



**WA Police Union of Workers**

# **WA Police Union of Workers**

## **Submission to the Joint Standing Committee on the Corruption & Crime Commission**



**Researched and prepared by**

**Fordham & Roast**  
PARTNERS IN CRIME

**for the President**

**WA Police Union of Workers  
20 August 2012**



## CONTENTS

Executive Summary .....	4
Submission.....	7
Introduction .....	7
TOR 1: How the CCC deals with allegations and notifications of WA Police misconduct .....	9
Legislation .....	9
Investigator or overseer? .....	10
What happens in practice .....	11
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 .....	36
Exceptional powers .....	36
Proposed amendments .....	37
Impact of proposed amendments upon WAPol: a more powerful CCC?.....	38
Contempt powers .....	40
CCC – WAPol relationship .....	43
Whistleblowers .....	46
Budgets .....	48
A punitive approach .....	49
TOR 3: How the CCC'S practices in this regard compare to police oversight bodies in other jurisdictions.....	53
Police oversight models.....	54
General Accountability & Governance Trends .....	55
The Global Situation. ....	56
An analysis of the CCC.....	66



Categorising the CCC .....	68
Oversight of the CCC.....	69
Would the IPCC model of police oversight be appropriate in Western Australia? .....	71
Conclusion .....	73
Recommendations.....	75
APPENDIX: WAPU Corruption & Crime Commission Survey .....	76

## LIST OF TABLES

Table 1: CIVILIAN OVERSIGHT BODIES RESPONSIBLE FOR HANDLING COMPLAINTS AGAINST POLICE .....	57
Table 2: COMPOSITION OF CIVILIAN OVERSIGHT BODIES .....	58
Table 3: SCOPE OF COMPLAINTS AGAINST POLICE HANDLED BY CIVILIAN OVERSIGHT BODIES.....	59
Table 4: INVESTIGATIVE POWER OF CIVILIAN OVERSIGHT BODIES .....	60
Table 5: INVESTIGATION OF COMPLAINTS AGAINST POLICE .....	61
Table 6: OVERSIGHT OF INVESTIGATIONS OF COMPLAINTS AGAINST POLICE.....	63
Table 7: DISCIPLINARY POWER OF CIVILIAN OVERSIGHT BODIES.....	64
Table 8: CHANNEL OF APPEAL AFTER REVIEW OF COMPLAINTS AGAINST POLICE .....	65



## 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.



WA Police Union of Workers

## SUBMISSION

*"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 WAPol.
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.





### TOR 1: HOW THE CCC DEALS WITH ALLEGATIONS AND NOTIFICATIONS OF WA POLICE MISCONDUCT



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<sup>1</sup>.
11. When a matter is referred to a relevant public sector agency for investigation, the Commission monitors the progress of the investigation<sup>2</sup>. Reports on completed investigations by relevant public sector agencies are forwarded to the Commission, which reviews their adequacy<sup>3</sup>.

---

<sup>1</sup> Corruption and Crime Commission of Western Australia, *Notification Guidelines for Principal Officers of Public Authorities* 3rd Ed February 2005 s6 at 9.

<sup>2</sup> s40

<sup>3</sup> 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<sup>4</sup>.
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<sup>5</sup>
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.

---

<sup>4</sup>Corruption and Crime Commission *Annual Report* 2010 -2011, [65]

<sup>5</sup> *ibid*



---

## CASE STUDIES

### STUDY 1

---

*Before dawn a large number of officers from the ACC<sup>6</sup> 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.*

---

<sup>6</sup> 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 summonsed 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 verbally 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 later 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, hiding 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 if we had been 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.





