduct. (Police Staff subject of a complaint are generally managed under the provisions of the Public Sector Management Act 1994).

The application of the MIM will not limit or touch on the agency's performance management programs and, where performance falls below the required standard, the Substandard Performance Management Policy is to be applied.

In addition, the WA Police Strategic Plan and Service Delivery Standards make clear the requirement in providing responsive and quality policing services. This premise is extended by the MIM to ensure WA Police similarly responds to community concerns and complaints against police and in dealing with demonstrated and reported incidents of unprofessional conduct.

Officers and employees who engage in criminal conduct will be held criminally responsible and be subject to the same provisions at law as all others are in the community.
Officers who are subject of a criminal / disciplinary / statutory charge/s and/or Commissioner’s Loss of Confidence action may remain in the workplace when determined appropriate by the outcome of a risk assessment completed within the scope of the Organisational Risk Management framework – (AD-95 & HR-31.1.8).

Managerial Intervention through behavioural modification actions recorded on a Management Action Plan will, when deemed necessary, be employed to manage and influence an officer’s conduct during a period of internal/criminal investigation or whilst awaiting the outcome of criminal / disciplinary charges and or Commissioner’s Loss of Confidence action.

The primary onus is on the subject officer to change behaviour and address unprofessional conduct. To reinforce and promote positive outcomes in this regard, all managers and supervisors agency wide will be held both responsible and accountable in facilitating for all subject officers, opportunities for both behavioural modification and personal development.

**The MIM is premised on the following:**

- Ensuring managerial intervention is applied to all incidents of demonstrated and or identified unprofessional conduct, whether by a reporting mechanism, investigation or otherwise.
- Restricted use of disciplinary charges confined to more serious incidents of unprofessional conduct and for those incidents that fall short of the Commissioner of Police losing confidence in a subject officer.
- Fair and equitable application to achieve behavioural modification.

**The MIM will contribute to:**

- Maintaining and improving professional standards and professional conduct within and throughout the agency, including making a significant contribution to the ethical health of the agency.
- Changing and positively improving the ethical and professional culture within and throughout the agency.
- Building corruption resilient and organisational professionalism to secure the trust of the community, partner agencies and groups, key stakeholders and all oversight bodies.

**In general terms the MIM is characterised by:**

- The *WA Police Code of Conduct* as the primary standard and reference point for the behaviour, conduct and performance.
- A “top down” commitment, touching all in the agency and focusing on ethical and professional conduct, with a strong commitment to performance.
• A focus on managerial intervention to address demonstrated and identified unprofessional conduct.

• A remedial/developmental approach which recognises that officers will make honest mistakes and which provides a “fair go” to positively change behaviour and conduct to improve both individual and organisational performance and ethical health by:
  
  - Maximising the opportunity to improve service delivery.
  - Enhancing the professional and personal development of individuals.
  - Contributing to organisational learning and development.
  - Contributing and enhancing the public confidence in the WA Police and strengthening organisational integrity and professionalism.
  - Encouraging and empowering managers and supervisors at all levels to respond effectively and react in a timely manner to all instances of demonstrated and identified unprofessional conduct.
  - A contribution to achieving sustainability in building positive peer pressure between officers; officer self regulation; and positive organisational culture.

• Restricted use of disciplinary charges, confined for more serious and systemic breaches of conduct.

• Managers and supervisors accepting both responsibility and accountability for the development of relevant behavioural modification actions capable of changing and positively influencing behaviour and conduct and to ensure such actions are managed to a successful conclusion (MAP). Additionally, it is critical the day-to-day administration of a MAP rests with the subject officer’s direct line officer-in-charge and or manager.

• Management Action Plans (behavioural modification actions) being delivered by senior officers to reinforce the need to change behaviour and address demonstrated and identified unprofessional conduct.

• Senior managers positively engaging subject officers during the delivery of a MAP to secure the willingness and agreement of the subject officer to actively participate in the agreed behavioural modification action/s. *(Note – without a willingness by the subject officer to participate in a behavioural modification action, behaviour and unprofessional conduct will not change).*

• Accountability by Commander / District-Divisional Superintendent / Branch Heads for the implementation and administration of the MIM within their respective areas of command is in the ordinary course of business, monitored by the Police Complaints Administration Centre (PCAC) and externally by the Corruption and Crime Commission (CCC).

**HR-31.1.2. Achieving Outcomes**

The management of subject officers is based primarily on the principle of modifying behaviour by training and development and by addressing demonstrated and identified unprofessional conduct through managerial intervention.
HR-31.1.3. Standards

The standards for assessing behaviour and conduct with respect to demonstrated and identified unprofessional conduct are found in the *WA Police Code of Conduct* and the *Police Force Regulations 1979*.

HR-31.1.4. MIM Principle

The MIM is premised on a remedial/developmental approach with fairness and equity to all parties being key and to provide members of the community with the right and opportunity to make and lodge complaints against police officers or other police employees with a clear expectation that all complaints will be either examined and or thoroughly investigated in a timely and thorough manner.

The application of the MIM must demonstrate and ensure procedural fairness with respect to all involved parties and in all relevant practices, process and outcomes.

HR-31.1.5. Managerial Intervention Outcome

When considering the most appropriate form of managerial intervention to address demonstrated and or identified unprofessional conduct; the following are to be key considerations:

1. The *WA Police Code of Conduct* is the primary reference document.
2. Selection of managerial intervention is the most appropriate in the circumstances with a real and measurable capacity to correct unprofessional conduct.
3. The subject officer/s complaint history is carefully and contextually considered.
4. Whether any deficiency in supervision and or management contributed in any way to the demonstrated and or identified unprofessional conduct.
5. If applicable, whether any Health and Welfare issues contributed in any way to the demonstrated and identified unprofessional conduct.
6. Timelines of incidents / unprofessional conduct.
7. Utilisation / application of all opportunities to enhance professional and personal development and learning, and contribute to organisational learning and ethical health.
8. Utilisation / application of the opportunity to improve commitment to service delivery and contribute to the enhancement of community confidence and in the professionalism and integrity of the WA Police.
9. If applicable, consider prior applications of managerial intervention action/s and the extent to which a specific outcome was achieved as well as the extent to which behaviour and conduct was positively influenced.
10. Whether the managerial intervention / behavioural modification action being considered is reasonable, fair-and equitable.
**Explanatory Note:**
Considerations are not to be confined to those above and an attempt is to be made to identify all which will assist in determining the most beneficial form of managerial intervention to deliver the best outcome.

**HR-31.1.6 Delivery of a Management Action Plan**

- Following the decision to progress management intervention by way of behavioural modification action/s, the senior officer engaging the subject officer in this regard is to fully explain the decision and seek the subject officer’s agreement to participate. Without agreement, this form of behavioural modification is not to proceed and another form of managerial intervention will need to be considered. To progress behavioural modification actions in the absence of the subject officer’s agreement, is considered a wasted effort, given behavioural modification will not occur unless the subject officer is a willing participant.

- For more serious incidents of unprofessional conduct, it is a requirement for the respective Commander / Superintendent / Inspector / Branch Head or person acting in these positions, to deliver the MAP.

- In circumstances where a Managerial Notice also forms part of the outcome of either an examination and or investigation, (in addition to a behavioural modification action/s), the delivery of both the Managerial Notice and MAP is to be facilitated by the Commander / Superintendent / Branch Head. (An exception to this applies to select districts within Regional WA - refer to the MIM Guidelines for information).

- For a MAP arising from Local Complaint Resolution (LCR), Local Dispute Resolution (LDR) and Short Format Investigation, the delivery may be by an officer other than the Commander / Superintendent / Inspector / Branch Head, but not by an officer below the rank of Sergeant and providing the delivery officer is senior to the subject officer.

- For a behavioural modification action (the action) arising from an Internal Affairs Unit investigation, the action and MAP will be delivered by the Superintendent / Inspector Internal Affairs Unit in conjunction with the Commander / Superintendent / Branch Head of the subject officer.

- Irrespective of who delivers a MAP, it is incumbent upon the Commander / Superintendent / Branch Head of the subject officer to endorse and take overall responsibility and accountability for the management of the MAP and to ensure behavioural modification actions are discharged and the MAP formally concluded.

- When the requirements of a MAP have been finalised, (both on development/service and subsequent discharge) PCAC is to be advised and provided a copy in all instances.

- A MAP is to be forwarded to and retained by PCAC and a copy placed on a subject officer’s Employee Management File.
HR-31.1.7. Management of a MAP

The delivery officer is to communicate in writing (email will suffice), with the subject officer when significant milestone/s in the MAP have been achieved.

When all behavioural modification actions have been successfully completed, the delivery officer is to advise the subject officer in writing accordingly and to formally advise the MAP is ‘discharged’. It is also recommended the delivery officer personally engage with the subject officer in this regard as a follow up, to receive feedback and to reinforce the original key messages. A copy of the written communication in this regard and other feedback, notes of discussions, are to be forwarded to the PCAC.

The delivery officer is required to personally meet with the subject officer when time frames to complete behavioural modifications actions either have not been met or are unlikely to be met. The subject officer is to be reminded of the agreement to undertake the behavioural modification actions and or consequences for such actions not being undertaken. The delivery officer is then to make a written record of the meeting and a copy of the record either attached to the internal investigation file or forwarded to PCAC for placement on the file.

Should behavioural modification actions not be completed after the follow up meeting, the delivery officer is to immediately consider other forms of managerial intervention and engage the subject officer accordingly. PCAC is to be immediately advised in this regard.

Transfer or other change in deployment status and location (including a change in rank), does not free a subject officer from the agreement and obligation to complete outstanding behavioural modification action/s. In such circumstances, the respective MAP is to be formally presented / delivered by the delivery officer to the Commander/Superintendent/Branch Head of the subject officer’s new workplace and forms part of the Employee Management File.

The Commander/Superintendent/Branch Head on receiving the MAP, effectively takes over the delivery officer role and assumes accountability in this regard and within a reasonable time, is required to meet with the subject officer and make clear the original agreement and expectations. The new delivery officer will then engage the area OIC/Manager/Supervisor to which the subject officer has transferred to. This officer then assumes responsibility for the management of MAP.

In all instances an OIC/Manager/Supervisor, on an officer being transferred to a new area, is to check the officer’s Employee Management File as a back up to ensure an outstanding MAP is identified and managed accordingly.

HR-31.1.8. Disciplinary Offences / Charges

Disciplinary charges may be brought against Police/Auxiliary Officers pursuant to section 23 of the Police Act 1892.

A Commander / Superintendent / Branch Head may recommend a disciplinary charge. Approval to progress such a charge can only be made by either the Commissioner of Police or the Assistant Commissioner Professional Standards. Officers acting as the
Commissioner of Police and Assistant Commissioner Professional Standards have delegated authority to approve disciplinary charges.

The recommendation and associated disciplinary referral materials are to be forwarded together with the completed internal investigation file to PCAC. Recommendations by the Internal Affairs Unit are referred direct to the Assistant Commissioner Professional Standards.

When considering disciplinary charges, it is important that an officer’s behaviour and conduct during the course of the disciplinary charge process be carefully considered. It may be appropriate to consider a behavioural modification action to assist with the management and control of a subject officer’s behaviour and conduct. Such considerations are to be made in context, relevant to the behaviour and conduct and be individualised to the subject officer.

It is mandatory for the Commander / District / Divisional Superintendent / Branch Head to continue to be both responsible and accountable for the subject officer prior to, during and after the disciplinary charge process has commenced. With regard to the latter, the process commences as soon as the recommendation is made.

A recommendation to deal with a matter by way of a disciplinary offence is not to be used as a means, or indeed a premise, not to prefer / consider either criminal and or statutory charges. With regard to the latter, the Police Prosecution Policy is the primary reference and it stands alone.

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**HR-31.1.9. Management of Officers Subject to Other Managerial Intervention Action**

Officers subject of criminal / statutory charges and or Commissioner’s Loss of Confidence proceedings are also to be carefully managed and consideration on whether to engage in behavioural modification actions should always occur in the ordinary course of business. Responding to an officer’s health and welfare needs is also critically important with respect to either direct action or by way of consideration only.

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**HR-31.1.10. Stand Down / Stand Aside**

Stand-Down and Stand-Aside action needs to be considered in all instances where serious unprofessional conduct has been exhibited and or demonstrated. The premise for such action is risk assessment / mitigation and the ‘Organisational Risk Framework’ is to be employed (risk summary). The decision to Stand-Down / Stand-Aside should not be solely premised on the seriousness of the conduct.

The risk assessment should consider the capacity to achieve and influence the day to day management of a subject officer. For these reasons and if risks can be sufficiently mitigated, it may be more appropriate to have subject officer/s remain in the work place.

**Stand Aside:**

Once a risk summary has been completed, a Stand-Aside application is to be presented to the Portfolio Head for consideration of approval. Employees who are subject of Stand-
Aside need to be subject of a managerial regime (to manage behaviour / documented on a MAP).

The Superintendent PCAC and the Superintendent Ethical Standards Division are to be advised of all Stand-Aside Notices issued and be kept informed of the Notice status.

Stand-Down:

An application for a Stand-Down is to be presented to the Assistant Commissioner Professional Standards by the Commander / District / Divisional Superintendent after approval by the respective Portfolio Head. The Assistant Commissioner Professional Standards will consider and progress the Stand-Down application to the Commissioner of Police.

Officers on Stand-Down will be appointed a welfare officer by the District Divisional Superintendent and the appointed welfare officer will maintain regular contact (weekly), with the officer to manage and guide the officer throughout the period of Stand-Down. With regard to the latter, a running sheet is to be maintained detailing the contact times / dates and general matters discussed / raised at each contact.

During a period of Stand-Down / Stand-Aside, responsibility and accountability for the management of the subject officer does not shift from the district / division / portfolio to which the officer is attached. In addition to legislative requirements, both a Stand-Down and Stand-Aside are to be the subject of regular reviews by the district / divisional head.

HR-31.1.11. Criminal/Statutory Offences and Legal Opinion

Where a criminal/statutory offence is identified during the course of an internal investigation, there may be instances where the investigator, because of legal complexities, requires legal advice. In these instances, the investigator is encouraged to source such assistance and advice from the agency’s Legal and Legislative Services business area.

There is no need to seek legal opinion for matters where prima-facie evidence clearly supports a criminal/statutory offence and considerations in this regard are in accord with the agency Prosecution Policy and Guidelines.

In cases where prima-facie evidence exists but the preferred recommendation of the Commander / Superintendent / Branch Head is not to proceed by way of a criminal/statutory charge (either indictable or summarily), the following is to apply:

- Analysis and comment is to be made in the internal investigation final report with respect to considerations relative to criminal/statutory charges. Such considerations need to include reference the agency’s Prosecution Policy and Guidelines.

- Approval by the Portfolio Head (Assistant Commissioner and/or Commander where applicable), to not prefer a criminal / statutory charge/s when prima facie evidence has been established.

- Recording of the decision not to prefer criminal/statutory charges in the district / division Discretionary Register for all indictable and summary offences. The registry entry is to be endorsed by the respective Portfolio Head.
In circumstances where the investigating portfolio is not represented by an Assistant Commissioner and/or Commander then approval not to proceed by way of a criminal/statutory charge is to be made by the Assistant Commissioner Professional Standards Portfolio.


In all instances where unprofessional conduct has been reported, suspected, demonstrated and or identified by other means, a Complaint Advice Note is to be immediately submitted to PCAC. All such matters will be the subject of examination and/or internal investigation in accordance with PCAC SOP’s.

Complaints / Incidents of unprofessional conduct and solely of a managerial/disciplinary nature (not criminal conduct):

- Alleged unprofessional conduct is to be investigated by the portfolio/district/division where the member is ordinarily assigned to on a full time basis, including periods of secondment. It is irrelevant whether the member is on duty or off duty.

Criminal Conduct

- To be investigated by the district in which the alleged criminal conduct occurs.

- In circumstances whether the alleged criminal behaviour is either in the place of work (whilst on duty) or arising directly from official and rostered duties, the alleged unprofessional conduct will be investigated by the portfolio/district/division in which the officer is assigned to on a full time basis, including periods of secondment.

- In certain circumstances and to accord with the Specialist Crime Portfolio Service Delivery Charter, a criminal allegation involving a member may be allocated to a specialist crime squad (various) for investigation.

- Any criminal investigation undertaken must have regard to the Complaints against Police Investigation Guidelines and the WA Police Investigation Doctrine.

Allocation Determinations

- In all instances where criminal conduct is being investigated, the portfolio/district/division in which the officer is assigned on a full time basis, including periods of secondments, will conduct an internal examination of the member’s unprofessional conduct and be responsible to progress general disciplinary/managerial action in accordance with legislative provisions and those in the Managerial Intervention Model.

Explanatory Note:
The criminal investigation and internal examination are to be conducted simultaneously and relevant legislative/managerial action is to be taken at the earliest opportunity and not unnecessarily delayed.
There will be occasions, premised on demonstrated need, special circumstances, policy requirements, when PCAC and Internal Affairs Unit protocols, determine an investigation (for either criminal/unprofessional conduct) is to be assigned contrary to the general allocation rules.

The Superintendent PCAC and Superintendent Internal Affairs Unit, have authorised discretion to alter the allocation rules, premised on demonstrated need, reasonable opportunity/capacity for investigation and special circumstances.

In instances when multiple districts/divisions are conducting separate investigations for either criminal and or unprofessional conduct matters involving the same officer/s and incident, immediate liaison, communication and consultation is to occur to ensure completeness of legislative, policy and procedural requirements.

Further information about these requirements and the Complaint Investigation Allocation Rules is contained in the MIM Guidelines – located in the PCAC Intranet site.

When a criminal charge has or is to be preferred against a WA Police employee, the investigating officer shall as soon as practical, prepare a briefing note and a draft media release setting out the details of the charge/s and court date for the advice of the Commissioner, Assistant Commissioner Professional Standards and the Superintendent Ethical Standards Division.

HR-31.1.13. General Responsibilities, Accountabilities and Obligations

HR-31.1.13.1. For Commanders/Superintendents/Branch Heads

- To conduct a risk assessment and general analysis on receipt of a complaint investigation file and or allegation of unprofessional conduct.

