

Our Ref: 00768/2017

2 October 2018

Hon Matthew Swinbourn, MLC  
Standing Committee on Environment and Public Affairs  
Legislative Council Committee Office  
18-32 Parliament Place  
WEST PERTH WA 6005

Dear Mr Swinbourn

**PETITION NO 060 - ACCOUNTABILITY OF POLICE AND CORRUPTION OVERSIGHT AGENCIES**

Thank you for your letter dated 19 September 2018 seeking comments on the terms of the petition.

With respect to the petitioners, the petition completely misunderstands the legislation establishing the Corruption and Crime Commission.

The petition criticises the State's current regime for police accountability and corruption oversight as not effective, primarily on the basis that it is not seen to result in prosecution or disciplinary action.

There will always be differing views as to the outcome of some matters which are in the public domain. Determination that a police officer has used excessive force is a matter on which reasonable minds may differ, for example. A prosecuting authority is required to take into account admissible evidence and to have regard to exculpatory material in deciding whether a prosecution is necessary in the public interest. Effectiveness in relation to police misconduct cannot be judged solely on either criteria. In the last financial year the Commission dealt with 2,606 allegations, conducted 15 investigations, and monitored and reviewed 995 allegations.

The petition seeks support from the Legislative Council for the 'creation of a Multi-Partisan' Select Committee to audit the internal workings of the WA Police Force and corruption oversight agencies. This is a matter for Parliament but Parliament already has an established Joint Standing Committee into the Corruption and Crime Commission (JSCCC).

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**Contact the Corruption and Crime Commission**

The petition would dilute oversight. The current four tiered system of oversight (WA Police internal affairs, the Commission, the Parliamentary Inspector and the JSCCC) would be replaced by two tiers comprising the new body and a Select Committee.

The petition seeks to replace the Commission, WA Police Internal Affairs and WA Ombudsman with a new Royal Commission-like body dealing exclusively with police misconduct.

The petition is factually wrong. The petition refers to the UK Independent Police Complaints Commission. That body was disbanded and since January 2018 has been replaced by the independent Office of Police Conduct (IOPC) whose powers derive from the *Policing and Crime Act 2017*.

IOPC has been given remarkably similar powers to the Commission. In particular IOPC does not investigate every matter. Like the Commission, it decides what and how it will investigate and what it will return to police for investigation. It is too soon to say whether IOPC will be effective.

The Commission is already publicly accountable in many ways, including the Joint Standing Committee. The Commission already has the powers suggested for the new body.

I do not disagree with the concept of a stand-alone police misconduct agency. Such a body would come at considerable cost and much duplication. New South Wales is the only state with separate public sector and police misconduct commissions. All other states combine the two functions, saving resources. For example, the Commission maintains a surveillance capability and a data intercept capability. These can be switched between the two functions according to need. These are expensive but vital resources which would have to be replicated with two commissions with consequent cost to the State. There are undoubted benefits to having a dedicated Police Misconduct Commission if the State is prepared to bear the significant financial costs.

The time limit of six months to complete investigations is unrealistic for complex matters. The Commission could achieve a six months clearance rate for most matters if Parliament is prepared to allocate funds for the very substantial increase in resources that would be necessary - at least double the existing allocation, including lease and fit-out of accommodation costs for extra staff.

Finally, there is an incontrovertible reason why the petition should, with respect, be denied.

The Commissioner of Police is responsible for the management of the force including all matters of misconduct and corruption. He cannot be accountable if he has no control over the process. He cannot act swiftly when necessary if he has no power. The governance of the police force would be compromised. Police generally deal effectively with misconduct. In addition, every allegation of misconduct must be notified to the Commission. The Commission regularly

interrogates police systems to ensure this occurs. The Commission will oversee or take over an investigation if circumstances require.

Oversight such as the Commission provides, is a check on the misuse of power but it should not be assumed the police are incapable of dealing with misconduct. It should not be assumed that the Commissioner of Police would condone misconduct and be ready to accept officers guilty of misconduct without intervention.

Yours sincerely

A handwritten signature in blue ink that reads "John McKechnie". The signature is written in a cursive style with a large initial 'J'.

John McKechnie, QC  
**COMMISSIONER**