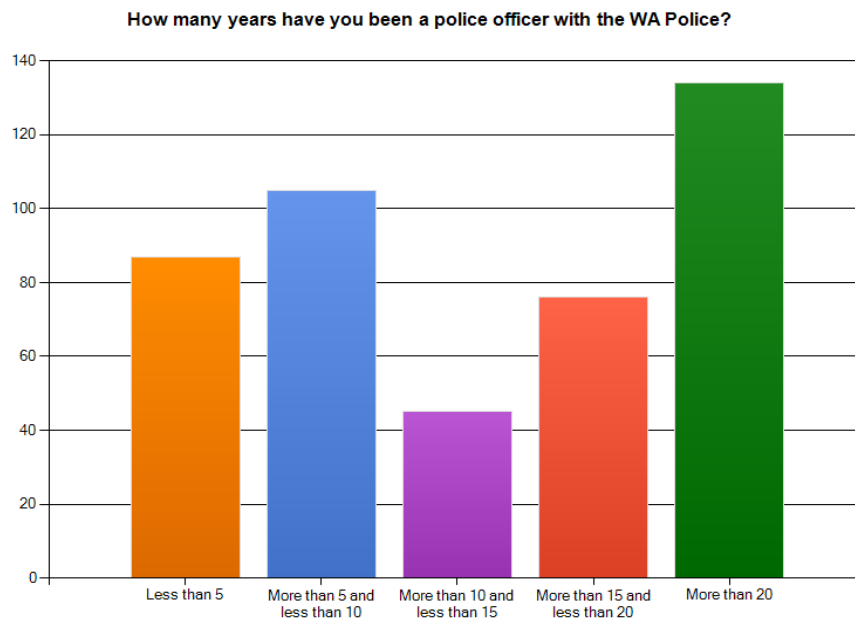
## RESULTS

---

### TIME IN WAPOL

---

21. 30% of respondents had been police officers for more than 20 years.



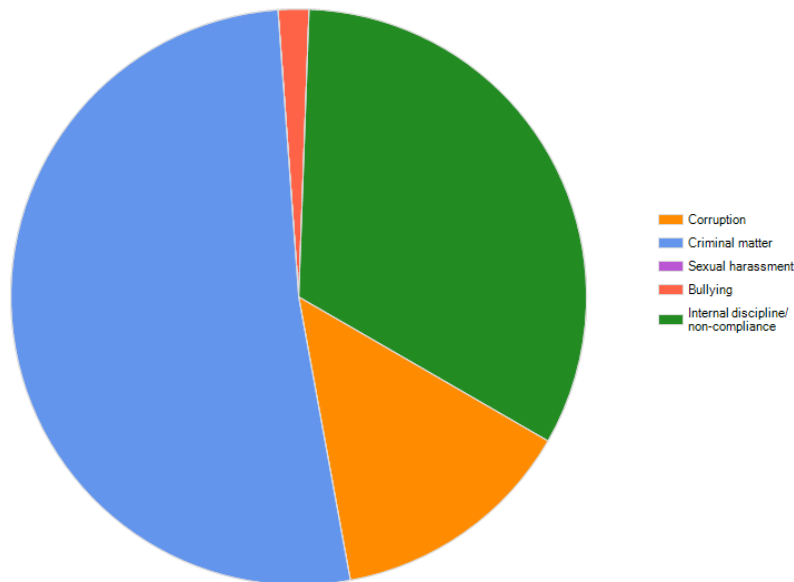
### THE CCC EXPERIENCE

---

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 (59% and 52% respectively). Only one respondent was a complainant (alleged bullying).



What was the allegation that warranted the CCCs involvement?



23. Of those questioned as a suspect (37 in total), 22 indicated they were questioned privately but four 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.