- To appoint a suitably skilled and experienced investigator.

Important considerations in appointing the internal investigator:

- The appointed investigator is to be of equal or higher rank to that of the subject officer/s and must have the capacity to complete the investigation within established timeframes. The investigator is also required to have the necessary skills, attributes, knowledge and experience to conduct the investigation to the agency standard.

- In appointing an investigator, personal associations and conflict of interest issues will need to be considered, although the association and conflict will need to be compelling and supported by real facts in issue. Being a subject officer’s direct line manager and or supervisor is not sufficient to premise a decision with respect to the latter. The primary intent is that an investigation should not be compromised and the integrity of the investigation and professionalism of the investigator, are to be preserved and demonstrated. It is imperative the investigation is not allocated to an officer who may be either a party to or involved in the matter to be investigated.
A compelling conflict of interest or supported perceived conflict of interest, are to be declared and a declaration form is to be submitted. (Refer to the MIM Guidelines and PCAC for further advice about conflicts of interest and other issues to be considered when determining an appropriate investigator. Also refer to the WA Police Code of Conduct and Police Manual AD-16.10 to gain an understanding of what is considered a conflict of interest).

**Additional roles, responsibilities and accountabilities are as follows:**

- Ensuring all investigations are completed in a timely manner and to the highest possible standard.
- Ensuring investigations are completed in a fair and equitable manner and in accordance with procedural fairness.
- Where appropriate, seeking the advice from specialist areas (such as Health and Welfare Services, Human Resources Equity Unit, Workplace Relations Branch and Occupational Safety and Health Branch).
- Ensuring investigation recommendation/s are proportionate, supported by the evidence and reasonably defensible.
- Accept both responsibility and accountability for managing the behaviour and conduct of subject officers during the course of the investigation and then in applying managerial intervention and or other action in response to demonstrated unprofessional conduct.
- Researching and developing real and measurable behavioural modification action/s which have the capacity to positively modify and influence conduct and then to record and manage the behavioural modification action on a MAP.
- In applying managerial intervention, to maximise all opportunities to ensure service delivery standards are not adversely affected; to ensure the ongoing professional and personal development / learning of affected officers; and to ensure community confidence and the integrity of WA Police is preserved and improved.
- Ensuring the managerial intervention and outcomes are consistent with values articulated in the **WA Police Code of Conduct**.
- Ensuring the identification of training, supervision, legislative, process, policy and procedural issues which may require change and or amendment, and in formally communicating the latter.
- Ensuring learning outcomes arising from the conduct of internal investigations are communicated.
- Acknowledging and accepting the extent of management and supervision required by the MIM and the extent to which the application of the MIM will be assessed and evaluated as part of performance reviews and formal evaluations.
HR-31.1.13.2. For Commanders/Superintendents/Branch Heads and Others who Deliver Managerial Intervention

- Upon a decision being made to engage a subject officer in a form of managerial intervention, direct communication is to occur with the subject officer and his/her officer-in-charge/manager. Relevant details and information is to be provided to the parties to ensure sufficient understanding and to afford the opportunity for cognisance and preparation.

- With respect to behavioural modification actions, it is important to secure the agreement of the subject officer during the course of the MAP delivery. Should agreement not be forthcoming, another form of managerial intervention is to be considered.

**Explanatory Note:**

*Behavioural modification actions will not succeed without willing participants being sincere in their intentions to modify their behaviour. The actions are not to be considered or interpreted as punitive actions and this point needs to be made clear by the delivery officer. Similarly a MAP does not have a punitive intent and/or purpose and accordingly, should not be considered and/or portrayed as such. They merely provide the mechanism to record and manage a behavioural modification action/s.*

- During the delivery meeting, engage in open and honest discussion with the subject officer in a non-threatening environment and manner, to:
  - Inform officers of the findings of the investigation and the outcome/s.
  - Make clear managerial intervention is not a punitive remedy rather a genuine attempt to change behaviour and conduct.
  - Ensure understanding, to explain the intent and deliverables of the behavioural modification action/s and making clear the expectations with respect to the MAP generally and in terms of timeframes.
  - Achieve agreement on the behavioural modification action and adopt a consultative and collaborative approach.
  - Make clear to a subject officer the consequences of non compliance to either engaging or completing agreed behavioural modification actions.
  - Take into consideration and resolve concerns that may be raised by the subject officer. Such concerns may be about the conduct of the investigation; the integrity of the investigation; the investigation outcome; professionalism of the investigator; and the appropriateness of recommendations and or managerial intervention. Disagreement with the investigation outcome without valid argument is not in itself sufficient reason for the subject officer not to accept the behavioural modification action.
  - Make a record of the concern/s raised by the subject officer and the outcome achieved and for such record to be attached to the investigation file.
- In instances where agreement cannot be reached on a behavioural modification action, to consider another managerial intervention action and advise the subject officer accordingly either at the time, or subsequent to the delivery meeting.

- Advise the subject officer that a copy of the MAP will be attached to the officer’s Employee Management File.

- On successful completion of a behavioural modification action, to formally advise the subject officer accordingly.

**Explanatory Note:**
The attendance at the delivery meeting by the subject officer’s manager or supervisor is either by mutual agreement between the parties or when determined necessary by the delivery officer.

**HR-31.1.13.3. For Subject Officers**

- On being advised of an impending managerial action to be delivered, ensure familiarisation with the relevant and broader provisions of the MIM.

- Accept responsibility and be prepared to engage in open, honest and reasonable discussion with the delivery officer.

- Respond positively to the intended/proposed managerial intervention.

- Acknowledge and ensure absolute understanding of the consequences should there be a failure to comply with any form of managerial intervention.

- Be prepared to accept responsibility and accountability for demonstrated and identified unprofessional conduct.

- Be prepared to accept responsibility and accountability for the outcome of decisions and actions.

- Be prepared to raise any issues or concerns about any aspect of the internal investigation, the internal investigation outcome, and or delivery meeting.

- Be accepting that managerial intervention is about a genuine attempt by all parties to positively change behaviour and conduct and it is neither a punitive remedy nor action.

- Where a MAP is a part of the managerial intervention action, be an active participant in the planning, organising and in ensuring successful completion.

- Seize the opportunity for managerial intervention to enhance both professional and personal development and so maximise opportunity for career potential and continued employment.

- Learn from the experience and self regulate to reinforce the need to accept both responsibility and accountability for behaviour and conduct into the future.
HR-31.1.13.4. For Officers in Charge and Managers/Supervisors (Attending Officers)

- The attending officer is to be of equal or higher rank to that of the subject officer.

- Following advice being received that a managerial intervention action is to be delivered, the attending officer is to personally meet with the subject officer prior to the delivery meeting and:
  
  - Provide the subject officer with support and explain the process, conduct and intent of the delivery meeting; and
  
  - Advise the subject officer to fully familiarise themselves with the relevant and broader provisions of the MIM and to assist the subject officer in this regard.

- The attending officer is to attend with the subject officer and participate in the delivery meeting.

- The attending officer for the delivery of an Assistant Commissioner’s Warning Notice will in all cases, be the subject officer’s district/divisional superintendent.

- On invitation by the delivery officer and or on permission being sought from the delivery officer, attending officers may actively participate during the delivery of the managerial intervention.

- After the delivery meeting, the attending officer will engage the subject officer to reinforce and make clear expectations arising from the delivery meeting and to further reinforce the consequences should unprofessional conduct reoccur and or continue.

- In instances where a MAP is a part of the managerial intervention, the attending officer will be held accountable in terms of planning, organising and in ensuring successful completion.

HR-31.1.13.5. For the Police Complaints Administration Centre (PCAC)

- Provide support, assistance, advice and information to all both internal and external stakeholders.

- Recording (milestone and other) dates associated with various aspects of investigation files and monitoring compliance with those dates.

- Reviewing, assuring and influencing the standard and quality of internal investigations and the application of the MIM.

- Reviewing, assuring and influencing the quality of internal investigation outcomes and managerial intervention generally.

- Provide timely feedback to all involved and interested parties on all relevant aspects of the MIM.
• Ensure timely, accurate and comprehensive recording of all information and data obtained through the review/quality assurance (QA) process.

• Following the QA process, review recommendations for disciplinary charge/s and/or Loss of Confidence nomination/s and referring those matters in the first instance to the Superintendent PCAC and then to the Assistant Commissioner Professional Standards for approval / endorsement.

• Communicating with relevant oversight bodies to ensure business expectations and deliverables are being met.

• Facilitate and enable first point of contact and ongoing communication with the Corruption and Crime Commission for matters touching PCAC roles, responsibilities and deliverables.

• Providing advice and assistance to district / divisional heads, governance officers and investigators to ensure the timeliness, quality and consistency in investigations and investigation outcomes.


Verbal Guidance is the lowest form of managerial intervention and is intended to bring to a subject officer’s attention the identification of unprofessional conduct, the remedial action required and to remind a subject officer of the required standards of behaviour and conduct.

The application of verbal guidance will be confined to minor incidents involving low level unprofessional conduct.

Verbal Guidance requires acceptance and acknowledgement by the subject officer and when such is not forthcoming other forms of managerial intervention action/s will need to be considered.

A process for review is not provided for as the delivery involves communication, consultation and agreement.

HR-31.1.15. Managerial Notice

A Managerial Notice is the first level ‘high end’ form of managerial intervention action to demonstrate to a subject officer the seriousness of the unprofessional conduct engaged in and the consequences that may follow, should any form of unprofessional conduct re-occur. A Managerial Notice is to be promoted as a genuine attempt by all parties to positively change the behaviour and conduct of a subject officer.

A Managerial Notice is neither a punitive remedy nor outcome, rather an instrument to encourage and promote professional conduct into the future. A Managerial Notice is to be considered when behavioural modification action/s alone, are not considered sufficient to modify both behaviour and conduct or when unprofessional conduct continues.
Generally, a Managerial Notice:

- Stands alone or may be part of a wider solution/outcome involving both disciplinary offences and or behavioural modification action/s as managed by a MAP.

- Is approved and personally delivered by the Commander/Superintendent/Branch Head (delivery officer) - (An exception to the latter applies to select districts within Regional WA – by reason of remoteness - refer to the MIM Guidelines for information).

- Is a written record of a subject officer’s unprofessional conduct and it is to be attached to the officers Personnel File, Employee Management File and the Internal Investigation File.

A delivery officer issuing a Managerial Notice will engage the subject officer in discussion on the facts and issues / decision/s giving rise to the Managerial Notice and attempt to secure the subject officer’s commitment to both accept the Managerial Notice and to change his/her behaviour and conduct. Sufficient notes will be recorded by the delivery officer to adequately represent the nature and outcome of the discussion and delivery. A formal written response is not required by the subject officer.

Should a subject officer not accept a Managerial Notice, the details of such non acceptance are to be recorded by the delivery officer and other action will then need to be considered. Such action need not be decided on at the time of delivery, however the delivery officer is to immediately inform the subject officer that by reason of non acceptance, he/she will need to further consider the outcome/intended actions.

Following non acceptance of a Managerial Notice, the delivery officer is to carefully consider the interim management of the officer which is to include operational status (stand down/stand aside) and or engaging the officer in behavioural modification action/s.

When a Managerial Notice is part of a wider solution/outcome which also involves behavioural modification action/s as recorded on a MAP, a copy of the MAP is also to be attached to the officers Personnel File, Employee Management File and the Internal Investigation File. Additionally and as a consequence of the latter, the delivery officer is also required to directly communicate with the subject officer with regard to the completion / outcome of the MAP.

A process of review is not provided for as the delivery involves communication, consultation and agreement.

**HR-31.1.16. Assistant Commissioner’s Warning Notice**

An ‘Assistant Commissioner’s Warning Notice’ is the highest level of managerial intervention. Its primary purpose is a formal warning notice to reinforce the premise that a subject officer has to correct and address any identified unprofessional conduct and should there be a failure in this regard, continued employment and engagement with the agency may be at risk.
It may also be issued in circumstances where a subject officer refuses to discharge a previously agreed managerial intervention, or in circumstances where there is repeated failure to correct unprofessional conduct.

A Notice may be issued in response to serious and sustained unprofessional conduct. It may also be considered appropriate in circumstances where there is repeated failure by a subject officer to correct unprofessional conduct and in circumstances when a subject officer refuses to either accept or discharge managerial intervention actions previously agreed to.

The issue and service of a Notice is a formal and documented process designed intentionally for personal delivery and presentation to reinforce the key messages and deliverables. A subject officer will present personally before the respective Assistant Commissioner in the uniform of the day.

**Generally, an Assistant Commissioner’s Warning Notice:**

- Is recommended and prepared by, the subject officer’s Commander/Superintendent/Branch Head, or in the case of a matter investigated by the Professional Standards Portfolio the Superintendent Internal Affairs Unit;

- Must be considered and supported by the respective Assistant Commissioner before issue. If not supported, the investigation file is to be returned to the District/Division for alternate action to be considered;

- Once supported by the respective Assistant Commissioner, the internal investigation giving rise to a Notice is to be quality assured by PCAC in the first instance and then, the issue of the Notice is to be approved by the Assistant Commissioner Professional Standards to ensure consistency in application and approach (Note: for IAU investigations, IAU QA protocol to be applied);

- After consideration by the Assistant Commissioner Professional Standards, the investigation file will be returned to the respective Portfolio Assistant Commissioner for the outcome to be progressed;

- Is to contain a detailed written record of the summary of facts giving rise to the unprofessional conduct and likely consequential outcomes;

- Is to be personally delivered by the respective Assistant Commissioner or in the case of unprofessional conduct sustained through an Internal Affairs Unit investigation, by the Assistant Commissioner Professional Standards in the presence of the subject officer’s District / Divisional Superintendent;

- After delivery, a copy is to be placed on the subject officer’s Personnel File (held at Personnel Services) with a copy retained on the investigation file and the subject officer’s Employee Management File; and

- When the Portfolio Head is not an Assistant Commissioner, the Notice will be delivered by the Assistant Commissioner Professional Standards.
The personal delivery of a Notice by the respective Assistant Commissioner or Assistant Commissioner Professional Standards provides the opportunity for full discussion of the issues and the subject officer can either respond to, or comment on, the Notice content. The Assistant Commissioner will make note of the time, date and location of delivery on the notice and record any response or comment/s made by the subject officer. Accordingly, a formal written response from the officer is not required.

During delivery, it is critical the subject officer is clearly made aware of the magnitude of the unprofessional conduct engaged in and to reinforce the subject officer’s continued employment and engagement with the agency may be at risk should there be any further form of unprofessional conduct demonstrated and or identified.

To this end, the respective Assistant Commissioner will explain to the subject officer the severity of the unprofessional conduct and/or non acceptance of managerial intervention, the likely consequences of any form of unprofessional conduct continuing into the future and agency and community expectations with respect to the member’s conduct. In detailing the consequences, the subject officer is to be left in no doubt that continued employment will be at risk of termination should there be continuance of any form of unprofessional conduct. The subject officer is to also be encouraged to acknowledge the delivery and service of the notice and sign the receipt of service.

A process of review is not provided for as the delivery involves communication, consultation and agreement. Any notes made during the delivery of the Notice and any communication with the subject officer, are to be attached to the investigation file. Again, a copy of the warning notice and receipt of service is to be placed on the officer’s Personnel File and Employee Management File.

**Explanatory Notes:**

1. The Assistant Commissioner’s Warning Notice template is available in the MIM folder on the WA Police Intranet site at: Ethics & Integrity/Professional Standards/PCAC/Managerial Intervention Model.

2. It is open for the Commissioner, Deputy Commissioner (DC) of Police and Executive Director to respectively prepare and deliver a ‘Warning Notice’. In these instances, the policy as it applies to the Assistant Commissioner’s Warning Notice will also apply to the Commissioner, DC and Executive Director Warning Notice respectively.

**HR-31.1.17. No Right of Review**

The MIM is premised on fairness, equity and professionalism and outcomes are premised on communication, consultation and agreement. Accordingly, a right of review is not provided for and issues with respect to non agreement and concerns are to be communicated, considered and dealt with during the delivery process.

Managerial Intervention is a genuine attempt by the agency to positively involve officers who have engaged in sustained unprofessional conduct, to positively change behaviour and conduct and so make an investment in the officer’s continued development and performance.
For any form of managerial intervention to be successful, all parties have to be in agreement and it is firmly held that behavioural modification will not occur if a subject officer is not a willing and genuine participant. Mere objection and defiance, work against the intent and deliverables of the MIM.

To mitigate perceived concerns in not providing a review mechanism, PCAC, in the ordinary course of business and in facilitating the QA process, consider in all instances, the following factors:

- Whether the internal investigation complies with or has been conducted in accordance with relevant legislation and or the established agency investigative protocols / standards (*Complaints against Police Investigation Guidelines* and *WA Police Investigation Doctrine*).

- Whether the managerial intervention action is supported by real and sustained facts in issue.

- Whether there has been an appropriate analysis of the evidence.

- Whether the outcome is proofed on the balance of probability.

- Whether there have been other issues that have influenced the investigation outcome and or management intervention action.

- Whether the managerial intervention action is fair and reasonable considering all the circumstances and extent of unprofessional conduct engaged in.

- Whether the managerial intervention action is consistent with the intent and deliverables of the MIM.

All deficiencies identified by PCAC in the QA process, will be referred to the respective district/divisional officer in the ordinary course of business.

It is also open for the Superintendent PCAC to personally engage the district/divisional officer for identified deficiencies in dispute and if required, refer such matters to the Assistant Commissioner Professional Standards for adjudication.

**HR-31.1.18. Conclusion**

The extent of ethical and professional conduct by all WA Police employees, is fundamental to the agency delivering a quality policing service to the community of Western Australia and in significantly making a contribution to the overall ethical health of WA Police.

Effectively and decisively managing complaints against police is a key influence with respect to community confidence in police and in assisting the agency to achieve statutory and internal/external policy obligations.

The MIM is a contemporary approach to managing employees’ subject of complaints and premises a framework focused on managerial intervention and behavioural modification, in a genuine attempt to change a subject officer’s behaviour and conduct and to provide an
opportunity and mechanism for all subject officers to do so. It relies on communication, consultation and agreement to achieve the intents and deliverables of the policy.

The MIM framework and approach has been constructed to ensure associated practices, procedures and outcomes are fair, reasonable and equitable.

Further Information and Assistance

For further information support or assistance, contact is to be made with PCAC on Ph:9223 1000 or access the MIM Guidelines, Complaints against Police Investigation Guidelines and associated documents located in the Intranet at: Ethics & Integrity/Professional Standards/PCAC/Managerial Intervention Model.

For recommendations to either improve or enhance the policy, please contact the Superintendent PCAC.

Statute Law:

- Police Act 1892
- Police Force Regulations 1979
- Public Sector Management Act 1994
- Equal Opportunity Act 1984
- Occupational Safety and Health Act 1984

References:

- WA Police Code of Conduct
- WA Police Policy HR-1.1 (Establishment, Maintenance and Security of Employee Records)
- Report of the Royal Commission into Whether There Has Been Corrupt Or Criminal Conduct By Any Western Australian Police Officer – Final Report: Kennedy Royal Commission (specifically Chapter 9 relating to ‘Complaints’ and Key Reform Area 8 relating to ‘Complaints Management and Discipline’)
- WA Industrial Relations Commission’s decision in Carlyon v Commissioner of Police (2004 WAIRC 11428)
- The Ombudsman’s Redress Guidelines; Parliamentary Commissioner for Administrative Investigations, February 2008
- Putting the picture together: Inquiry into response by government agencies to complaints to family violence and child abuse in Aboriginal communities; Gordon. (The Gordon Inquiry)
- WA Police Local Complaint Resolution Guidelines
- WA Police Managerial Intervention Model (MIM) Guidelines
- WA Police Complaints Against Police Investigations Guidelines
- WA Police Investigation Doctrine
- Public Sector Standards in Human Resource Management
- WA Police Policy HR-18 (General Principles of Human Resource Management)
- WA Police Policy HR-27 (Managing Staff Performance Policy)
- WA Police Policy HR-27.3 (Substandard Performance Management)
- WA Police EEO Management Plan
- WA Police Policy HR-5 (Equal Opportunity)
- WA Police Strategic Plan
- WA Police Service Delivery Standards
Appendix Four

Submission provided by the WA Police Union of Workers

On 24 August 2012 the Committee received a letter and enclosed submission from the President of the WA Police Union of Workers, Mr George Tilbury, in response to an invitation to provide the Committee with a submission in aid of the inquiry, and subsequent to being granted an extension in the deadline for providing this submission.
WA Police Union of Workers
Submission to the Joint Standing Committee on the Corruption & Crime Commission

The President
WA Police Union of Workers
20th August 2012
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EXECUTIVE SUMMARY

1. There are three Terms of Reference:

TOR 1: How the CCC deals with allegations and notifications of WA Police misconduct.
   (TOR 1 focuses on process. We comment not just on methods or process but also on the impact on the target of the investigation of such methods.)

TOR 2: The impact of the CCC’s practices in this regard on the capacity of WAPol to deal effectively and appropriately with misconduct.
   (TOR 2 focuses on the impact of the CCC’s practices. We comment on the direct financial cost and the indirect costs including organisational performance and individual health and welfare.)

TOR 3: How the CCC practices in this regard compare to police oversight bodies in other jurisdictions.
   (TOR 3 focuses on comparison of practices. We have described what occurs in other jurisdictions, with a view to informing our recommendations.)

2. We have focused upon the impact both of the current system of dealing with complaints, and of possible alternatives. The consequences of the processes employed by the CCC and WAPol are of primary concern to the men and women of the police workforce and the ‘capacity’ of the organisations is governed by the need to deal with misconduct with consistency, fairness and transparency.

3. We conducted an online survey of members. Consistent themes included dissatisfaction with the time taken to conclude an investigation, mistrust of the CCC, and a belief that they will be treated unfairly. The capacity of WAPol to deal effectively and appropriately with police misconduct is marred by workforce perceptions that the CCC has a punitive ideology. The health and welfare cost is substantial, even for those eventually exonerated.

4. A section 42 notice can be raised by the CCC in order to prevent commencement or stop any investigation being undertaken by WAPol. In these circumstances there is a lost opportunity for mutual management and co-operation. In the past three years the CCC and IAU have undertaken only one joint operation.
5. The Corruption and Crime Commission Amendment Bill 2012 is still being debated but the amendment of Section 6A (1) of the CCC Act coupled with other amendments proposed by the Bill considerably expands the CCC’s role in the investigation of organised crime. As a result

5.1. A budget shortfall is likely and either or both agencies will be impacted.
5.2. The CCC will be exposed to a greater risk of corruption
5.3. A large part of the CCC’s role is to oversee investigative bodies and yet the proposal now is that it becomes just such a body. A claim of true independence and oversight capacity is in direct conflict with a role as part of the investigative team.

6. Oversight of the CCC is fundamental to ensure its relationship with WAPol in handling misconduct allegations made against WA Police and in the role of oversight of the Police to manage police misconduct.

7. Oversight systems similar to those utilised by the United Kingdom’s Serious Organised Crime Agency (SOCA) are mooted by the Premier to oversee the CCC.

8. The Independent Police Complaints Commission (IPCC) oversees complaints made against the police. The IPCC has been the subject of considerable criticism. SOCA is not an oversight body, and is to be replaced.

9. We are concerned that British systems, processes and organisations that have either failed, been made redundant, or the subject of dissatisfaction and complaint are being considered as models in Western Australia.

10. The following recommendations are made:

10.1. Delay the progress of the Corruption and Crime Commission Amendment Bill 2012 that empowers the CCC to investigate organised crime in order to permit a thorough analysis of the implementation of the United Kingdom’s National Crime Agency in 2013.

10.2. Identify and examine the key reasons for the dissolution of the SOCA leading to the implementation of the NCA in the United Kingdom.
10.3. Consider the merits and the appropriateness of parallel responsibility for both investigation of police misconduct and organised crime by one agency in light of the UK experience.

10.4. Revisit the means by which the CCC deals with police misconduct, with a view to the identification of the issues that perpetuate a formal, inefficient and punitive disciplinary process. In particular, the adversarial disciplinary system should be abandoned and the treatment of police should be brought into line with the manner in which other public sector employees are dealt with.

10.5. The CCC to advise the Commissioner of Police or his delegate of any investigation or closed hearing where there is no solid evidence that the investigation could be compromised and WAPol should be given the opportunity to monitor the matter to permit the identification of occupational health risk factors and management issues throughout the investigation.

10.6. Amend s151 of the Act to permit disclosure of information provided to the Commission to a psychiatrist or psychologist or other medical professional where it is necessary.

10.7. The CCC and WAPol refine data capture to focus on outcomes not outputs in order to more efficiently measure organizational change and reform.

10.8. WAPol to instigate data capture to investigate potential links between misconduct management and occupational, health, safety and welfare issues.
“The paradox of power”: how can an organisation be granted sufficient powers to protect people from the threat at hand, while still being constrained from becoming a threat itself?

ELINOR OSTROM, NOBEL LAUREATE 1933–2012

INTRODUCTION

1. Following the tabling of the Corruption and Crime Commission’s Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Use of Taser® Weapons by Officers of Western Australia Police and the Department of Corrective Service on 16 April 2012, the Joint Standing Parliamentary Committee on the Corruption and Crime Commission is proceeding with its foreshadowed inquiry into the handling by the CCC of misconduct allegations made against WA Police (WAPol) officers, and notifications of reviewable police action provided by WA Pol.

2. By letter dated 18 June 2012, the then President-Elect of the WA Police Union of Workers was invited to make a submission pertaining to the terms of reference of the inquiry, and to attend before a public hearing, to discuss the matters noted above.

3. There are three Terms of Reference:

   3.1. How the CCC deals with allegations and notifications of WA Police misconduct (TOR 1)

   3.2. The impact of the CCC’s practices in this regard on the capacity of WA Police to deal effectively and appropriately with misconduct (TOR 2); and
3.3. How the CCC practices in this regard compare to police oversight bodies in other jurisdictions (TOR 3).

4. The Union has interpreted the Terms of Reference in the following manner:

4.1. TOR 1 focuses on process. The Union is interested in the day-to-day operations of the Commission and its operatives in receiving, investigating and conducting enquiries into alleged police misconduct. An investigation or enquiry has two elements: the investigator and the target. They are inseparable. Accordingly, we intend to comment not just on methods or process but also to explore the impact on the target.

4.2. TOR 2 focuses on the impact of the CCC’s practices on the capacity of the organisation to deal effectively and appropriately with such matters. “Capacity” relates not just to the impact upon the internal investigative processes of WAPol, but also to the direct financial cost and the indirect costs including those pertaining to organisational performance and the individual health and welfare effects of such practices.

4.3. TOR 3 focuses on a comparison of the practices of police oversight bodies in other jurisdictions with the CCC “in this regard”, that is, in dealing “with allegations and notifications of … Police misconduct”. We have described what occurs in a selection of other jurisdictions, with a view to informing our recommendations to the Joint Standing Committee.

5. Consequently, in our research, submissions and recommendations, we have chosen not merely to describe current processes, but to focus upon the impact both of the current system of dealing with complaints, and of possible alternatives. Ultimately, it is the outcomes or consequences of the processes employed by the CCC and WAPol that are of primary concern to the men and women of the police workforce and the ‘capacity’ of either or both organisations is governed by the need to deal with misconduct with consistency, fairness and transparency. It is crucial that this Committee look to the future.
6. As noted in 4.1 above, TOR 1 focuses on process. The Union is interested in the day-to-day operations of the Commission and its operatives in receiving, investigating and conducting enquiries into alleged police misconduct. An investigation or enquiry has two elements: the investigator and the target. They are inseparable. Accordingly, we intend to comment not just on methods or process but also on the impact on the target of such methods.

LEGISLATION

7. Section 7A of the Corruption and Crime Commission Act 2003 (“the Act”) provides that the main purposes of the CCC are:

(a) to combat and reduce the incidence of organised crime; and

(b) to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector.

8. Section 7B sets out how the Act’s purposes are to be achieved. This provision underpins the work of the CCC.

(1) The Act’s purposes are to be achieved primarily by establishing a permanent commission to be called the Corruption and Crime Commission.

(2) The Commission is to be able to authorise the use of investigative powers not ordinarily available to the police service to effectively investigate particular cases of organised crime.
(2) The Commission is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so while retaining power to itself investigate cases of misconduct, particularly serious misconduct.

INVESTIGATOR OR OVERSEER?

9. A large part of the CCC’s role is to oversee investigative bodies and yet the proposal now is that it becomes just such a body. It is difficult to reconcile a claim of true independence and oversight capacity with a role as part of the investigative team.

10. The CCC may deal with suspected misconduct in a variety of ways, including:
   • Referring matters to relevant public sector agencies for investigation.
   • Referring matters to independent bodies, such as the Ombudsman or Auditor General, for investigation.
   • Investigating matters itself.
   • Investigating matters in conjunction with relevant public sector agencies or independent bodies.
   • Taking no action.

11. When a matter is referred to a relevant public sector agency for investigation, the Commission monitors the progress of the investigation. Reports on completed investigations by relevant public sector agencies are forwarded to the Commission, which reviews their adequacy.

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1 Corruption and Crime Commission of Western Australia, Notification Guidelines for Principal Officers of Public Authorities 3rd Ed February 2005 s6 at 9.

2 s40

3 s41
12. In recent years the CCC has moved the focus in discharging its oversight responsibilities from monitoring and reviewing individual misconduct allegations to analysing organisational systems and cultures in public authorities and preventing, identifying and dealing with misconduct when it occurs. Consistent with this, the Commission now adopts a more strategic approach to monitoring and reviewing “appropriate authority investigations” into serious misconduct allegations.

13. There has been either new or more effort placed into following areas:

- corruption prevention and misconduct
- education and consultancy services
- regional outreach program
- materials development
- analysing organisational systems and cultures
- research

14. In the absence of additional funding and the mooted uptake of a substantially more robust role in the investigation of organised crime it is not difficult to envisage how the oversight role could develop into a paper shuffling exercise confining itself to delegating all investigations and carrying out a ‘tick and flick’ on the file’s return.

WHAT HAPPENS IN PRACTICE

15. In order to further inform our response concerning processes and organisational impact, we carried out an online survey of members enquiring into their dealings with both the CCC and police internal investigations, and have provided case studies exploring the experiences of several who have been investigated.

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4 Corruption and Crime Commission Annual Report 2010-2011, [65]

5 *ibid*
Before dawn a large number of officers from the ACC\textsuperscript{6} and Professional Standards executed search warrants on my home and office and that of X.

Their conduct can best be described as overbearing, arrogant and unprofessional. My wife was forced to use the toilet and shower whilst being constantly watched by a female officer. On one occasion I put my arms around my wife to comfort her when an ACC officer pushed us apart telling us not to talk to each other.

The search lasted some 12 hours. They sifted every item of food in the pantry, they sifted the cat’s litter box, they seized all documents and paper they could find, including photos and letters from my wife’s deceased mother. They found no incriminating evidence. Throughout the search the officers refused to provide me with any information. When asked why I was being raided, what the allegations against me were or what the grounds for the search warrant were, the reply was, “I am not at liberty to say”.

And they never did say until over 12 months later when I was finally interviewed by the ACC Special Investigator.

Within 24 hours of raiding my home the ACC released details of the raids to the media with the then ACC Chairman stating in a TV interview that he expected criminal charges to be laid in the near future. This was a breach of the ACC Act.

For over 12 months I was kept in limbo. Suspended from my job of over thirty years and totally isolated. My peers in Police Service were ordered by Commissioner not to contact me. I was subjected to almost constant surveillance by ACC personnel for months.

\textsuperscript{6} It was recommended by the Kennedy Royal Commission (2004) that the ACC be replaced by a Corruption and Crime Commission (“CCC”), with expanded powers and resources to take over the role of the ACC and to carry on the work of the Royal Commission, in order that there be a permanent independent agency with the capacity to resolve police corruption issues.
I was eventually called before the Special Investigator and interviewed over six days. Although I was permitted to have legal counsel accompany me, he was not permitted to make any statement or representation on my behalf. I was not permitted to question any witnesses nor to provide any evidence to the SI that tended to disprove an allegation. He simply would not allow me to speak nor would he accept any written statement I prepared for him.

Many months again passed by until I was served with a summons alleging I committed Perjury ... jointly charged with me were ... other serving and retired officers. We were summoned to appear in Court on Christmas Eve. At about the same time I was provided with a copy of a Report forwarded by the ACC to the Commissioner of Police and I was served with a Section 8 Notice of Dismissal. This report referred to numerous allegations, most of which were best described as nonsense and none of which I was guilty of.

During the Preliminary Hearing into the Perjury charges we (the defence) sought access to the transcripts of ACC interviews with various witnesses. This was strongly challenged by the ACC who employed an independent QC to represent them in opposing this application. After several adjournments the Court ordered the ACC to provide the material sought. On receipt it was very obvious why the ACC had been so determined to hide it from us. The material proved beyond any doubt that the allegation that I had [committed an offence] as reported to the C. of P. was false.

On resumption of the hearing the principal witness (X) ... was cross examined by defence counsel and readily admitted that almost his entire defence to charges he was answering in the criminal court ... was fabricated. The Magistrate consequently ordered the DPP to have ... interviewed to ascertain exactly what portions of the several hundred pages of his trial transcript was perjury.

When the Hearing resumed a Senior Investigator from the then ACC produced a typed report detailing paragraph by paragraph through the entire transcript which parts ... now admitted to perjury.

When my lawyer called for the audio transcript ... stated he did not tape the interview. In explanation further stating that although it was a requirement for the ACC to tape record all interviews he considered he was acting for the DPP at that time and not the ACC so he didn’t believe he was required to. In reply to questioning he also admitted that he was aware of the significant value such evidence would be for the defence. X stated that he had been able to prepare the detailed report because he made written notes.

My lawyer then called for the notes to be produced, however the investigator claimed he had destroyed them. (Many months later I became aware that the written notes the investigator claimed to have destroyed had been found at the ACC). My efforts to have X investigated for perjury and attempting to pervert the course of justice were rejected.

The hearing was then adjourned and all charges subsequently withdrawn by the DPP.
The impact of the investigation and its outcome was and still is devastating. Initially I suffered severe depression requiring many months of medical care including hospitalization. Over the longer term I was unemployable in any position commensurate with my training and expertise. I have suffered very significant loss of income. My marriage has suffered, my life is not what it would have been and I still hold great resentment that I spent my life’s work in the Police Service and for that I got verballed by the ACC and given absolutely no support from the Police Service.

STUDY 2

Much has been made by the Government regarding the need for closed inquiries by the ACC to protect the reputations of innocent people. I have no difficulty with that scenario in principle. However, it presupposes that such inquiries will be conducted by people beyond reproach, fully competent, impartial and totally professional. Such a view is utopian, I can say from experience.

I and several others were charged with a serious criminal offence as a result of allegations made by someone we had charged. He latter admitted he had constructed these false allegations and we were eventually acquitted and completely exonerated. My experiences with the investigative body need to be known. Secret inquiries allowed the pursuit of private agendas, the secretion of evidence, abuse of power and the covering up of mistakes and incompetence. If inquiries by the ACC into the matters leading to the charges against us were held in an open forum, where police officers called to give evidence were permitted to refer to documents relating to the case (as were other witnesses), and we were permitted to have a solicitor present to competently cross-examine those making accusations, there can be no doubt that the charges against us would never have been preferred.

By its methods as described above, the ACC, in our case, and others I am aware of, succeeded in alienating not only its targets, but the vast majority of police officers in general, whereas a professional but fair approach would have engendered widespread support.

I see the balance between private and public hearings with the need to protect people’s private and professional reputations where appropriate, a significant issue for the CCC for the future. Any erosion of natural justice relating to these areas will obviously have an adverse impact on the targets of the CCC and their families, but equally as importantly will create a flow-on effect where rumour will mix with fact and the subsequent reputation and effectiveness of the CCC will be tarnished irreparably, as with what happened with the ACC. Oh! and by the way, charges against us were initiated by summons and mine was served on me in the family home on Christmas Eve.
STUDY 3

As a solicitor I was representing a client who had been summoned to the CCC to give evidence. As we walked into the hearing room I felt immediately intimidated. The public gallery had been filled up with CCC employees as a means to intimidate my client. I had my hands completely tied to act on his behalf, but at least I was there with him. We were treated with arrogance and rudeness throughout. This is not the way to get co-operation. I can’t help wondering what it would have been like for him if he walked into that room alone as many have.