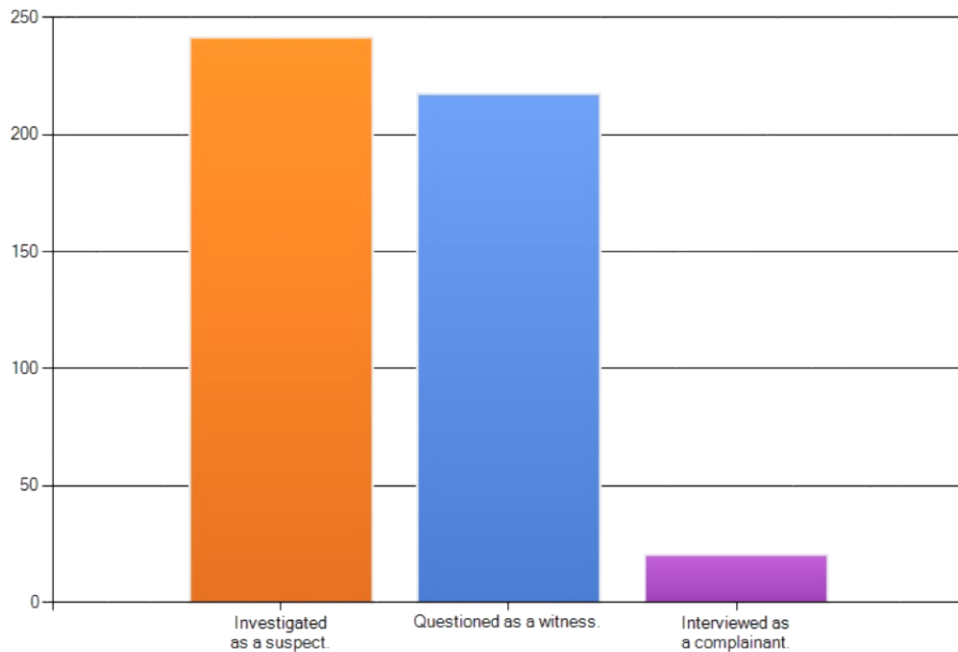
### THE POLICE INTERNAL INVESTIGATION EXPERIENCE

---

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, Taser<sup>®</sup>).



What occurred as a result of your contact with Police Internal Investigations? Mark all that apply.

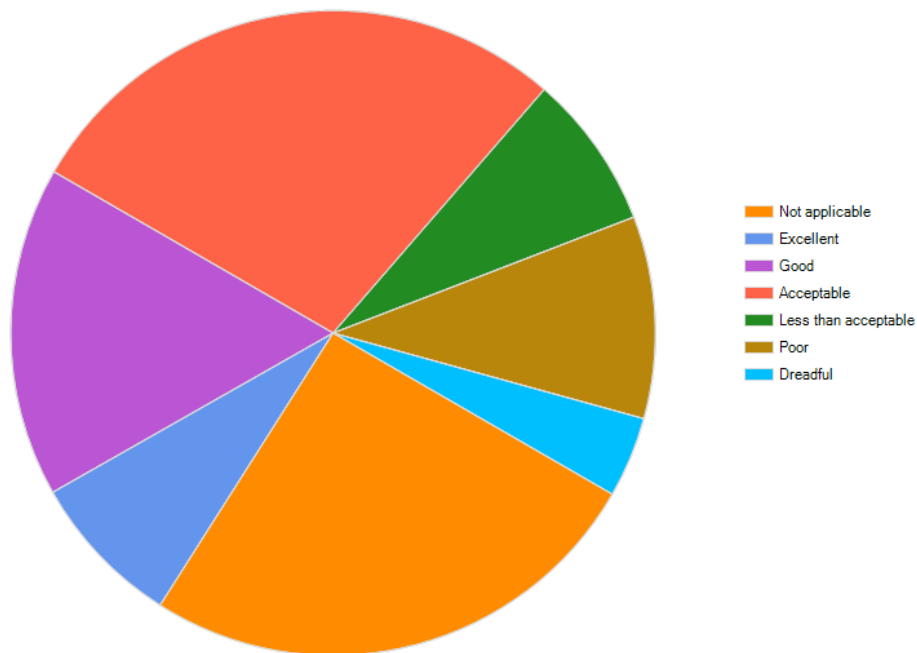


30. Whether complainant, witness or suspect, respondents gave mixed reviews to their internal investigation experience. Approximately two thirds of witnesses and suspects considered they were treated acceptably or better, but only about half of the complainants to whom the question was applicable considered 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.

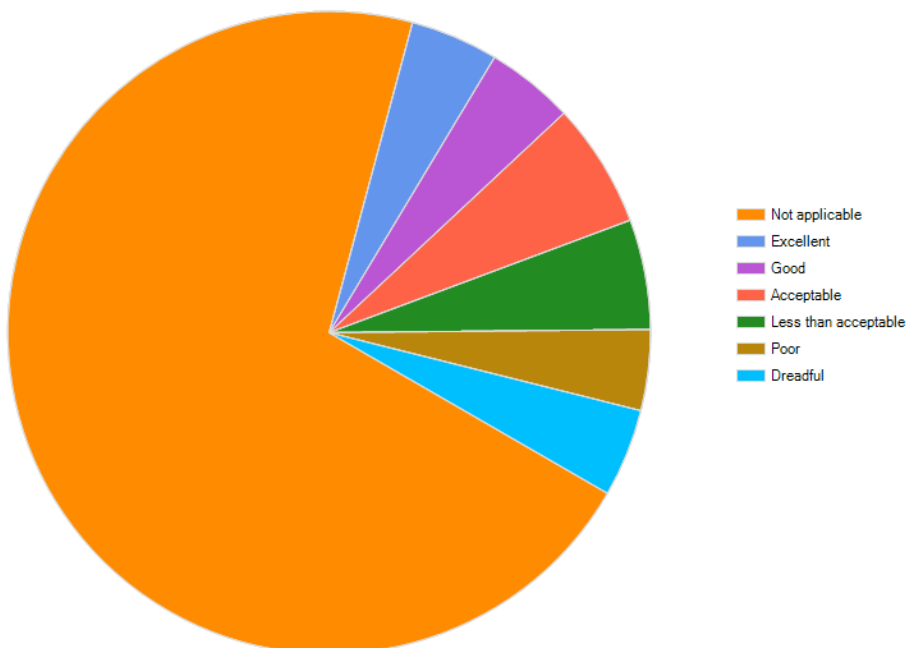
*They have never gotten back to me on any of the matters I have been involved in even as a complainant/reporting person as it seems standard practice not to advise of a result which left me in a prolonged state of anxiety at the unknown outcome?!! This has happened on a number of occasions for me, which 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?





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 focused 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 against the*



## 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.*





### GENERALLY

---

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<sup>7</sup>.
- 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 finding of not*

---

<sup>7</sup> WAPol 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)



*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 judgment and counseling 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.*



## WA Police Union of Workers

*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 expects an independent watchdog. Pity it's a bunch of lawyers who aren't investigators!*



## WA Police Union of Workers

*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, counseled, 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 focused 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 pleads 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 judgment. 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 focused on finding incriminating evidence than exculpatory evidence,



**WA Police Union of Workers**

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<sup>8</sup> under the Act, making it difficult for the Commissioner of Police to achieve the threshold required for an application to be granted<sup>9</sup>.

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<sup>10</sup> 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.

48. The other proposed changes introduced in the Bill, in summary, are:

---

<sup>8</sup> 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.

<sup>9</sup> See above, note 4 at [8]

<sup>10</sup> Colin Barnett, *The Corruption and Crime Commission Amendment Bill 2012*, Hansard [Thursday, 21 June 2012] p4227b-4229a,



- 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 will cease to oversee investigations into minor 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 the nature of the criteria to be satisfied in determining the 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<sup>11</sup>. 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"<sup>12</sup>.

52. It has been suggested<sup>13</sup> 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<sup>14</sup> 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.<sup>15</sup>
54. Premier Colin Barnett is quoted as saying that "*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

---

<sup>11</sup> Joint Standing Committee on the Corruption and Crime Commission: *How the Corruption and Crime Commission can Best Work Together with the Western Australian Police Force to Combat Organised Crime*, Report No. 10, 2010.

<sup>12</sup> Christopher Steytler QC, Parliamentary Inspector, *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.

<sup>13</sup> See above, note 12, [221].

<sup>14</sup> 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.

<sup>15</sup> See above, note 12 [383].

either or both agencies will be impacted. From a resources standpoint this calls into question the CCC's ability to deal with allegations and notifications of WA Police misconduct.<sup>16</sup>

---

## 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 investigation<sup>17</sup>.
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 answer<sup>18</sup>.
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"<sup>19</sup>.
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

---

<sup>16</sup> 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).

<sup>17</sup> S160(1) Corruption and Crime Commission Act 2003.

<sup>18</sup> Joint Standing Committees on the Corruption and Crime Commission, *Discontinuance of Contempt Proceedings against Members of the Coffin Cheaters Motorcycle Club* Report No. 27, 14 June 2012 at 4.

<sup>19</sup> See above, note 11 [202]





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.<sup>20</sup>*

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 Commission<sup>21</sup>:

*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.

---

<sup>20</sup> The Hon Justice Murray, Acting Chief Justice, letter dated 10 March 2006 quoted in Joint Standing Committee on the Corruption and Crime Commission Report No. 10 (see above, note 11, [210])

<sup>21</sup> 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*<sup>22</sup>. 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<sup>23</sup>.

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:

*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*

---

<sup>22</sup> See above, note 18, at p6.

<sup>23</sup> Ibid.



*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<sup>24</sup>.*

*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.<sup>25</sup>*

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.