CASE STUDY DISCUSSION

16. The first and second of these case studies relate to enquiries long past. The Kennedy Royal Commission traversed twenty years of history during its investigation and hearings and gave birth to the CCC. It could be said that little has changed over time: in 2010 seven police officers were called to give evidence in closed hearings into the 1990 Quartermaine shooting. The matter was twenty years old and resulted in recommendations from the CCC based on redundant procedure. Moreover, the conduct of closed hearings involving WA Police, in absence of any consultation or communication with WAPol can be viewed as a clear vote of no confidence in the organisation’s capacity to manage misconduct.
SURVEY

METHOD

17. An online survey was undertaken to capture the experience of members in respect of investigations into police misconduct allegations. A copy of the questions posed is attached as Annexure “A”. A quick turnaround was required, given our time constraints. 447 started the survey and 341 completed it.

18. The survey was a mixed methods qualitative/quantitative instrument, from which the material below is drawn. The text boxes contain relevant comments provided by respondents in relation to specific questions. Respondents were also asked at the end whether they had anything to add.

19. Where percentages are given, they refer to percentages of those answering a particular question unless otherwise specified. All percentages have been rounded to the nearest whole number.

20. Some of the qualitative answers were edited to protect identities.
RESULTS

TIME IN WAPOL

21. 30% of respondents had been police officers for more than 20 years.

THE CCC EXPERIENCE

22. 21% of respondents had had dealings with the CCC, with over half of those (51%) relating to a criminal enquiry, and approximately one third (33%) relating to internal disciplinary matters. About half were investigated as suspects, and half as witnesses (51% and 52% respectively). Only one respondent was a complainant (alleged bullying).
23. Of those questioned as a suspect (37 in total), 22 indicated they were questioned privately but 4 also went on to appear at a public hearing.

The allegations against me had been investigated by WAPOL investigators and insufficient evidence had been found to make prima facie. I thought the matter had been finalised and returned to work to have a summons served on me to attend a private hearing of the CCC. After attending the star chamber and being questioned regarding matters to which I had already given a formal report and been interviewed, some six months after the fact, I was queried on decisions made with a second’s thought and completely unrelated to the alleged matter for which I was being investigated. I was stood down whilst this was occurring and was informed that I was to be criminally charged after a friend rang and asked about it, as the press release with the information had been sent out prior to my being informed. ... The other police officer involved, rather than being treated as a potential POI, was treated as a star witness and guided through their evidential statement, to tailor the facts to match the CCC’s theory. The witness was exposed under cross-examination and one matter thrown out with no case to answer and I was acquitted of a second, related, matter. Two years after the fact I ... still had to answer a loss of confidence motion, barely retaining my job… as the counsel assisting the CCC in my investigation has now returned to the DPP, I have the uncomfortable situation of having to work with him in future investigations.
24. Of those who answered, 37% considered they were treated less than acceptably or poorly (compared to those questioned as witnesses where 24% considered their treatment to have been less than acceptable or poor).

25. The time between an investigated respondent becoming aware of an investigation and the completion of the investigation ranged from 7 days to several years. Of those who specified a time frame, the mean was 14.6 months. Three of the 40 who responded to this question were never told that an investigation had been finalised. This may account for 83% of respondents thinking the CCC does not deal with allegations of police misconduct efficiently.

I still don't know the final results and if I was a suspect or a witness or what the final view of the matter was and that was about seven years ago. I saw suspensions of officers for years without charge and then lies by the investigators with no recourse, things WAPOL would never do or allow.

26. Approximately 70% of respondents do not trust the CCC to deal with complaints confidentially, nor fairly. 79% were not confident the CCC would clear them if they were wrongly accused, and 77% consider that a CCC investigation was not even-handed, in the sense that equal efforts would be made to obtain exculpatory evidence as inculpatory.

27. Over 60% would not report police misconduct to the CCC.

THE POLICE INTERNAL INVESTIGATION EXPERIENCE

28. 80% of the 414 who answered the question said they had been involved in a police internal investigation, with 75% having been questioned as a suspect, 68% as a witness, and 6% as a complainant. This totals more than 100%, as some had experience of more than one form of involvement.

29. 49% involved allegations of a criminal nature, and 68% internal disciplinary issues. 12% related to alleged corruption. 20% reported other allegations of which over half related to use of force (arrests, shooting, Tasering®).
30. Whether complainant, witness or suspect, respondents gave mixed reviews to their internal investigation experience. Approximately two thirds of witnesses and suspects considered they were treated acceptably or better, but only about half of the complainants to whom the question was applicable considered they were treated acceptably or better.

31. Of those who were suspects, several spent over 5 years without being cleared, and, disturbingly, some 13% were never formally advised that they were cleared once the investigation ended. Discounting the outliers (the extreme numbers at each end of the scale) the average wait for resolution was 10.6 months.

They have never gotten back to me on any of the matters I have been involved in even as a complainant/reporting person as it seems standard practice not to advise of a result which left me in a prolonged state of anxiety at the unknown outcome?! This has happened on a number of occasions for me, which aggravated my anxiety disorder.
If you were a witness questioned by Police Internal Investigations, how do you rate how you were treated?

If you were a complainant interviewed by the Police Internal Investigations, how do you rate the way your complaint was handled?

- Not applicable
- Excellent
- Good
- Acceptable
- Less than acceptable
- Poor
- Dreadful
32. 56% trusted police internal investigations to deal with complaints confidentially, and 48% trusted them to deal with complaints fairly. 49% trusted them to deal with complaints efficiently. 58% were not confident that an investigation would clear them if wrongly accused, with 66% considering that the internal investigation was more focussed on finding incriminating evidence than exculpatory evidence. 70% would report police misconduct to internal investigations.

MINOR MISCONDUCT

33. An overwhelming majority (92%) considered that allegations of minor police misconduct should be dealt with internally and not by the CCC. The comments extracted below give a fair representation of the views of serving police officers. There is considerable animosity and distrust of police investigating police.

Walk a mile in another man’s shoes - it is imperative that investigators of internal complaint matters understand the associated risks, assessments and pressures placed upon an officer in day-to-day, front line policing. Split second decisions can and will be made with mistakes. Without the benefit of hindsight and hours if not weeks to be able to assess the “best practices” and “other available options” they may not be clear at the time, under the stresses of the situation and pressures placed upon frontline police officers to perform under constant pressure with little to no time to complete the tasks thoroughly. Police must investigate Police in the first instance.

There is a greater ability for internal investigations to seek the truth and know where to look. I am not confident that the CCC would be fair in their investigation. They release details to the media when it suits their investigation without any for thought to the ramifications upon the individual. If the CCC were given the role of investigating Police, there would need to very clear guidelines surrounding directions to provide information and right to silence.
Police Internal Investigations are staffed by experienced, professional and impartial officers whose sole objective is to fully investigate a complaint and recommendations based on all available evidence. I do not see what if any benefits the CCC can contribute to an investigation that cannot be capably and effectively investigated by Police Internal Investigations. The other issue is that Police Internal Investigations are not subject to political influences, populist expectations and having to justify their existence.

The Police Internal Investigations are not perfect, however they understand what the job is like. They understand that Police officers have to make split second decisions and sometimes get it wrong. Where they fail is that if there is the slightest error they have to discipline that officer. I feel that this is not always the best course of action if the decision is made in good faith.

Each time I was interviewed regardless of whether I was a witness or subject of a complaint I was treated with less courtesy or respect than the worst criminals I've ever dealt with. No follow up was ever given without me initiating the contact and on several occasions no contact at all was made to notify me of the outcome. My experience with WAPOL has left a continuing distaste for the agency and how it treats its members who by the very nature of the job will be subject to complaints either malicious or justified. The difference is that the outcome for officers is that it is unlikely that we will keep our jobs in the event of an adverse finding in the current policing climate. All in all an absolutely disgusting level of professionalism.

Minor allegations should be dealt by WAPOL as they are minor, however the appeal process should be governed by another body to ensure objectivity and fairness is adhered to. I've heard the Commissioner is trying to have the right of appeal removed (Section 23 Police Act). I think this would be a huge abuse of power and will totally go
MAJOR MISCONDUCT:

34. Respondents were more inclined to have the CCC investigate serious allegations, but they were by no means unanimous. 52% considered that serious misconduct should go to the CCC.

- CCC should be involved in as the name suggests, CRIME and CORRUPTION matters.

- The CCC is seen as an independent organisation to investigate serious allegations of public servant misconduct. The public would have better trust in CCC as some may believe if Police investigate themselves, it would be seen as somewhat favouritism to the officers in question. We do not want the public to feel this way.

- CCC has a history of proceeding with prosecutions where the accused person has been cleared through lack of evidence. I believe they are easily influenced by public perceptions, the WA public want police to deal with crime but they do not want police to have any powers to do that, the media indulge themselves with anti police reports and fuel the ignorant public's ill informed opinions. I believe that Police Internal Investigations are an officer's only chance of a fair and unbiased investigation without being the target of a witch-hunt by an organisation that feels a need to justify its existence.

- The CCC are incompetent. I would be happy for an external body to investigate allegations of serious police misconduct but it must be staffed by experienced investigators who know how to conduct a fair and thorough investigation. I have previously worked at IAU and do not consider there is a competent external oversight body in any Australian jurisdiction.

- Serious Police misconduct should be investigated by an external body to ensure a proper investigation that is not influenced by the agency's "agenda" or internal politics.
35. The last question asked respondents if they wished to add any other comments at all. 119 officers responded, often with copious detail. It is clear from the length and tone of the responses that officers felt strongly about the issues upon which they commented.

36. The responses had a number of themes, many echoing comments made in response to earlier specific survey questions. Clearly some of the comments fell into more than one category. The themes which most regularly arose were:

- Police investigators were said not to cull frivolous or baseless complaints, and not to hold vexatious or dishonest complainants accountable.
- Minor complaints were escalated out of proportion to their seriousness.
- Officers were unaware that they are under investigation until late in the day, preventing them from gathering exculpatory evidence.
- Police internal investigations were said to have a guilty till proven innocent attitude and/or to be biased. Similar comments were made about the CCC, but in fewer numbers, which may reflect the fact that the CCC deals with far fewer matters.
- The CCC was said to have too much power.
- Officers lacked faith that a correct result will be arrived at by either body.
- The CCC was said to conduct investigations without appropriate skills that is, guided by lawyers.
- The CCC “piggybacked” on WAPol investigations, and preferred soft or media-driven targets.
- The CCC and internal police investigators afforded suspects fewer rights than those granted to common criminals.
- Inordinate time was taken to complete an investigation, or police and the CCC undertook serial investigations. Officers also complained of delays in advising of outcomes.
• There was a substantial human cost involved in such enquiries, with negative effects on physical and mental health of officers, strain on personal relationships, distress and fear suffered by the investigated party and his or her loved ones.

• There was said to be a negative effect on policing, inducing officers to operate in a conservative, dysfunctional, risk-averse manner, which limited their operational effectiveness.

37. A representative selection of responses follows:

**FRIVOLOUS COMPLAINTS**

Simply put, the agency spends too much time dealing with frivolous complaints where the complainant is upset because he was charged/issued infringement and want the police officer to suffer. A simple investigation conducted by the line supervisor can determine whether or not the allegation is real and then if found to be real, forward it on to Internals if required. Police internals/DPP criminally charging officers for doing their duty is incomprehensible, yet it happens because of a minor breach of policy made during one of the most intense times of that officer’s life. We really need to get back to basics with Spirit of the Law/Letter of the Law philosophy and decide what we as an agency are doing … no officer should be charged with any traffic related offence whilst on duty in a police vehicle period … if an urgent call comes out or an offence is committed in front of them, they are duty bound/morally bound to act.

It is extremely disappointing from an officer’s point of view that when a false allegation is made against police, the complainant is not charged with creating a false belief or similar charge where and when one can be laid. I believe officers would respect the complaint process more if they saw the liars and persons trying to get back at them with malicious complaints being dealt with for wasting time and money. Also, if a complaint is unfounded, it should not be kept on an officer’s personal record. We cannot use charges with a

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7 WA Pol does not capture data about how the Corruption and Crime Commission or internal investigations deal with alleged police misconduct and the occupational health and welfare impacts on the organisation. (Letter 14 August 2012 from Assistant Commissioner Professional Development to Fordham & Roast)
finding of not guilty against and accused, so why should an unfounded or exonerated file be left on our records, possibly ruining our career path over a malicious complaint?

I have serious concerns that people are able to make false reports about police misconduct and that at the conclusion of investigations that are clearly found to be false and misleading, that no action is taken against the person for clearly making a false report that under any other normal circumstances would amount to a charge being preferred against the person.

MINOR COMPLAINTS

Complaints against police particularly when they are “on duty “ complaints should always be treated at lowest level until they are escalated if evidence is found of misconduct, criminal conduct or corruption. The LCR system has turned into a full on investigation rather than an OIC or supervisor at station level dealing with a complainant, speaking with officers and resolving the issue.

Minor allegations against police discipline such as rudeness, not being empathetic etc should not be part of the Internal Investigation process but should be part of a police management and supervision process. Too much time and energy is spent on minor complaints. Complaints in relation to arrest, laying of charges etc should be dealt with by the COURTS and not duplicated by internal investigations. In a lot of cases the Court Room should be the arbitrator of these matters and not an Internal Investigation. If the Magistrate or Judge makes comments that warrant an investigation an investigation could be generated. This department is moving toward management by CAN. Example: a person complains that police used handcuffs when not necessary and they were injured (as minor as red marks) even though it can be shown that the use of handcuffs were entirely appropriate and in accordance with guidelines and this is explained to the complainant and they submit a complaint anyway, a FULL, TIME AND RESOURCE CONSUMING investigation STILL takes place.

NOT AWARE OF INVESTIGATION

The subject officer should be formally notified when a complaint has been received by either CCC and/or PCAC (Internal Affairs). The full extent of the allegation may not be known until the service of a notice in
writing is made other than the “Chinese whispers” that bedevils policing across the world! … other than in exceptional circumstances this notice should be served very shortly after receipt of the allegation. … [A] new regulation (or policy) … that an officer who is the subject of an investigation must be notified in writing of that investigation as soon as practicable, … [in] the form of a notice, which clearly sets out the nature of the complaint (time, date & circumstances …) the officer’s rights, including the right not to say anything concerning the matter under investigation. This gives the officer the earliest possible opportunity to gather any material he/she may need to defend the matter. To wait some weeks or even months puts the officer at a disadvantage, especially if the memory of witnesses is part of the evidence to be adduced.

ASSUMPTION OF GUILT

Not all Police with misconduct are guilty and should not be treated as though they are. Some make errors in judgement and counselling and guidance should be given. Three strike Policy for minor misconduct and for serious misconduct the officer should be stood down whilst investigation is investigated.

Anyone can make a complaint about Police and their complaint seems at the moment to be held higher than the account given by the officer’s themselves. Further, the WA Police don’t support officers having their own recording devices yet have no problem with members of the public using their own.

The officer is guilty until they can prove themselves innocent, even when such allegation have been proven to be false. There is no consequence for making a false report against Police. The investigations should not immediately instigate a belief of guilt until all avenues of the investigation are cleared as in natural justice.

They need to have independent interviewers/investigators so you are not investigating your own peers. Even at LCR level. The risk of biased investigations is high.

I think WAPOL is currently narrow-minded and is purely looking for convictions against officers. I think minor offences are blown out of proportion and the punishment exceeds the seriousness of the alleged offence. I think WAPOL is influenced too much by media and government when determining an outcome of an allegation.
Police inquiries can be and often are subject to a determination BEFORE the inquiry is complete. (I know this as a fact as I have been ‘directed’ by Superintendent level several times as to the ‘required results’ when I have been conducting internal investigations). I have been treated far worse by ‘my fellow officers’ than any criminal I have ever had dealings with in over 30 years of law enforcement as a sworn police officer. I consider it shameful and an absolute disgrace that police are being directed to come to a particular investigation result, be it negative or even positive, in respect to the subject officer. Many officers who richly deserve severe sanction or dismissal are protected while others who have made a quite minor error (and some have done nothing wrong at all) are hounded and sanctioned very harshly dependent on the district officer/equivalent or the manner in which a file is written up. Internal investigations would not be so ‘closed’ if the investigators and senior ‘directing’ officers could be subjected to scrutiny at each step by a representative of the subject officer.

As for the CCC, no copper in his right would trust them to do the right thing and be fair and unbiased.

POWERS OF CCC

Our experiences from the past with the CCC and the various other Commissions of Inquiry have been disgraceful. Giving them wider powers has only corrupted them to the point they were unaccountable and justice and fairness were the first things to fall away.

The CCC are a power unto themselves, and their powers should be vastly reduced. A new entity should be established with reduced powers, with the ethos that an officer is innocent and all efforts should be made to prove an officer’s innocence instead of focusing on persecuting the officer.

CCC LACKING APPROPRIATE SKILLS

The public expect an independent watchdog. Pity it’s a bunch of lawyers who aren’t investigators!
Perhaps the CCC should hire investigators or train their lawyers to be investigators. Generally Detectives think the CCC are a pretty pathetic bunch of would-be Detectives who can’t even draft a search warrant correctly. The public expects and deserves an independent organisation to look over WAPOL. I don’t have an issue with that. I have an issue with the fact that lawyers are not investigators. Which makes them a pretty inefficient bunch. You would not let a Detective Sergeant run a District Court trial, why would you get a solicitor to investigate corruption?

CCC PICKING SOFT TARGETS

I believe the Internal Investigation Unit is a sufficient resource to manage allegations of misconduct or criminal offences against Police. The CCC is a secretive body whose charter also extends to serious and organised crime but who appear to prefer investigation the softer targets of Police and public servants.

… CCC gravely erred in my view when they permitted the Spratt - Perth Watch House footage to be aired on television, which was in conjunction to the release of the Taser® inquiry for a media grab. What they really did was release evidence to the public and then 18 months later recommend common assault charges against the officers involved.

Under the CIA we are to protect criminals from the media, yet when that Kevin Spratt incident came to alight they released the CCTV from the lock up to the media. How is that protecting the officers? As I am to understand it was a criminal investigation, therefore the CIA should apply.

SUSPECTS’ RIGHTS

I was interviewed by three internal investigators during one interview. Even police policy and procedures for interviewing murder suspects would not allow three lots of questions to be fired to one person of interest due to the possibility it would be thrown out of court due to unfairness to the POI. Not our internal investigators though, they can break the rules to put pressure on you. They already knew the result before I was interviewed as there were independent public witnesses, but I still got pulled through the wringer, hurting my feelings of loyalty to the agency.
Police Officers are the only people I know who go to work with a sense of trepidation that at any time during their shift they could be facing an internal interrogation where their rights are eroded or be stood down and isolated from their workmates. This is not a reasonable state of affairs in 2012. Internal Investigations, either by Police or the CCC, should be more accountable in terms of fairness and it is not accepted that because police are given powers they somehow should be denied a fair and non-discriminatory justice system that would apply to the rest of the community. Inquiry officers at the CCC should be accountable for their actions in the same manner as are police.

I feel that Internal Investigators can’t be trusted and have an agenda to “lock up” Police Officers right or wrong … I have assisted Internal Investigators at jobs. I certainly have seen the way they think, judge and treat officers who they are investigating. My experience in assisting with these inquiries has certainly left me with a lasting impression of internal investigations and it’s not a good one.

In criminal matters Police should be given the same rights as any member of the public regarding questioning as in the CIA, as police officers are compelled to report on all matters even if this incriminates the officer and the report is submitted as evidence in criminal proceedings.

I had two Inspectors investigate me on one specific occasion and they were both aggressive, intimidating and biased in their approach. That type of interview style is archaic and not indicative of the majority of how frontline investigators are trained and subsequently conduct themselves.

**DELAY / SERIAL INVESTIGATIONS**

We are trained to make a split second decision but it takes weeks, months and years for others to decide if it was right or wrong, meanwhile you’re left sitting on the bench.

As a witness, complainant or suspect in any internal investigation you should be advised of the result within days or the matter being finalised. I have been a witness, complainant and suspect in several incidents over my 17 years and I have never been advised of the result of any inquiry, just seen the results.
as people are exonerated, counselled, placed on Management Action Plans, or quietly leave the job. While part of an investigation you are on trial, like it or not and the outcome should be communicated to all those who took part.

Officers should be told the outcome of the investigation at the earliest opportunity, not left to their own devices to find out. The investigation should be objective, not solely focussed on appeasing the complainant.

HUMAN COST

The current process is an absolute disgrace and a 17 month investigation, where an individual is stood down, losing a large portion of their expected income with no consideration for the effects this has on an the accused’s family, financial standing, career or mental and physical health is outrageous and should be outlawed and punished severely for occurring … the accused can be demoted for an offence they did not commit simply because individual is … without the slightest understanding of the job we do and/or the capacity to assume anything but the worst OR that an investigation can be carried out so poorly with no effort made in finding the actual facts of the case while the Workplace Relations and the Human Resource Director can ignore all pleas for assistance, understanding and any showing of care for an individual’s rights or state of health while an investigation drags out with no motion whatsoever month after extremely long month deserves a criminal investigation of its own and prosecution of all involved in order to assure these people are held accountable for the wrongs they have committed.

Officers … are not being given any feedback whatsoever in relation to how the investigation is going or even a result at the end. This means that they are effectively left “hanging” with no answer to the way things have turned out prolonging stress and anxiety in our officers with no care about their welfare.

It caused me a great deal of stress as the complainant questioned my morals and ethics, and nothing was done about the complainant’s lies. I was very bitter after the experience.

It seems anyone can make a claim against a police officer and even when there is no evidence, there must be an investigation and the officer placed under stress even when they have done absolutely nothing wrong. We have to produce evidence to support a claim and yet we can get accused without any evidence offered.
Wrong, stupid, unfair, moronic. Our job is hard enough without having to fear reprisal for making a decision that may lead to a complaint and investigation because we are doing our job. We are trained to make split second decisions. We may not always get it right, but I don’t think we should be punished the way we are for making a mistake in trying to do our best. The stress of undergoing an internal and having it hang over our heads for so long has short and long term effects with family, home life, work, physical health, mental health. Quicker resolutions would help those being investigated just be able to get on with work and life knowing it’s resolved, even if the decision is not to their liking. The impression I got was that I was guilty regardless of what I said. No understanding of the situation, no real appreciation of the mental stress I was under at the time and there was absolutely no benefit gained and no harm done to the other party. I didn’t feel like I was treated badly or unfairly, but I would have appreciated some understanding and taking all things into consideration. If it is a deliberate act, then fair enough, we should be investigated.

**EFFECT ON POLICING**

IAU handles the matters very well at present but this requires a huge resource and funding liability. If we had a government board or commission we could let a whole bunch of professional investigators and support staff get back to real policing as they should and let the government appointed board/commission get on with the job. I suspect that IAU/PCAC are driven by a requirement to provide statistics to the state government proving their clearance figures increased every year to justify their existence for funding purposes, the same as any other unit or station within the police force. … I also suspect that the organisation is driven by media reporting and driven hard! It’s almost as if the Commissioner or someone in the CET must provide explanations to the media when some allegation of police misconduct arises from the capture of an arrest using force on a member of the public’s mobile phone goes viral on YouTube or some such media. This organisation is so risk averse today that police officers on the ‘front line’ are more scared of the repercussions from the hierarchy than they are of offenders when using force to make an arrest and are becoming hobbled by it. If you ask any front line officer “Do you believe you will be supported by the Commissioner, his CET and your own District Office when or if you use ‘force’ to make an arrest?” 95% of them would say, “No”!

As a Police officer, you are half doing your job and half protecting yourself from allegations, etc. If Police can feel secure in their job then certainly, there will be a higher work rate than what there is currently.
The use of Tasers® has now become so complex and complicated, leaving only very little base for justification. The use of force reports along with the justification matrix has caused common sense to rocket away from good judgement. The new and current guidelines are unreasonable and have left me confused. The mere pointing of a Taser® to resolve conflict requires a use of complex Force Report / Matrix. The finding of any small interpreted unjustified use of a Taser® far outweighs the actual justified appropriate use even with a good conflict result. I personally will avoid using or carrying a Taser® in operational Police work as the level, its reliability and justified use is still not clear and will remain open to interpretation.

If bosses micro managed a little less and left discipline to the S/Sgts and Sgts half this mess would never happen. The chain of command has failed; commissioned officers are pulling up Constables and having a go; commissioned officers are writing their own policies for their own areas without reference to agency policy. There is no real leadership; neither is anyone teaching leadership, in particular situational leadership, anymore. Just because you are good on paper does not make you a leader. Without man management skills, and I don’t mean being able to do a roster, there is no hope. Without leaders there is no respect, without respect there is no discipline, without discipline there is anarchy. Everyone is looking over his or her back now, there is no trust, we have come to far, there is no hope!

DISCUSSION

38. 37% of those investigated by the CCC considered they were treated less than acceptably or poorly. This is slightly more than the 34% of suspects questioned in an internal police enquiry.

39. The mean investigation time experienced in a CCC enquiry was 14.6 months, compared to 10.6 for a WAPol internal investigation. Of concern is the fact that some officers, whether investigated by the CCC or a police internal enquiry, were not advised that the investigation had been completed.

40. The striking difference in attitude / experience of the CCC versus the internal police investigative process appears when considering the trust or confidence respondents had in each body. Only 30% trusted the CCC to deal with complaints confidentially, compared to 56% for police investigations. 48% trusted a police investigation to be conducted fairly, compared to 30% for the CCC. 79% were not confident the CCC would clear them if they
were wrongly accused, compared to 58% for a police internal investigation, and 77% consider that a CCC investigation more focussed on finding incriminating evidence than exculpatory evidence, compared to 66% for a police enquiry. 30% would not report police misconduct to internal investigations, but 60% would not report police misconduct to the CCC.

41. An overwhelming majority considered that allegations of minor police misconduct should be dealt with internally and not by the CCC, but only 52% considered that serious misconduct should go to the CCC.

42. Generally, therefore, police who have been investigated by the CCC or who have had dealings with the CCC harbour a great deal of mistrust of the CCC. Despite advances made by WAPol toward a contemporary behaviour management approach, the impact of the CCC’s practices on the capacity of WAPol to deal effectively and appropriately with WA Police misconduct is a negative one, marred by workforce perceptions that the CCC has a punitive ideology geared toward “name, shame, publish and punish”, and at the same time does not afford them the rights enjoyed by other members of society.
TOR 2: THE IMPACT OF THE CCC’S PRACTICES IN THIS REGARD ON THE CAPACITY OF WA POLICE TO DEAL EFFECTIVELY AND APPROPRIATELY WITH WA POLICE MISCONDUCT

43. As noted in 4.2 above, TOR 2 focuses on the impact of the CCC’s practices on the capacity of the organisation to deal effectively and appropriately with such matters. “Capacity” relates not just to the impact upon the internal investigative processes of WAPol, but also to the direct financial cost and the indirect costs including those pertaining to organisational performance and the individual health and welfare effects of such practices.

EXCEPTIONAL POWERS

44. s7B(2) is relevant to the terms of reference of this inquiry in that the CCC currently has no authority to itself investigate organised crime. The only way in which it can combat and reduce the incidence of organised crime is by authorising WAPol to use exceptional powers in the conduct of particular police organised crime investigations. The Commissioner of Police can apply under s46 (1) (a) (b) (c) of the Act to the Corruption and Crime Commissioner for authority to use exceptional powers. If the application is granted, the Commission monitors the use of those powers but does not itself have any role in the investigation. The Commission cannot initiate an exceptional powers application.

45. During 2010 - 2011 the Commission received two applications for an exceptional powers finding and one application for a fortification warning notice. Prior to that only one application had been made in seven years. It was claimed by the CCC that use of exceptional powers remains problematic, given the low number of applications received from WAPol.
The problem lies in the complex definition of organised crime under the Act, making it difficult for the Commissioner of Police to achieve the threshold required for an application to be granted.

46. The annual reports of the CCC have flagged this as an issue since 2004. Eight years later, legislation is being contemplated to allow the CCC itself to conduct investigations into serious and organised crime. The Corruption and Crime Commission Amendment Bill 2012 was introduced into the Legislative Assembly on 21 June 2012.

PROPOSED AMENDMENTS

47. The proposed Amendment Bill 2012 includes an attempt to remedy the problem noted above by redefining the term “organised crime”, eliminating the need to show substantial planning and organisation. The proposed s6A (1) reads as follows:

Organised crime is the activities of a group (however organised and whether or not having an identifiable organisational structure) of 2 or more persons (whether or not all or any of those persons are in the State) who act in concert for the purpose of committing one or more serious offences.

For the purposes of subsection (1), a serious offence is an offence punishable by two or more years’ imprisonment.

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8 The definition reads: Activities of 2 or more persons associated together solely or partly for purposes in the pursuit of which 2 or more Schedule 1 offences are committed, the commission of each of which involves substantial planning and organisation. The Schedule 1 offences constitute a selection of serious crimes.

9 See above, note 4 at [8]

48. The other proposed changes introduced in the Bill, in summary, are:

48.1. The CCC will be able to assist and support police investigations into serious offences and will have the capacity to investigate serious or criminal offences involving public officers. The CCC’s role will be redefined to oversight of serious misconduct of public officers. However, its current jurisdiction over all matters of police misconduct will be retained.

48.2. The CCC’s misconduct prevention and education function will be transferred to, and exercised by, the Public Sector Commissioner. To the extent to which its oversight and prevention functions are entwined, the CCC will be given power to assist, in cooperation with the PSC, any public authority that it identifies in the course of performing its other functions as having a special need to increase its capacity to prevent or combat misconduct.

49. The amendment of Section 6A (1) of the CCC Act coupled with other amendments proposed would considerably expand the CCC’s role in the investigation of organised crime: it lowers the threshold by changing nature of criteria to be satisfied in determining level of involvement of the CCC. This has implications concerning the terms of reference that will be commented on in the remainder of this submission. To expand further on the proposed amendments would go beyond the terms of reference.

**IMPACT OF PROPOSED AMENDMENTS UPON WAPOL: A MORE POWERFUL CCC?**

50. The push to expand the powers of the CCC has raised questions about conflicts of interest and the CCC’s oversight role. A large part of the CCC’s role is to oversee investigative bodies and yet the proposal now is that it becomes just such a body. A claim of true independence and oversight capacity is in direct conflict with a role as part of the investigative team.

51. It is important to examine how these changes will impact on the Corruption and Crime Commission in its role to deal with allegations and notifications of WA Police misconduct. A 2010 Report by the Joint Standing Committee on the Corruption and Crime Commission found the move to investigating organised crime would expose the CCC to greater risk of
corruption and could undermine public confidence in the CCC and police, and its role in the oversight of police\textsuperscript{11}. The report won the backing of the CCC Parliamentary Inspector, Christopher Steytler, who said expanding the CCC’s reach into organised and serious crime investigations would be a “grave error”\textsuperscript{12}.

52. It has been suggested\textsuperscript{13} that it is instructive to track the CCC’s criticisms of WA Police competence back to 2005, and to observe how the criticisms have paralleled the CCC’s recommendation for an increased organised crime jurisdiction.

53. The CCC says\textsuperscript{14} it needs $42 million over five years to provide a serious and organised crime function, supporting 49 additional full time employees. During the same time WA Police were asked how they would acquit funding in the fight against organised crime\textsuperscript{15}

54. Premier Colin Barnett is quoted as saying “the lack of funding will mean that both agencies will have to manage these changes within existing budget. While it is understood that the CCC’s misconduct prevention and education function will be transferred to, and exercised by, the Public Sector Commissioner one would envisage that the budget would be devolved to the PSC with that function. It is likely that, if these changes occur, a budget shortfall will result and either or both agencies will be impacted. From a resources standpoint this calls into


\textsuperscript{12} Christopher Steytler QC, Parliamentary Inspector, \textit{Submission to the Inquiry} 29 January 2010, 20 cited in the Joint Standing Committee Report No. 10 (ibid at 9). See also The West Australian 21 June 2012 on CCC and Organised Crime.

\textsuperscript{13} See above, note 12, [221].

\textsuperscript{14} The CCC will require $42.131 million over five years to have a “mature” serious and organised crime function, without diminishing the CCC’s ability to discharge its existing misconduct and education and prevention function. Hansard, Mr John Hyde; Mr Frank Alban [ASSEMBLY - Thursday, 9 September 2010] p6287c-6292a.

\textsuperscript{15} See above, note 12 [383].
question the CCC’s ability to deal with allegations and notifications of WA Police misconduct.¹⁶

### CONTEMPT POWERS

55. When a misconduct allegation is made and a complaint received, the CCC can issue a summons to a witness compelling the witness to attend an examination at which the witness must answer questions relevant to the investigation¹⁷.

56. The CCC has, in the past, used the threat of contempt proceedings to secure compliance in answering questions and has preferred charges when compliance was not forthcoming. On one occasion the contempt proceedings failed on the ground that the certificate accompanying the notice of motion did not identify the questions the witnesses had allegedly failed to answer¹⁸.

57. In addition to the failure of the contempt proceedings, no one was successfully prosecuted for the matter which was then before the CCC, and the use of the coercive hearings power was therefore described by the Joint Standing Committee in their 2010 Report as a “resounding failure”¹⁹.

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¹⁶ Mr Barnett was quoted as saying that the CCC would not receive any additional funding, believing the transfer of some of its current functions to the Public Sector Commission would free up resources. (The West Australian Newspaper June 21st 2012).


¹⁹ See above, note 11 [202]
58. According to the same report the CCC expressed the view that the appropriate response to the failure of the contempt proceedings would be to amend the CCC Act to give the CCC the power to itself commit for contempt in an appropriate case, with a power to detain a person pending a genuine attempt to give true answers. This process, according to the CCC, would send a clear message to any person contemplating contempt of the Commission.

59. As to this suggestion, the Acting Chief Justice, the Hon Justice Murray wrote to the Committee as follows:

I would draw to the attention of the Committee, the truly exceptional nature of the power to commit for contempt. Even in the Supreme Court, most of the contempt powers are exercisable only by the Full Court, rather than by a presiding judge.20

60. His Honour also brought to the Committee’s attention the Western Australian Law Reform Commission’s 2003 Report on the review of the law of contempt and highlighted the following observations made by that Commission21:

Even with judicial reform and codification, the summary procedure for dealing with contempt continues to exhibit an absence of the usual safeguards that apply to criminal offences generally.

The procedure impaired the presumption of innocence, gives rise to a reasonable apprehension of bias (as the person presiding over the hearing is the same person who determines whether there has been a contempt) and gives rise to a concern about whether the person would be afforded a fair hearing. The contempt procedure involved, in effect, a presumption of guilt.

61. During the year 2011/2012 the CCC held exceptional powers examinations by way of private hearings over 13 days, in support of police organised crime investigations. The CCC prepared certificates for the Supreme Court citing five members of the Finks Motorcycle Club for contempt arising out of their refusal to answer questions during a CCC examination.


21 Project No 93, June 2003 [211]
62. The charges were sustained, with all five being found guilty. All five were sentenced to two years imprisonment for contempt, with one also being sentenced to an additional three months for abusing the CCC Commissioner during the examination.

63. In respect of two Coffin Cheaters members also charged, it was said they had not refused to answer questions, but that they had answered them in a way which was unhelpful, to say the least\(^{22}\). The CCC decided not to proceed with those charges, as the chances of succeeding was said to be remote. Mr Mark Herron, Acting CCC Commissioner said,

> Contempt is a very difficult charge to establish. It is a charge of last resort. In this situation I formed the view we were unlikely to be successful. The Coffin Cheaters were examined then and they used the ploy of “I don’t recall”.

64. The question is “Why did the CCC even begin contempt proceedings in a situation in which it should be obvious they would fail?”