---

<sup>24</sup> Gary Adshead and Luke Eliot, *The West Australian* August 10, 2012.

<sup>25</sup> 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<sup>26</sup>.
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"<sup>27</sup>. 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 loyalty became

---

<sup>26</sup> See above, note 11 at [424].

<sup>27</sup> 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.



misguided and associated with a siege mentality and a code of silence that it became dysfunctional and corruption tolerant.

76. There is a view<sup>28</sup> 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. CCC

---

<sup>28</sup> See above, note 27.

Commissioner Roberts-Smith RFD QC responded to the Committee in a written submission dated 24 July 2007<sup>29</sup>. 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 oversighting 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;

---

<sup>29</sup> 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<sup>30</sup>. 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*<sup>31</sup>.
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<sup>32</sup> 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 and an increase of 33% in FTEs to enhance its role in the investigation of organised crime. It is not

---

<sup>30</sup> See above, note 27, at [41].

<sup>31</sup> Joint Standing Committee On The Corruption And Crime Commission *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*, Report No. 18, 8 September 2011 at [69].

<sup>32</sup> 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].





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 that 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.*<sup>33</sup>

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 argued<sup>34</sup> 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 proceedings<sup>35</sup>. If it is contemplated that any matter under investigation could result in the institution of criminal proceedings, at the time that it

---

<sup>33</sup> See above, note 27, at [12].

<sup>34</sup> Ibid.

<sup>35</sup> See above, note 31 at [24], [69], 3.9, 1.2, Criticism 2.



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 warning<sup>36</sup>. 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 card<sup>37</sup>. He is reported to have said:

---

<sup>36</sup> Letter to the Joint Standing Committee on the Corruption and Crime Commission by Malcom McCusker AO QC in advance of his attendance before the JSCCCC, at 10:15am 22 June 2011.

<sup>37</sup> The West Australian Newspaper Thursday August 9th 2012 pp 1,4,5, 6.



**WA Police Union of Workers**

*I have made no secret of the fact I have been disappointed which how long this process has taken, particularly due to sensitivities surrounding 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.



WA Police Union of Workers

### TOR 3: HOW THE CCC'S PRACTICES IN THIS REGARD COMPARE TO POLICE OVERSIGHT BODIES IN OTHER JURISDICTIONS



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
  - Police investigating police
  - Police investigating another police force
- Interdependent Model
  - Civilian observation
  - Hybrid investigation
- Independent Model.
  - 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 investigation<sup>38</sup>.

---

### 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.

---

### 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.

---

### GENERAL ACCOUNTABILITY & GOVERNANCE TRENDS

---

<sup>38</sup> Public Commission for Public Complaints Against the RCMP, Police Investigating Police – Final Public Report 28.02.2012.



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.*<sup>39</sup>

---

### 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 tables<sup>40</sup>.

---

<sup>39</sup> Chan, Janet B.L. (1999). Governing police practice: limits of the new accountability. *British Journal of Sociology*, 50(2), 251-270. Cited by Commission for Public Complaints Against the RCMP [www.cpc-cpp.gc.ca](http://www.cpc-cpp.gc.ca) sourced 9/8/2012

<sup>40</sup> Division of the Legislative Council Secretariat, [www.legco.gov.hk/yr01-02/english/sec/library/0102in24e.pdf](http://www.legco.gov.hk/yr01-02/english/sec/library/0102in24e.pdf) sourced July 9th, 2012.





Table 1: CIVILIAN OVERSIGHT BODIES RESPONSIBLE FOR HANDLING COMPLAINTS AGAINST POLICE

2 2  
2

Jurisdictions	Civilian Oversight Bodies	Statutory Status
<b>Hong Kong</b>	The Independent Police Complaints Council <sup>1</sup>	Yes
<b>New York City, United States of America</b>	New York City Civilian Complaint Review Board	Yes
<b>England and Wales, United Kingdom</b>	Independent Police Complaints Commission <sup>1</sup>	Yes
<b>Queensland Australia</b>	The Crime and Misconduct Commission	Yes
<b>New South Wales, Australia</b>	(a) The New South Wales Ombudsman	Yes
	(b) The Police Integrity Commission	Yes
<b>Toronto, Canada</b>	Ontario Civilian Commission on Police Service	Yes
<b>Singapore</b>	Not applicable	Not applicable