65. Blame was laid by the CCC at the feet of counsel representing the Police Commissioner in this matter. It is open to conclude that the CCC was making the point that police incompetence not only contributed to this outcome, but also advances the long held view of the CCC that they should have a mandate to investigate organised crime\(^{23}\).

66. In context of TOR 1, such actions of the CCC do little to inspire confidence in the CCC by police officers under investigation, or by the community in reporting matters of misconduct, or in respect of the possibility of the CCC working conjointly with the police to fight organised crime.

67. As a survey respondent commented:

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\(^{22}\) See above, note 18, at p6.

\(^{23}\) Ibid.
The CCC has a history of proceeding with prosecutions where the accused person has been cleared through lack of evidence. I believe they are easily influenced by public perceptions, the WA public want police to deal with crime but they do not want police to have any powers to do that, the media indulge themselves with anti police reports and fuel the ignorant public’s ill informed opinions, I believe that Police Internal Investigations are an officer’s only chance of a fair and unbiased investigation without being the target of a witch-hunt by an organisation that feels a need to justify its existence.

**CCC – WAPOL RELATIONSHIP**

68. Police Commissioner Karl O’Callaghan made these observations in respect to the investigation of police misconduct:

> WA Police are answerable to the Commission. To be answerable to the Commission with respect to one area of its operation and to then be required to work jointly with the Commission with respect to organized crime may create a difficult relationship between the agencies.

I think it is fair to say that the relationship between the police and the CCC in this State is still developing, so it is a developing relationship … The CCC, of course, also has a core function of oversight, on the one hand, and wants to become involved in organised crime investigation, on the other hand, so there are some tensions there as well. We have also had some fundamental differences of opinion with the CCC about some of the ways in which they go about their business.

[and in relation to the use of exceptional powers] There were issues of trust, issues of perceived competence and, I suppose, issues of culture to stop those things from occurring.

69. Clearly the Commissioner has concerns over the proposed dual role of the CCC: the oversight of investigative bodies and its proposed transformation into one. This calls into question the CCC’s capacity to oversee the effectiveness and therefore capacity of the WA Police to investigate its own officers.

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25 See above, note 11 [98].
70. The CCC must retain the confidence of the community as an effective oversight body as well as instilling confidence in the police so that matters of misconduct will be reported to it.

71. The Joint Standing Committee on the Corruption and Crime Commission is uncomfortable with any proposal that may lead to:

- a perception that the CCC is not authentically independent of the WA Police;
- an increased risk to the integrity of the CCC; and
- reduced funding to the CCC’s misconduct function.\(^{26}\)

72. From all three standpoints, should the CCC’s function change there will be considerable impact on its practices that will in turn impact on the capacity of WA Police to deal effectively and appropriately with WA Police misconduct.

73. At present the CCC is a body, independent of police, to which a report of police misconduct can be made. A complaint may also of course be made direct to police. In order to disclose information, the complainant must have confidence in the agency to which they are reporting.

74. Survey results and several confidential case study interviews with police officers who have had dealings with the CCC or its predecessor have illustrated that the majority harbour much mistrust of the CCC and do not believe that they will be treated fairly.

75. Fitzgerald and Wood wrote about police culture being one of silence and the difficulties in penetrating the “blue veil”\(^ {27}\). Wood described police as having a distinct organisational culture, aspects of which were seen as vital to the survival and sense of security of officers who have to work in dangerous and demanding environments. In this regard, Wood found that the group loyalty aspect of policing was not in itself negative. It was when this group

\(^{26}\) See above, note 11 at [424].

\(^{27}\) Fitzgerald (1989) and (1996; 1997) cited by the Royal Commission into Whether There has been Corrupt or Criminal Conduct by any Western Australian Police Officer, Final Report Vol 1 p.46.
loyalty became misguided and associated with a siege mentality and a code of silence that it became dysfunctional and corruption tolerant.

76. There is a view that there is no one single police culture and that there are marked differences in the way in which various areas of the police service carry out their functions. It is necessary therefore, that strategies be developed appropriate for each of the sub-cultural groups to deal with any misguided sense of loyalty. As an example, the strong emphasis that is placed on team work and solidarity during recruit training needs to be balanced with an emphasis on individual accountability and responsibility.

77. The comments ‘regarding a misguided sense of loyalty’ above can and should be dealt with by teamwork in the discovery of corrupt officers. The creation of an environment of ‘no tolerance’ comes from within. It cannot be imposed from without.

78. For this reason the absence of cooperation by the CCC in regard to joint investigations with WAPol is a significant impact on the capacity of WAPol to manage misconduct and casts considerable doubt as to whether these organisations can or should work together investigating organised crime. For example, a section 42 notice can be raised by the CCC in order to prevent commencement or stop any investigation being undertaken by WAPol. In these circumstances there is a lost opportunity for mutual management and co-operation. In the previous three years the CCC and IAU have undertaken only one joint operation, and there are no known examples of the Commission exercising ‘active oversight’ of critical incident investigations conducted by IAU.

79. The organisations share a common objective of corruption minimisation, but the methodology of each organisation is significantly different and irreconcilable problems exist.

28 See above, note 27.
CCC Commissioner Roberts-Smith RFD QC responded to the Committee in a written submission dated 24 July 2007. He wrote:

This incident perhaps highlights cultural differences and natural tensions that exist when the two agencies are working together while, concurrently; one maintains the responsibility of general oversight of the activities of the other. It is inevitable that some police officers will be critical and distrustful of an agency overseeing their conduct.

80. This state of affairs impacts on capacity of each organisation to fulfil its individual function in dealing effectively and appropriately with police misconduct.

WHISTLEBLOWERS

81. A whistle-blower is a person who makes an honest disclosure of information in the public interest about serious wrongdoing in the workplace to an authority that is able to take the appropriate steps to deal with the matter. It is important to note that this definition, with its basis “in the public interest,” sets it apart from those persons who make disclosures for personal gain or who make false or misleading reports.

82. Reporting corrupt behaviour is never easy, and it is even harder when the suspected corruption involves a friend, colleague or boss. It is widely acknowledged that reporting wrongdoing to an appropriate authority can be very difficult to do, and that some prefer to allow perpetrators to continue with their wrongdoing unchallenged, rather than to draw attention to themselves by whistleblowing.

83. Reasons cited for not reporting wrongdoing include:

- The belief that nothing useful will be done about the disclosure;
- The belief that they do not have enough evidence of the wrongdoing;
- Not wanting public attention and concerns over loss of privacy;

29 See note 11 above at [444]
• Fear of reprisals and disapproval from work colleagues and others;
• The perception that they are being disloyal to a person or organisation.

84. The Police Force Regulations 1979 provide at r. 602 that

A member or cadet shall not – withhold any complaint or report against a member or a cadet,

and at r. 623 that:

Any member being an officer, non-commissioned officer or officer-in-charge of a police station shall report promptly any member or cadet who has committed an offence against the discipline of the Force.

These regulations underline the fact that members of the Police Service have a duty not only in respect of their own behaviour, but also the behaviour of fellow officers.

85. Western Australia has enacted whistleblower legislation in the form of the Public Interest Disclosure Act (WA) 2003. The legislation is aimed at mollifying concerns about the confidentiality of disclosure and therefore encouraging more disclosures to be made.

86. Concerns about loss of privacy and not wanting public attention drawn to oneself, as a reason for not reporting wrongdoing has been addressed in s. 16 of the Act which states:

(1) A person must not make a disclosure (an “identifying disclosure”) of information that might identify or tend to identify anyone as a person who has made an appropriate disclosure of public interest information under this Act unless -

(a) The person who made the disclosure of public interest information consents to the disclosure of information that identify or tend to identify him or her;
(b) It is necessary to do so having regard to the rules of natural justice.
(c) It is necessary to do so to enable the matter to be investigated effectively …

(f) The identifying disclosure is made in accordance with s152 or 153 of the Corruption and Crime Commission Act 2003.

87. The confidentiality problem concerning a reluctance to report undesirable behaviours is still evident in each sub-section other than (a). We therefore doubt that an informant is protected while reporting matters to the CCC or to police internal investigators or that measures under the Public Interest Disclosure Act are sufficient.
88. Returning to Wood’s observations, on the one hand we have a police culture of silence and on the other regulatory bodies and legislation that are not robust enough to protect the whistleblower\textsuperscript{30}. One strains against the other.

**BUDGETS**

89. The CCC complaints structure is an expensive “post box” model, with the independent body receiving the complaints then referring most to the police. The Parliamentary Inspector noted that *between 1 July 2009 and 31 March 2011 [the CCC received] 381 complaints of the use of excessive force by [the WA Police] but has independently investigated only one of these\textsuperscript{31}.*

90. The 2010-2011 Annual Report of the CCC indicates the total cost of its services for 2010-2011 was $26.19 million and it has 148 full time equivalent employees (FTEs). Seven out of 23 search warrants taken out were not executed, five arrest warrants were issued, three *Surveillance Devices Act* warrants were taken out and 35 *Telecommunications (Interception) Act* warrants were taken out. Only 26 people were charged with offences and only five of those were public officers.

91. The CCC suggests\textsuperscript{32} it needs $42 million over five years to provide a serious and organised crime function, supporting 49 additional FTEs. Having regard to previous levels of productivity and performance, the CCC is requesting an additional 55% increase in budget

\textsuperscript{30} See above, note 27, at [41].


\textsuperscript{32} CCC will require $42.131 million over five years to have a “mature” serious and organised crime function, without diminishing the CCC’s ability to discharge its existing misconduct and education and prevention function. See above, note 14 at [130].
and an increase of 33% in FTEs to enhance its role in the investigation of organised crime. It is not practical nor is it cost effective for both the CCC and WAPol to run parallel but separate investigations.

A PUNITIVE APPROACH

92. Effectiveness of the police services is very much depended upon the nature of the police organisational structure as well as the style of policing. Positive changes discouraging inappropriate police conduct are inextricably associated with organisational development.

93. The survey results explored above make it clear that police officers want and need to feel that they are adequately protected by the government that puts them out on the streets to do their job. This includes but is not limited to occupational health safety and welfare issues as well as the protection which should be afforded to shield them from vexatious or unfounded complaints.

94. An honest police officer coming under adverse notice of the CCC may well develop mistrust as a result of the manner in which he/she perceives they were treated. The cause may lie in a perception that their rights have been violated or they will be treated without regard to the presumption of innocence. Again the survey provides contemporary evidence of this.

95. It is common ground that Police corruption carries a high societal cost: the notion of the police being accused of committing the very acts they are employed to outlaw (much less carrying them out) impacts devastatingly on the integrity of the police and tarnishes the public image of law enforcement. Corruption protects other criminal activity such as drug dealing and prostitution. This should not abrogate the presumption of innocence for police.

96. In 2003 the Kennedy Royal Commission made the following observation concerning the manner in which the West Australian Police Service (as it then was) carried out its internal investigations:

Through its dependence on the proof of specific charges in a legalistic, adversarial context, and its punitive nature has encouraged the code of silence, and the practice of cover-up; discouraged
honesty and a willingness to admit mistakes; and been productive of delay and enormous disruption to the careers of the officers involved.33

97. It is clear from the survey that many police regard processes adopted by both CCC investigators and police internal investigators as productive of fear therefore discouraging openness in dealings between members and these bodies.

98. When a police officer is being questioned in an internal investigation, pursuant to regulation 603 of the Police Force Regulations 1979, investigating officers will order a police officer to answer questions relating to disciplinary matters, even though any such answers may be incriminating. The answers cannot be used in any criminal proceedings, but false answers or a refusal to obey an order to answer may form the basis of disciplinary proceedings.

99. The Kennedy Royal Commission argued34 that the disciplinary process should adopt a greater orientation towards management solutions, but that the retention of the power to direct officers to answer is necessary. It was contended that the provision had a dual purpose. It enabled the Commissioner of Police to obtain information in circumstances in which, for reasons of self-protection, officers may be reluctant to answer. On the other hand, it also enabled officers to provide information in circumstances in which what they say could not be used against them in any criminal proceedings. The existence of the provision was said not to be inconsistent with the recommendation of a less punitive approach to discipline within WAPol.

100. A less punitive disciplinary process accords well with organisational learning and development but there is still considerable doubt surrounding the failure to acknowledge the right to remain silent. The CCC is consistently critical of the police for instituting internal disciplinary charges as opposed to criminal proceedings35. If it is contemplated that any

33 See above, note 27, at [12].

34 Ibid.

35 See above, note 31 at [24], [69], 3.9, 1.2, Criticism 2.
matter under investigation could result in the institution of criminal proceedings, at the time that it becomes apparent that a police officer under investigation could face criminal proceedings, he/she should be cautioned. The CCC also has the power to compel a response to questioning, so if the CCC recommends criminal prosecutions then police officers should not be compelled to answer further questions without being cautioned.

101. The Commission may reach a point in its investigation where it concludes that there is evidence to support a prima facie case of misconduct. If that point is reached, it would be unjust to publicly examine the putative accused. The proper course would be to send the papers to the Director of Public Prosecutions (in the case of a possible criminal offence), much as is done after a coronial enquiry, or the Police (to institute disciplinary proceedings).

102. The CCC may have no more than a suspicion that there has been misconduct, sufficient to warrant an investigation. In such a case there is clearly a potential for prejudice or privacy infringements, in particular damage to the reputation of an individual. The damage may result from unproven and untested allegations or assertions made against that individual by a witness, or put to the individual, who has no right to bring an action for defamation, has very limited right to cross-examine (and may in any event not even be aware that the witness is to give or has given such evidence), and no right to call any witnesses in rebuttal. The allegation may be “sprung” on him or her without prior warning36. There is also no right to silence.

103. It may well be that at the end of its investigation the CCC concludes that there is no misconduct by an individual, but that may be some considerable time later, and in the interim serious and irreparable damage may have been done to the individual’s reputation and career.

104. A timely example is the CCC investigation into the Commissioner of Police Karl O’Callaghan concerning alleged misuse of his corporate credit card37. He is reported to have said:


37 The West Australian Newspaper Thursday August 9th 2012 pp 1,4,5, 6.
I have made no secret of the fact I have been disappointed which how long this process has taken, particularly due to sensitivities rounding the negotiation of my contract… The CCC had moved at a glacial pace and the timeframe allowed rumours and innuendo to swirl around the 5800 – strong police force.

105. The Police Commissioner is reported to have made a formal complaint concerning the manner in which the CCC carried out this investigation.

106. The generation of 315 pages of transcript of hearings over 37 months in relation to this investigation would appear to be a disproportionate allocation of resources, and an inefficient investigation.

107. By maintaining a punitive approach to disciplinary proceedings and failing to regard the process as more about performance management than “name, shame and punish”, the impact of the Corruption and Crime Commission’s practices in this regard on the capacity of WA Police to deal effectively and appropriately with WA Police misconduct is consistently negative.
108. As noted in 4.3 above, TOR 3 focuses on a comparison of the practices of police oversight bodies in other jurisdictions with the CCC “in this regard”, that is, in dealing “with allegations and notifications of … Police misconduct”. We have described what occurs in a selection of other jurisdictions, with a view to informing our recommendations to the Joint Standing Committee.

109. Due to the time available in order to complete this submission the analysis of comparative police review or oversight agencies referred to in TOR 3 could only be conducted through a review of available literature. Information analysed was either in electronic format or hard copy such as the agency’s annual report, statistical reports and departmental performance reports, news releases and other relevant literature.

110. It is, however, noted that the Committee has met with the Chief Administrator of the Chicago Independent Police Review Authority, as well as officers from the Office of Professional Integrity within the Royal Canadian Mounted Police, The Independent Commission Against Corruption and the Independent Police Complaints Commission in Hong Kong.

111. It is important to note that each oversight body reviewed had its own particular characteristics that separate it from other similar agencies, even when those are the broad representation of the same model. In the same vein, each of the oversight entities carries its own features, which may not be captured by one general definition. However, we have, for the purposes of this discussion, set out general parameters for comparison.
POLICE OVERSIGHT MODELS

112. An analysis of police oversight bodies in other democracies rooted in British common law reveals a diverse array of powers, obligations and scope of review among the oversight models ranging from the municipal level (Chicago) and the regional level in South Australia, to countrywide in Northern Ireland, New Zealand and the United Kingdom.

113. The three main categories of police oversight models are:
   • Dependent Model
     o police investigating police, and
     o police investigating another police force
   • Interdependent Model
     o civilian observation,
     o and hybrid investigation
   • Independent Model.
     o totally independent investigation. There is no police involvement in the investigation

DEPENDENT MODEL

114. The dependent model concerns “police investigation of police” whether that is within a single organisation or one investigating another. Common to both is that there is no civilian involvement in the criminal investigation and, therefore, there is a total dependence on the police for the handling of criminal investigations.

115. The police are fully responsible for any criminal investigations and administration of public complaints alleging criminal offences. The oversight body may recognize complaints regarding service, internal discipline or public trust.
116. In the same model Police investigating another police force will occur in specific cases to ensure there is independence and transparency in instances of serious injury or death has occurred.

117. In selected Canadian provinces, memoranda of agreement exist between the local police and the Royal Canadian Mounted Police (RCMP) that permit this mode of investigation38.

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**INTERDEPENDENT MODEL**

118. The interdependent model includes civilian involvement to varying degrees as observers during criminal investigations to ensure there is impartiality. A hybrid investigation involves a mostly civilian oversight body whose involvement in the investigation goes beyond the role of mere overseer. Here, the oversight body may conduct the investigation entirely on its own with the police engaged for the purpose of collaboration.

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**INDEPENDENT MODEL**

119. The independent model as the name suggests is a totally independent investigation with no police involvement in the investigation. The oversight body is composed completely of civilians who undertake independent criminal investigations that cannot be referred to the police. Under these circumstances the independent oversight body may have the power to prefer criminal charges or make findings recommendations that they be preferred.

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GENERAL ACCOUNTABILITY & GOVERNANCE TRENDS

120. Governance of police in Australia is shifting away from traditional models of reactive accountability, dependent on external legal rules, hierarchical and central regulation and punishment-centred discipline.

Police organizations are being more closely managed and scrutinized internally by a labyrinth of management systems, technologies and procedures and externally by more elaborate public complaint systems and auditors. The new accountability moves away from “punishment and deterrence” towards “compliance” and modes of regulation aimed at “preventing harm” and “reducing risk,” through tighter regulation, audit, surveillance and inspection. While the old accountability is seen to have failed, the new accountability has also not been very successful, but Chan argues that it may gradually succeed as modes of internal self-governance and self-regulation are more acceptable to police culture than more traditional, legalistic, external accountability measures … the future of police accountability lies in more elaborate and effective modes of “internal management and self-governance” and not in more intricate and powerful forms of external governance and control. 39

THE GLOBAL SITUATION.

121. A comparative analysis has been made of the global situation concerning the composition and jurisdiction of civilian oversight bodies and is illustrated in the following tables40.

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Table 1: CIVILIAN OVERSIGHT BODIES RESPONSIBLE FOR HANDLING COMPLAINTS AGAINST POLICE

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Civilian Oversight Bodies</th>
<th>Statutory Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>The Independent Police Complaints Council ¹</td>
<td>Yes</td>
</tr>
<tr>
<td>New York City, United States of America</td>
<td>New York City Civilian Complaint Review Board</td>
<td>Yes</td>
</tr>
<tr>
<td>England and Wales, United Kingdom</td>
<td>Independent Police Complaints Commission</td>
<td>Yes</td>
</tr>
<tr>
<td>Queensland Australia</td>
<td>The Crime and Misconduct Commission</td>
<td>Yes</td>
</tr>
<tr>
<td>New South Wales, Australia</td>
<td>(a) The New South Wales Ombudsman</td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>(b) The Police Integrity Commission</td>
<td>Yes</td>
</tr>
<tr>
<td>Toronto, Canada</td>
<td>Ontario Civilian Commission on Police Service</td>
<td>Yes</td>
</tr>
<tr>
<td>Singapore</td>
<td>Not applicable</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

¹ Formed in 2004 following the Police Reform Act of 2002, the IPCC replaced the widely discredited Police Complaints Authority (PCA). Like its predecessor, it oversees complaints made against the police. It can also carry out its own investigations into the most serious cases. But most of the time police forces still investigate themselves. Since April 2006 its supervisory role has expanded.
Table 2: COMPOSITION OF CIVILIAN OVERSIGHT BODIES

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Composition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hong Kong</strong></td>
<td>The Chief Executive of Hong Kong will appoint the Chairman, 3 Vice-Chairmen and not fewer than 8 other members. The Ombudsman or his representative will be an ex officio member.</td>
</tr>
<tr>
<td><strong>New York City, United States of America</strong></td>
<td>13 members are appointed by the Mayor of New York (5 are nominated by the Mayor; 5 are designated by the City Council; and 3 are designated by the Police Commissioner.)</td>
</tr>
<tr>
<td><strong>England and Wales, United Kingdom</strong></td>
<td>The Home Secretary will appoint not fewer than 10 members. The Queen will appoint the Chairman.</td>
</tr>
<tr>
<td><strong>Queensland, Australia</strong></td>
<td>The Chairperson, 4 Commissioners and 2 Assistant Commissioners are nominated by the Minister and appointed by the Governor-in-Council.</td>
</tr>
<tr>
<td><strong>New South Wales, Aust</strong></td>
<td>(a) The New South Wales Ombudsman The State Cabinet recommends a preferred candidate and the state Governor makes an appointment. Parliamentary Joint Committee can veto the recommendation.</td>
</tr>
<tr>
<td></td>
<td>(b) The Police Integrity Commission The Commissioner is appointed by the State Governor.</td>
</tr>
<tr>
<td><strong>Toronto, Canada</strong></td>
<td>Members are appointed by the Lieutenant Governor-in-Council.</td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Jurisdictions Civilian Oversight Bodies</td>
<td>Scope of Complaints</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Hong Kong&lt;br&gt;The proposed Independent Police Complaints Council</td>
<td>Police misconduct and any practice or procedure adopted by the police.</td>
</tr>
<tr>
<td>New York City, United States of America New York City Civilian Complaint Review Board</td>
<td>Police misconduct involving the use of excessive force, abuse of authority, discourtesy and offensive language.</td>
</tr>
<tr>
<td>England and Wales, United Kingdom Independent Police Complaints Commission</td>
<td>Any conduct of a police officer or an employee of police that has an adverse effect on a member of the public, or the conduct is sufficiently serious to bring the police into disrepute.</td>
</tr>
<tr>
<td>Queensland, Australia The Crime and Misconduct Commission</td>
<td>Corruption and police misconduct that is disgraceful, improper or shows unfitness to continue as an officer, or does not meet the standard of conduct the community reasonably expects of a police officer.</td>
</tr>
<tr>
<td>New South Wales, Australia <a href="#">a) The New South Wales Ombudsman</a>&lt;br&gt;[b) Police Integrity Commission]</td>
<td>Conduct that may be illegal, unreasonable, unjust, oppressive, discriminatory, or based on improper motives.&lt;br&gt;Police corruption or serious police misconduct.</td>
</tr>
<tr>
<td>Toronto, Canada Ontario Civilian Commission on Police Service</td>
<td>Policies of or services provided by the police force. Conduct and performance of an on-duty police officer and conduct of an off-duty officer, provided that it is related to the occupational requirements or the reputation of the police.</td>
</tr>
<tr>
<td>Singapore</td>
<td>Not applicable. (The Singapore Police Force investigates Police misconduct.)</td>
</tr>
</tbody>
</table>
### Table 4: INVESTIGATIVE POWER OF CIVILIAN OVERSIGHT BODIES

<table>
<thead>
<tr>
<th>Jurisdictions Civilian</th>
<th>Power of Investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Conducts independent investigation</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>The proposed Independent Police Complaints Council</td>
</tr>
<tr>
<td>New York City, United States of America</td>
<td>New York City Civilian Complaint Review Board</td>
</tr>
<tr>
<td>England and Wales, United Kingdom</td>
<td>Independent Police Complaints Commission</td>
</tr>
<tr>
<td>Queensland, Australia</td>
<td>The Crime and Misconduct Commission</td>
</tr>
<tr>
<td>New South Wales, Australia</td>
<td>(a) The New South Wales Ombudsman</td>
</tr>
<tr>
<td>Toronto, Canada</td>
<td>Ontario Civilian Commission on Police</td>
</tr>
<tr>
<td>Singapore</td>
<td></td>
</tr>
</tbody>
</table>
Table 5: INVESTIGATION OF COMPLAINTS AGAINST POLICE

<table>
<thead>
<tr>
<th>Jurisdictions Civilian</th>
<th>Oversight Bodies</th>
<th>Investigation of Complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>The proposed Independent Police Complaints Council</td>
<td>The Complaints Against Police Office of the Hong Kong Police Force investigates all the complaints.</td>
</tr>
<tr>
<td>New York City, United States of America</td>
<td>New York City Civilian Complaint Review Board (CCRB)</td>
<td>CCRB investigates all the complaints except those outside its scope. CCRB has 169 civilian employees and the authorized headcount is 187 (129 investigators and 58 administrative staff).</td>
</tr>
<tr>
<td>England and Wales, United Kingdom</td>
<td>Independent Police Complaints Commission</td>
<td>The police investigate the majority of the cases. The proposed Commission will have its own powers of investigation and a mixed team of seconded police investigators and civilian investigators. The proposed Commission will decide whether it will conduct a full independent investigation on a particular case.</td>
</tr>
<tr>
<td>Queensland, Australia</td>
<td>The Crime and Misconduct Commission (CMC)</td>
<td>The Queensland Police Service investigates the majority of the cases. CMC has its power of investigation and a mixed team of seconded police investigators and civilian investigators. However, it will only investigate complaints of a more serious nature.</td>
</tr>
</tbody>
</table>

New South Wales, Australia

1. The New South Wales Ombudsman
2. The Police Integrity Commission (PIC)

The New South Wales Police investigates the majority of the cases. The Ombudsman will conduct its own investigation if the police investigation is grossly inadequate or an issue of significant public interest needs to be addressed.

PIC only conducts direct investigations into complaints of a very serious nature. It can hold investigative hearings in private or in public. The police and the Ombudsman are required to notify PIC of complaints about serious police misconduct, and PIC may decide to refer the complaints back to the police for investigation. Either PIC or the Ombudsman can then monitor...

Toronto, Canada

Ontario Civilian Commission on Police Service (OCCPS)

The Toronto Police Service investigates the majority of the cases. OCCPS only conducts direct investigations on allegations against police chief, deputy chiefs or Toronto Police Services Board members.
| Singapore | The Singapore Police Force (SPF) investigates all the cases. If it is a non-serious complaint, the Police Divisional Headquarters with a view to resolving it through consensus resolution with the parties involved will investigate it.

If it is a serious allegation of misconduct, the complaint will be forwarded to the Internal Investigation Department of the SPF for investigation. |
### Table 6: OVERSIGHT OF INVESTIGATIONS OF COMPLAINTS AGAINST POLICE

<table>
<thead>
<tr>
<th>Jurisdictions</th>
<th>Oversight of the Investigations of Complaints Against Police</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hong Kong</td>
<td>It will review the manner in which complaints are handled by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force and review all the findings of CAPO’s investigations. It is proposed to give the Council power to require the police to investigate any complaint. If the proposed Council is not satisfied with an investigation, it can ask CAPO to re-investigate, or make a report to the Chief Executive.</td>
</tr>
<tr>
<td>New York City, United States of America</td>
<td>CRB will form a 3-member panel to make a final decision on findings of an independent investigation carried out by itself. To assure objectivity, the above panel will comprise representatives from each of the three designating authorities: the Mayor, City Council, Police Commissioner.</td>
</tr>
<tr>
<td>England and Wales, United Kingdom</td>
<td>Subject to the passage of the Police Reform Bill, the proposed Commission will have the power to call in any case to supervise police investigation. It will also review results of police investigation.</td>
</tr>
<tr>
<td>Queensland, Australia</td>
<td>It has power to request a report from the Queensland Police Service regarding the result of an investigation.</td>
</tr>
<tr>
<td>New South Wales, Australia</td>
<td>If the investigation involves matters of a serious nature, a report of investigation has to be sent to the Ombudsman. The Ombudsman can ask the police to further investigate the complaint.</td>
</tr>
<tr>
<td></td>
<td>(b) Police Integrity Commission</td>
</tr>
<tr>
<td></td>
<td>It requests and reviews reports of police investigations in serious cases, and then publishes reports to Parliament.</td>
</tr>
<tr>
<td>Toronto, Canada</td>
<td>It only reviews police decisions at the complainant’s request. It can refer the complaint back to the police for further investigation, or assign it to another police service.</td>
</tr>
<tr>
<td>Singapore</td>
<td>Not applicable.</td>
</tr>
<tr>
<td>Jurisdictions Civilian Oversight Bodies</td>
<td>Disciplinary Power of Civilian Oversight Bodies</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>---------------------------------------------</td>
</tr>
<tr>
<td><strong>New South Wales, Australia</strong></td>
<td>The Ombudsman can make recommendations to the police but the police retain the ultimate authority to impose discipline. If the Ombudsman believes the police’s refusal to take action is unreasonable, or the action taken is inadequate, a report can be made to the Police Commissioner, the Minister of Police, and ultimately, to Parliament.</td>
</tr>
<tr>
<td>(a) The New South Wales Ombudsman</td>
<td></td>
</tr>
<tr>
<td>[b) The Police Integrity Commission (PIC)</td>
<td>PIC can make recommendations to the police but the police retain the ultimate authority to impose discipline. If the police do not follow PIC’s recommendations, PIC will publish these incidents in its reports to Parliament.</td>
</tr>
<tr>
<td><strong>Toronto, Canada</strong></td>
<td>If a complainant or an accused officer is not satisfied with a decision made at a disciplinary hearing, either party may appeal to OCCPS. OCCPS may hold a second and final hearing, and may direct action to be taken with respect to the police officer.</td>
</tr>
<tr>
<td>Ontario Civilian Commission on Police Service (OCCPS)</td>
<td></td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>Not applicable. (The Deputy Commissioner of Police makes decision on disciplinary matters. There is no civilian body to oversee disciplinary matters.)</td>
</tr>
</tbody>
</table>

Table 7: DISCIPLINARY POWER OF CIVILIAN OVERSIGHT BODIES
Table 8: CHANNELS OF APPEAL AFTER REVIEW OF COMPLAINTS AGAINST POLICE

<table>
<thead>
<tr>
<th>Jurisdictions / Civilian Oversight Bodies</th>
<th>Channel of Appeal after Review</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hong Kong</strong></td>
<td>When a complainant is notified of the results of the police investigation endorsed by the proposed Council, he or she can request a review of the complaint within 30 days. The proposed Council will review the second report of the police investigation and that is final.</td>
</tr>
<tr>
<td><strong>New York City, United States of America</strong></td>
<td>Its decision is final.</td>
</tr>
<tr>
<td>New York City Civilian Complaint Review Board</td>
<td></td>
</tr>
<tr>
<td><strong>England and Wales, United Kingdom</strong></td>
<td>Its decision is final.</td>
</tr>
<tr>
<td>Independent Police Complaints Commission</td>
<td></td>
</tr>
<tr>
<td><strong>Queensland, Australia</strong></td>
<td>If a complainant is not satisfied with a decision of CMC, he or she can apply for an internal review or appeal to the Parliamentary Crime and Misconduct Committee.</td>
</tr>
<tr>
<td>The Crime and Misconduct Commission (CMC)</td>
<td></td>
</tr>
<tr>
<td><strong>New South Wales, Australia</strong></td>
<td>If a complainant is not satisfied with a decision of PIC, he or she can apply for a review. Whether or not this occurs is at the discretion of the Commissioner.</td>
</tr>
<tr>
<td>[a] The New South Wales Ombudsman</td>
<td></td>
</tr>
<tr>
<td>[b] The Police Integrity Commission (PIC)</td>
<td></td>
</tr>
<tr>
<td><strong>Toronto, Canada</strong></td>
<td>The decision of OCCPS could be appealed to the Divisional Court but rarely is it overturned.</td>
</tr>
<tr>
<td>Ontario Civilian Commission on Police</td>
<td></td>
</tr>
<tr>
<td><strong>Singapore</strong></td>
<td>Not applicable. (If a complainant is not satisfied with the results of the police investigation, he or she can make an appeal to the Deputy Commissioner of Police through the Public Affairs Department.)</td>
</tr>
</tbody>
</table>
AN ANALYSIS OF THE CCC

122. The CCC monitors “appropriate authority investigations”, and the investigations may be reviewed by the CCC on completion to ensure the outcomes are satisfactory.

123. The Commission now adopts a different approach to monitoring and reviewing “appropriate authority investigations” into serious misconduct allegations. The Commission reports\(^\text{41}\) that this has enabled the Commission to more effectively assist public authorities to meet their legislated responsibilities to deal with misconduct. The Commission’s expansion of activities in relation to organisational systems and cultures has resulted in it reducing the number of “appropriate authority investigations” it monitors and reviews.

124. The number and mix of assessment decisions reflect the Commission’s ongoing change of focus in discharging its oversight responsibilities from individual misconduct complaints to analysing organisational systems and cultures in public authorities for preventing, identifying and dealing with misconduct when it occurs.

125. The Commission’s expansion of activities in relation to organisational systems and cultures resulted in it reducing the percentage of allegations referred to home agencies for investigation and then returned to the Commission for review from 43% to 28%.\(^\text{42}\)

126. Similarly and concurrently, the percentage of allegations referred to agencies but dealt with by the Commission as part of its systems based evaluation process, instead of being reviewed, increased from 35% to 50%.\(^\text{43}\).


\(^{42}\) Ibid at [81].

\(^{43}\) Ibid at [82].
127. S91(2)(e) of the CCC Act requires the Commission to report on the extent to which investigations carried out by the Commission have resulted in prosecutions of public officers or other persons or disciplinary action against public officers.

128. During the past 12 months a number of misconduct investigations resulted in the detection and identification [of particular behaviour] that although not criminal in nature may constitute a breach of discipline. This behaviour may include a public officer found to be in contravention of a public sector standard or code of conduct, committing an act of misconduct, or being negligent or reckless in the performance of their functions.

129. The CCC does not take a direct role in, nor determine the outcomes of, disciplinary proceedings undertaken by public authorities. The CCC can make assessments and form opinions that misconduct has occurred, and may also make recommendations to the chief executive officer of a public authority that, due to certain actions that have been identified, disciplinary action might be considered.

130. The CCC may also address the issue with an agency if the action subsequently taken appears insufficient.

131. Completing “appropriate authority investigations” to the appropriate standard is not the same as determining that agencies are adequately dealing with misconduct. The adequacy of “appropriate authority investigations” only measures the adequacy of investigations into particular allegations. It does not measure the capacity of agencies to adequately prevent and identify misconduct.
CATEGORISING THE CCC

132. Each oversight body reviewed had its own particular characteristics that separate it from other similar agencies, even when those are the broad representation of the same model. There are variations in size, role, powers, functions and strategies in agencies. Some are responsible for receiving and investigating complaints, some deal only with serious corruption and misconduct. Some models are generalists and some are specialist governed by statute. An agency whose jurisdiction extends to all public sector officials is referred to as belonging to the generalist model. An agency that oversees police or any special agency activities alone is referred to as belonging to the specialist model.

133. The CCC in Western Australia has a relationship with WAPOL that sits within an interdependent hybrid model. Premier, Colin Barnett has recently proposed legislation which would give the CCC the power to investigate organised crime, saying, *I think most people thought the CCC would be a powerful law enforcement and investigative body to deal with the growth of organised crime.* Such a move would draw the CCC / WAPol relationship outside these parameters.

134. This expansion in power involves co-operation with police, as well as the ability to investigate unexplained wealth. However, the move to investigating organised crime could expose the CCC to greater risk of corruption and could undermine public confidence in the CCC, its role in the oversight of police, and WAPol itself.

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OVERSIGHT OF THE CCC

135. We have previously raised concern over the potential conflict of interest concerning the CCC’s oversight role of WAPol arising by way of the push to expand the focus and powers of the CCC.