<sup>1</sup> 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

Jurisdictions Civilian Oversight		Composition
<b>Hong Kong</b> The proposed Independent Police Complaints Council		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.
<b>New York City, United States of America</b> New York City Civilian Complaint Review Board		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.)
<b>England and Wales, United Kingdom</b>	Independent Police Complaints Commission	The Home Secretary will appoint not fewer than 10 members.  The Queen will appoint the Chairman.
<b>Queensland, Australia</b> The Crime and Misconduct Commission		The Chairperson, 4 Commissioners and 2 Assistant Commissioners are nominated by the Minister and appointed by the Governor-in-Council.
<b>New South Wales, Aust</b>	(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.
	(b) The Police Integrity Commission	The Commissioner is appointed by the State Governor.
<b>Toronto, Canada</b> Ontario Civilian Commission on Police Service		Members are appointed by the Lieutenant Governor-in-Council.
<b>Singapore</b>		Not applicable.



**Table 3: SCOPE OF COMPLAINTS AGAINST POLICE HANDLED BY CIVILIAN OVERSIGHT BODIES**

<b>Jurisdictions Civilian Oversight Bodies</b>		<b>Scope of Complaints</b>
Hong Kong The proposed Independent Police Complaints Council		Police misconduct and any practice or procedure adopted by the police.
New York City, United States of America New York City Civilian Complaint Review Board		Police misconduct involving the use of excessive force, abuse of authority, discourtesy and offensive language.
England and Wales, United Kingdom	Independent Police Complaints Commission	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.
Queensland, Australia The Crime and Misconduct Commission		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.
New South Wales, Australia	(a) The New South Wales Ombudsman	Conduct that may be illegal, unreasonable, unjust, oppressive, discriminatory, or based on improper motives.
	(b) Police Integrity Commission	Police corruption or serious police misconduct.
Toronto, Canada Ontario Civilian Commission on Police Service		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.
Singapore		Not applicable. (The Singapore Police Force investigates Police misconduct.)



Table 4: INVESTIGATIVE POWER OF CIVILIAN OVERSIGHT BODIES

2

Jurisdictions		Power of Investigation			
Civilian		Conducts independent investigation	Maintains the power to investigate, but in most cases audits results of police investigation	No power to investigate but is authorized to review police investigation	No civilian body to investigate complaints or review police investigation
<b>Hong Kong</b> The proposed Independent Police Complaints Council				Yes	
<b>New York City, United States of America</b> New York City Civilian Complaint Review Board		Yes			
<b>England and Wales, United Kingdom</b>	Independent Police Complaints Commission		Yes		
<b>Queensland, Australia</b> The Crime and Misconduct Commission			Yes		
<b>New South Wales, Australia</b>	(a) The New South Wales Ombudsman		Yes		
	(b) The Police Integrity Commission		Yes		
<b>Toronto, Canada</b> Ontario Civilian Commission on Police			Yes		
<b>Singapore</b>					Yes



Table 5: INVESTIGATION OF COMPLAINTS AGAINST POLICE

Jurisdictions Civilian		
Oversight Bodies		Investigation of Complaints
<b>Hong Kong</b> The proposed Independent Police Complaints Council		The Complaints Against Police Office of the Hong Kong Police Force investigates all the complaints.
<b>New York City</b> , United States of America New York City Civilian Complaint Review Board (CCRB)		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).
<b>England and Wales</b> , United Kingdom	Independent Police Complaints Commission	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.
<b>Queensland, Australia</b> The Crime and Misconduct Commission (CMC)		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.
<b>New South Wales, Australia</b>  (a) The New South Wales Ombudsman (Ombudsman)  (b) The Police Integrity Commission (PIC)		<p>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.</p> <p>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</p>
<b>Toronto, Canada</b>  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.



## WA Police Union of Workers

<b>Singapore</b>	<p>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.</p> <p>If it is a serious allegation of misconduct, the complaint will be forwarded to the Internal Investigation Department of the SPF for investigation.</p>
------------------	---



Table 6: OVERSIGHT OF INVESTIGATIONS OF COMPLAINTS AGAINST POLICE

Jurisdictions Civilian Oversight Bodies		Oversight of the Investigations of Complaints Against Police
<b>Hong Kong</b> Independent Police Complaints Council (Council)		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.
<b>New York City, United States of America</b> New York City Civilian Complaint Review Board (CCRB)		CCRB 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.
<b>England and Wales, United Kingdom</b>	Independent Police Complaints Commission	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.
<b>Queensland, Australia</b> The Crime and Misconduct Commission		It has power to request a report from the Queensland Police Service regarding the result of an investigation.
<b>New South Wales, Australia</b>	(a) The New South Wales Ombudsman	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.
	(b) Police Integrity Commission	It requests and reviews reports of police investigations in serious cases, and then publishes reports to Parliament.
<b>Toronto, Canada</b> Ontario Civilian Commission on Police Service		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.
<b>Singapore</b>		Not applicable.



Table 7: DISCIPLINARY POWER OF CIVILIAN OVERSIGHT BODIES

Jurisdictions Civilian Oversight Bodies		Disciplinary Power of Civilian Oversight Bodies
<b>New South Wales, Australia</b>	(a) The New South Wales Ombudsman	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.
	(b) The Police Integrity Commission (PIC)	PIC can make recommendations to the police but the police retain the ultimate authority to impose discipline.  If the police does not follow PIC's recommendations, PIC will publish these incidents in its reports to Parliament.
<b>Toronto, Canada</b> Ontario Civilian Commission on Police Service (OCCPS)		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.
<b>Singapore</b>		Not applicable. (The Deputy Commissioner of Police makes decision on disciplinary matters. There is no civilian body to oversee disciplinary matters.)





**Table 8: CHANNELS OF APPEAL AFTER REVIEW OF COMPLAINTS AGAINST POLICE**

<b>Jurisdictions / Civilian Oversight Bodies</b>		<b>Channel of Appeal after Review</b>
<b>Hong Kong</b> The proposed Independent Police Complaint Council (Council)		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.
<b>New York City, United States of America</b> New York City Civilian Complaint Review Board		Its decision is final.
<b>England and Wales, United Kingdom</b>	Independent Police Complaints Commission	Its decision is final.
<b>Queensland, Australia</b> The Crime and Misconduct Commission (CMC)		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.
<b>New South Wales, Australia</b>	(a) The New South Wales Ombudsman	The Ombudsman may provide feedback, or directions, to NSW Police, if they think something was missed, or could be improved.
	(b) The Police Integrity Commission (PIC)	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.
<b>Toronto, Canada</b> Ontario Civilian Commission on		The decision of OCCPS could be appealed to the Divisional Court but rarely is it overturned.
<b>Singapore</b>		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.)



---

### 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<sup>41</sup> 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%.<sup>42</sup>

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%.<sup>43</sup>

---

<sup>41</sup> Corruption and Crime Commission *Annual Report* 2010 -2011.

<sup>42</sup> Ibid at [81].

<sup>43</sup> 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.*<sup>44</sup> 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.

---

<sup>44</sup> Garrett Mundy citing Colin Barnett, ABC News June 27, 2012, Expanding the role of the CCC has its critics <http://www.abc.net.au/news/2012-06-27>.



---

### 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<sup>45</sup> 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"<sup>46</sup>.

---

<sup>45</sup> Premier Mr Colin Barnett, Hansard [ASSEMBLY] Thursday, 21 June 2012 Corruption and Crime Commission Amendment Bill 2012 second reading speech, p4227b-4229a

<sup>46</sup> 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?<sup>47</sup>

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 investigations<sup>48</sup>. 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

---

<sup>47</sup> The IPCC was established by the *Police Reform Act* (UK) and came into operation in April 2004.

<sup>48</sup> Keith Vaz announced at ACPO Conference in Manchester on May 24 2012 that the inquiry would be commencing June 12th 2012. The outcome of this inquiry/review is unknown at this time.



## WA Police Union of Workers

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"*.<sup>49</sup>

146. Considering the above with the information in the second reading speech on the *Corruption and Crime Commission Amendment Bill 2012*<sup>50</sup> 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.

---

<sup>49</sup> Draft Independent Police Complaints Commission Corporate & Business Plans 2012\_13 160212 v.1.

<sup>50</sup> 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<sup>51</sup> 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 Kingdom's 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.

---

<sup>51</sup> 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 of police brought into line with the manner by 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.





WA **Police Union** of Workers

## APPENDIX: WAPU CORRUPTION & CRIME COMMISSION SURVEY