136. The Corruption and Crime Commission Amendment Bill 2012 introduced on 21 June 2012 proposes new reporting arrangements for the CCC which Premier Colin Barnett refers to as oversight systems. In relation to that he suggests the following:

Finally, with respect to reporting arrangements, this bill proposes the introduction of oversight systems similar to those utilised by the United Kingdom’s Serious Organised Crime Agency. In essence, these new reporting requirements will require the CCC, in consultation with the responsible minister, and other persons that the CCC considers appropriate, to determine its strategic priorities for the ensuing financial year. The CCC will also establish annual plans in consultation with, for example, the Commissioner of Police, which set out its performance targets and associated financial resources. The strategic priorities and annual plans will be required to be published in an appropriate form.

137. On the face of these comments it is uncertain whether reporting to, and consulting with the responsible Minister as part of a planning and reporting function is sufficient to constitute “oversight”.

138. The Premier referred to the “introduction of oversight systems similar to those utilised by the United Kingdom’s Serious Organised Crime Agency”.

---


46 Ibid.
139. According to the Independent Police Complaints Commission corporate plan, the IPCC replaced the widely discredited Police Complaints Authority (PCA). Like its predecessor, it oversees complaints made against the police. It can also carry out its own investigations into the most serious cases. But most of the time police forces still investigate themselves. Since April 2006 its supervisory role has expanded to include HM Revenue and Customs, the Serious Organised Crime Agency (SOCA), and as of April 2008 the UK Borders Agency.

140. The SOCA’s functions are set out in the Serious Organised Crime and Police Act 2005 and (in relation to civil recovery functions) in the Serious Crime Act 2007. They are to prevent and detect serious organised crime and to contribute to its reduction in other ways and the mitigation of its consequences, and to gather, store, analyse and disseminate information on crime. In summary, as explained in the 2004 White Paper “One Step Ahead”, SOCA has been tasked with making an impact on serious organised crime that affects the UK so that the harm that it causes is reduced.

141. The IPCC investigates the most serious complaints and allegations of misconduct against the police in England and Wales; individual police forces deal with the vast majority of complaints against police officers and police staff. IPCC considers appeals from people who are not satisfied with the way a police force has dealt with their complaint. The SOCA does not perform an oversight role of the police.

142. The IPCC must be the oversight body of the SOCA referred to by the Premier. The SOCA is not an oversight body itself. The Premier’s comment above must refer to the introduction of reporting and oversight protocols in line with the UK IPCC in Western Australia. The question still remains: to whom is the CCC to be accountable in connection with the investigation of organised crime?
WOULD THE IPCC MODEL OF POLICE OVERSIGHT BE APPROPRIATE IN WESTERN AUSTRALIA? 47

143. On 1 May 2012, following a demonstration calling for the IPCC’s abolition outside the London Headquarters of the IPCC, a Parliamentary Inquiry into the future of the IPCC was announced. The protesters were dissatisfied with the conduct of the IPCC and its failure to hold police officers to account. An inquiry into the ICAC was launched on June 12, 2012 and focused on the way the watchdog worked and the difficulties it encountered with complainants and police officers during its investigations48. It was announced that the inquiry was responding to:

- Frustrations on all sides – with police officers as well as complainants claiming the system was unfair.
- Allegations against the IPCC suggested it is a police-dominated organisation, while officers have claimed investigations take too long.
- Complaints from the IPCC that if officers refuse to speak during its investigations, its hands are tied and probes cannot go forward.
- Complaints that if police officers don’t want to be interviewed they cannot take things forward. They (officers) have been accused for “months and months
- ”.
- Concerns about the worries on both sides from police officers that they don’t regard the system being fair and from the public who believe it is also unfair.

144. Clearly, the SOCA’s functions are not aligned with an oversight body of the UK police; it is an organisation that has national responsibility in a similar manner as the Australian Federal

47 The IPCC was established by the Police Reform Act (UK) and came into operation in April 2004.

48 Keith Vaz announced at ACPO Conference in Manchester on May 24th 2012 that the inquiry would be commencing June 12th 2012. The outcome of this inquiry/review is unknown at this time.
Police, although the focus might differ. The ICAC is an oversight body to the UK police. It does not possess the same power as the CCC but it has been the subject of similar criticism.

145. In 2010, the UK Government announced its intention to create a National Crime Agency (NCA), which will replace SOCA. Primary legislation, the Crime, Security and Anti-Social Behaviour Bill, was introduced before Parliament in Spring 2012, to create the NCA in 2013. “The IPCC will be working with the Home Office to establish what the NCA will do and to ensure that we have appropriate oversight of it.”

146. Considering the above with the information in the second reading speech on the Corruption and Crime Commission Amendment Bill 2012 is cause for concern on two fronts:

• It seems that British systems, processes and organisations that have either failed, been made redundant, or the subject of dissatisfaction and complaint are being considered as models in Western Australia.

• Which organisation or who will oversee the activities of the CCC is not clear.

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50 See above, note 45.
CONCLUSION

147. With power and authority comes accountability. The latter must be proportionate to the former. As far as police officers are concerned that much seems accepted; it is the manner in which investigative authorities treat members during and after the investigation process that is of concern to the majority.

148. The impact of the CCC’s practices on the capacity of WA Police to deal effectively and appropriately with WA Police misconduct is marred by workforce perceptions that the CCC has a punitive ideology underpinned by a presumption of guilt, but not affording to them the rights enjoyed by other members of society. Members will be disinclined to report to, cooperate with, or conform to the dictates of a body they do not respect or trust, which in turn diminishes capacity of WA Police to deal effectively and appropriately with WA Police misconduct and undermines the effectiveness of ‘whistleblower’ legislation.

149. A large part of the CCC’s role is to oversee investigative bodies and yet the proposal now is that it becomes just such a body. A claim of true independence and oversight capacity is in direct conflict with a role as part of the investigative team.

150. The move to investigating organised crime would expose the CCC to greater risk of corruption and could undermine public confidence in the CCC and police, and its role in the oversight of police.

151. The CCC maintains that they will require an increase in budget of $42 million over five years to provide a serious and organised crime function. If these costs are to be met within existing resources it calls into question the extent of the CCC’s resources to also deal with WA Police misconduct efficiently.
152. The *Corruption and Crime Commission Amendment Bill 2012* introduced on 21 June 2012 \(^5\) proposes new reporting arrangements for the CCC which Premier Colin Barnett refers to as oversight systems. In the second reading of this Bill he proposes the introduction of oversight systems similar to those utilised by the United Kingdom’s Serious Organised Crime Agency (SOCA). According to the United Kingdoms Independent Police Complaints Commission Corporate Plan the IPCC is the oversight body, not SOCA.

153. SOCA’s functions are to prevent and detect serious organised crime. A National Crime Agency (NCA) will be established in the UK in 2013 to replace the SOCA.

154. The IPCC has itself been the subject of criticism and review and it is concerning that models being considered for implementation in Western Australia are the subject of dissatisfaction and complaint in other jurisdictions. Of deeper concern having regard to the expanded role being proposed for the CCC is what or who will oversee the CCC.

155. The CCC must retain the confidence of the community as an effective oversight body as well as instilling confidence in police so matters of misconduct are reported to it. Just as police should be accountable for their use of power and authority, so ought the CCC.

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\(^5\) See above, note 45.
RECOMMENDATIONS

156. Delay the progress of the Corruption and Crime Commission Amendment Bill 2012 that empowers the CCC to investigate organised crime in order to permit a thorough analysis of the implementation of the United Kingdom’s National Crime Agency in 2013.

157. Identify and examine the key reasons for the dissolution of the SOCA leading to the implementation of the NCA in the United Kingdom.

158. Consider the merits and the appropriateness of parallel responsibility for both investigation of police misconduct and organised crime by one agency in light of the UK experience.

159. Revisit the means by which the CCC deals with police misconduct, with a view to identifying issues that perpetuate a formal, inefficient and punitive disciplinary process. In particular, the adversarial disciplinary system should be abandoned and the treatment police brought into line with the manner in which other public sector employees are dealt with.

160. The CCC to advise the Commissioner of Police or his delegate of any investigation or closed hearing where there is no solid evidence that the investigation could be compromised and WAPol should be given the opportunity to monitor the matter to permit the identification of occupational health risk factors and management issues throughout the investigation.

161. Amend s151 of the Act to permit disclosure of information provided to the Commission to a psychiatrist or psychologist or other medical professional where it is necessary.

162. Capture data to assess links between the occurrence and investigation of police misconduct by the CCC and/or WAPol, effectiveness in producing organisational change and reform, and the occupational health and welfare impacts, with focus on outcomes not outputs.
Appendix Five

Submission provided by the Acting Parliamentary Inspector

On 26 October 2012 the Committee wrote to the Acting Parliamentary Inspector, Mr Craig Colvin SC, along with CCC Commissioner Macknay, to provide them with copies of the transcript of evidence given by the WA Police on 24 October 2012, and to ask for feedback on the suggestion that there might be value in more strictly defining the CCC’s police misconduct role. The Committee received a reply to this letter from Mr Colvin on 31 October 2012, and later resolved to accept this letter as a submission in aid of the inquiry.
31 October 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

COMMITTEE INQUIRY INTO HOW THE CCC HANDLES ALLEGATIONS
AND NOTIFICATIONS OF POLICE MISCONDUCT

Thank you for your letter dated 26 October 2012 concerning the management of misconduct allegations concerning officers and other staff of the WA Police.

You have asked for my views on a proposal that it be made clear to the community that the first port of call for a complaint is WA Police (on the basis that any notification to WA Police becomes a notification to the CCC) with the mandatory referral of all allegations concerning officers at the level of Assistant Commissioner and above or officers of the Internal Affairs Unit for investigation by the Corruption and Crime Commission because of issues of public perception and independence.

It is to be expected that the Commission would have regard for the seniority of officers involved or the nature of any special duty performed by those officers (such as being a member of the Internal Affairs Unit) in determining whether the Commission should undertake the investigation in respect of a particular complaint. Indeed, this is required by s34(2) of the CCC Act. Whilst guidelines might be expected to be developed between the Commission and the WA Police concerning the circumstances in which an investigation might be conducted, in the first instance, by the Commission, I would be concerned about any proposal for a rigid dichotomy based upon the seniority of officers or their duties in relation to the Internal Affairs Unit.

It is my view that the Commission must retain a discretion to assess the need in any particular case whether to independently investigate the allegations of misconduct being made. Further, I would be concerned about any public education process that suggested to the community that all complaints had to be directed to WA Police. It is important for the purposes of oversight and integrity that the public is aware of the avenue of making complaint directly to the Commission in respect of the conduct of staff and officers of WA Police. There may be instances in which complaints would not be
forthcoming if the position promoted to members of the public was that complaints needed to be made to WA Police in the first instance. Further, a system whereby the only means by which complaints can be brought to the attention of the Commission is by notification from WA Police itself would invite the possibility of corruption and compromise of that referral process.

In short, the ability of members of the public to raise complaints with either the Commission or WA Police is an important part of ensuring the integrity of the WA Police.

As to whether all complaints against officers of a particular level of seniority or officers in the Internal Affairs Unit should be investigated by the Commission, I would be concerned that such mandatory referral may introduce unfairness and unnecessary burdens upon senior officers. Allegations of misconduct are often proved to be unsubstantiated, or if substantiated may be of a minor nature, requiring nothing more than internal managerial action. Similarly, the conduct complained of may not constitute misconduct, even though the complainant couches it in such terms. These matters may be evidential to the Commission without the need to undertake a full investigation in all instances. Therefore, a mandatory rule imposed on the Commission to independently investigate all such allegations from the outset may burden it with investigations it would not otherwise undertake resulting in inefficient use of the resources of the Commission. It may also escalate matters which do not require the intervention of the Commission placing undue burdens on senior officers of WA Police.

Conclusion

It is appropriate that primarily complaints against staff and officers of WA Police should be the responsibility of WA Police in the first instance. As is presently the case, all such complaints should be notified to the Commission. The Commission should only remove matters into its own jurisdiction (or retain them) for investigation where there is a particular and compelling reason for doing so. Seniority of the officer involved may be such a reason, as may be the fact that the officer is a member of the Internal Affairs Unit. A mandatory rule as to when the Commission should be involved in an investigation would compromise proper oversight. However, ongoing cooperation between the Commission and the WA Police as to guidelines concerning the circumstances in which the Commission is likely to take over an investigation is important.

Whilst it is logical for WA Police to invite and encourage complaints to be made to WA Police, there should not be attempts at education that would suggest that there is not an open avenue to direct complaints to the Commission.

Yours sincerely,

CRAIG COLVIN SC
ACTING PARLIAMENTARY INSPECTOR
## Appendix Six

### Submissions received

<table>
<thead>
<tr>
<th>Date</th>
<th>Author</th>
<th>Role</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 June 2012</td>
<td>Suppressed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>21 June 2012</td>
<td>The Honourable Chris Steytler QC</td>
<td>Parliamentary Inspector</td>
<td>Office of the Parliamentary Inspector</td>
</tr>
<tr>
<td>8 July 2012</td>
<td>Suppressed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20 July 2012</td>
<td>The Honourable Roger Macknay QC</td>
<td>Commissioner</td>
<td>Corruption and Crime Commission</td>
</tr>
<tr>
<td>20 July 2012</td>
<td>Suppressed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>27 July 2012</td>
<td>Mr Dominic Staltari APM</td>
<td>Assistant Commissioner (Professional Standards)</td>
<td>WA Police</td>
</tr>
<tr>
<td>24 August 2012</td>
<td>Mr George Tilbury</td>
<td>President</td>
<td>WA Police Union of Workers</td>
</tr>
<tr>
<td>24 October 2012</td>
<td>Mr Dominic Staltari</td>
<td>Assistant Commissioner (Professional Standards)</td>
<td>WA Police</td>
</tr>
<tr>
<td>25 October 2012</td>
<td>The Honourable Roger Macknay QC</td>
<td>Commissioner</td>
<td>Corruption and Crime Commission</td>
</tr>
<tr>
<td>31 October 2012</td>
<td>Mr Craig Colvin SC</td>
<td>Acting Parliamentary Inspector</td>
<td>Office of the Parliamentary Inspector</td>
</tr>
<tr>
<td>2 November 2012</td>
<td>The Honourable Roger Macknay QC</td>
<td>Commissioner</td>
<td>Corruption and Crime Commission</td>
</tr>
<tr>
<td>4 November 2012</td>
<td>Mr George Tilbury</td>
<td>President</td>
<td>WA Police Union of Workers</td>
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<td>8 November 2012</td>
<td>Dr Karl O’Callaghan APM</td>
<td>Commissioner</td>
<td>WA Police</td>
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<td>12 November 2012</td>
<td>The Honourable Roger Macknay QC</td>
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<td>Corruption and Crime Commission</td>
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## Appendix Seven

### Briefings

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<th>Date</th>
<th>Name</th>
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<tr>
<td>10 October 2011</td>
<td>Ms Ilana Rosenzweig</td>
<td>Chief Administrator</td>
<td>City of Chicago Independent Police Review Authority</td>
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<td>12 October 2011</td>
<td>Mr Joseph Hincke Inspector Alfredo Bangloy</td>
<td>Professional Integrity Officer Officer In Charge (Professional Standards Unit)</td>
<td>Royal Canadian Mounted Police</td>
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<tr>
<td>8 May 2012</td>
<td>Hon Dr Joseph Lee</td>
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<td>Mr Lawrence Ma</td>
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<td>Mr Shing-hing Ip</td>
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<td>Mr Ricky Chu</td>
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<thead>
<tr>
<th>Date</th>
<th>Name</th>
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<tr>
<td>8 May 2012</td>
<td>Mr Paul Lau</td>
<td>Chief Investigator</td>
<td>Hong Kong Independent Commission Against Corruption</td>
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<td>Mr Peter Choi</td>
<td>Principal Investigator</td>
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<td>27 August 2012</td>
<td>Mr Michael Strong</td>
<td>Former Director</td>
<td>Office of Police Integrity Victoria</td>
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<td>28 August 2012</td>
<td>Mr Andrew Scipione APM</td>
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<td>New South Wales Police Force</td>
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<tr>
<td></td>
<td>Mr Paul Carey</td>
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<td>Mr Dave Hudson</td>
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<tr>
<td>28 August 2012</td>
<td>Ms Linda Waugh</td>
<td>Deputy Ombudsman (Police and</td>
<td>New South Wales Ombudsman</td>
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<tr>
<td></td>
<td>Mr Michael Gleeson</td>
<td>Manager (Police and Compliance)</td>
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## Appendix Eight

### Hearings

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<td>15 August 2012</td>
<td>The Honourable Roger Macknay QC</td>
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<td>Mr Mike Silverstone</td>
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<td>Mr Roger Watson</td>
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<td></td>
<td>Mr Robert Sutton</td>
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<td>12 September 2012</td>
<td>Mr Murray Lampard APM</td>
<td>Associate Professor</td>
<td>Edith Cowan University</td>
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<td>12 September 2012</td>
<td>Mr Ron Davies QC</td>
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<td>26 September 2012</td>
<td>Mr George Tilbury</td>
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<td>Mr Brandon Shortland</td>
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<td>Ms Judith Fordham</td>
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<td>Mr Stephen Roast</td>
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<td>24 October 2012</td>
<td>Dr Karl O’Callaghan APM</td>
<td>Commissioner</td>
<td>WA Police</td>
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<td>Mr Dominic Staltari APM</td>
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<td>Inspector Greg Young</td>
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<td>Ms Michelle Harries</td>
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<td>The Honourable Roger Macknay QC</td>
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Appendix Nine

Inquiry terms of reference

On 24 November 2010 the Joint Standing Committee resolved to conduct an inquiry with the following terms of reference:

The Joint Standing Committee on the Corruption and Crime Commission will inquire into, and report upon:

- how the Corruption and Crime Commission deals with allegations and notifications of police misconduct;
- the impact of the Corruption and Crime Commission’s practices in this regard on the capacity of the WA Police to deal effectively and appropriately with misconduct; and
- how the Corruption and Crime Commission’s practices in this regard compare to police oversight bodies in other jurisdictions.
Appendix Ten

Committee’s functions and powers

On 25 November 2008 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee’s functions and powers are defined in the Legislative Assembly’s Standing Orders 289-293 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 -


b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and

c) carry out any other functions conferred on the Committee under the Corruption and Crime Commission Act 2003.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.