

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

**INQUIRY INTO THE WESTERN AUSTRALIAN CORRUPTION AND CRIME
COMMISSION'S OVERSIGHT OF POLICE MISCONDUCT INVESTIGATIONS,
PARTICULARLY ALLEGATIONS OF EXCESSIVE USE OF FORCE**



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 1 JULY 2020**

SESSION TWO

Members

**Ms M.M. Quirk, MLA (Chair)
Hon Jim Chown, MLC (Deputy Chair)
Mr M. Hughes, MLA
Hon Alison Xamon, MLC**

Hearing commenced at 11.49 am**Mr DENNIS EGGINGTON****Chief Executive Officer, Aboriginal Legal Service of WA, examined:****Mr PETER COLLINS****Director of Legal Services, Aboriginal Legal Service of WA, examined:****Ms ALICE VIVIENNE BARTER****Managing Lawyer, Civil Law and Human Rights Unit, Aboriginal Legal Service of WA, examined:**

The CHAIR: On behalf of the committee, I welcome you and thank you for agreeing to appear today. I am Margaret Quirk. I am the Chair of the Joint Standing Committee on the Corruption and Crime Commission. I will introduce the other members of the committee present today. On my left is the deputy chair, Hon Jim Chown, MLC. To his left is Hon Alison Xamon, MLC. To her left is Mr Matthew Hughes, MLA, the member for Kalamunda.

I advise that proceedings of the committee's hearing will be broadcast live within Parliament House and via the internet. This broadcast may include to documentation provided by you to assist the committee in its investigations. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you might say outside of today's proceedings. Before we begin, are there any questions about your attendance today?

The WITNESSES: No, thank you.

The CHAIR: Would you like to make an opening statement?

Mr EGGINGTON: Thank you, Chair. I will probably preface the opening statement by saying that we certainly welcome the opportunity and know that this inquiry is really needed. But I am not the Dennis Eggington that you normally see on TV. I am actually pretty sad to come here today. It saddens me that, still, in our presentation of the overrepresentation of Aboriginal people, even in the serious nature of the complaints system against police, and the fact that some of the officers here were really decent police officers who we deal with. I have got to say that we go to them directly when we need to more times than going to the CCC. It saddens me that Aboriginal people, once again, are seen as not being important in the whole scheme of things. That includes my limited understanding of where we sit within the CCC's eyes.

Alice is our managing solicitor and does a lot of the police complaints. You have read our submission. That is just only a few. Once again, it saddens me that we get complaint after complaint—daily, weekly, monthly and yearly. It does not stop. It goes on and it continues. I hope, Alice, that some of the examples that you might share with the inquiry and the committee here are ones that we are particularly horrified about.

We do acknowledge that people like the deputy commissioner and the commissioner are trying to do their best and do the work, but, unfortunately, the powers that police do have, if they were used by a normal citizen, would be breaching civil law and criminal law. There lies a problem for our community. Given those extensive powers—we are talking about batons, tasers, firearms and, of course, the horrific use of dogs—I think it is really important to be accountable. While our

submission indicates that we do not believe that we get a fair deal within the CCC, and I do not know whether that is because it is the ALS or it is Aboriginal people—probably a little bit of both—we do and have said that we would rather see an independent body overseeing these types of complaints.

Before I came in today, one of the lawyers at work—she is a really hard worker who does our custody notification work—said that when she was looking at the ads for the CCC for staffing, it almost said that you have got to be a police officer or do not apply. There lies the problem. We do not believe that it is an independent review process. I am going to leave most of our evidence and get Peter—Pete does a tremendous job on behalf of the organisation and is straight into the commissioner's office or other senior police when we have got complaints and we feel the need to go there. I will leave most of the rest of the talking up to my colleagues, Chair, if I can.

The CHAIR: Thank you very much. Just as a general proposition, the tenor of the submission that was issued was that ALS does not consider referring matters to the CCC because you are not confident of a decent outcome or investigation; is that correct?

Mr EGGINGTON: That is correct—yes.

The CHAIR: Ms Barter or Mr Collins, do you want to speak next?

Mr COLLINS: Could I add something very briefly, please, Chair.

Hon JIM CHOWN: Could I just intervene quickly, in regard to the statements made by Mr Eggington and his issue with the CCC. Have you actually sat down with the CCC and tried to resolve this; and what was the outcome of that discussion?

Mr EGGINGTON: Not me personally—no.

Ms BARTER: Yes, I have.

Hon JIM CHOWN: The ALS has?

Mr EGGINGTON: The ALS has—yes.

Ms BARTER: We have ongoing liaison meetings.

Hon JIM CHOWN: That is it?

Ms BARTER: Yes.

Hon ALISON XAMON: And it still has not been resolved?

Ms BARTER: No.

Hon ALISON XAMON: Thank you.

The CHAIR: Mr Collins.

Mr COLLINS: Thanks, Chair. Before I start I need to acknowledge the traditional custodians of the land on which we meet, the Noongar Wadjuk people, and pay my respects to elders past, present and emerging. I am sorry. It occurred to me, when I was thinking about what we might say today this morning that the CCC is over 25 years old. I daresay when it was first created, the fact that it might be able to assist Aboriginal people was probably the furthest thing from anyone's mind. That pretty well remains the case now because Aboriginal people are not the subject of inquiries into unexplained wealth. They are not the highflying public servants or local councillors who have been investigated for allegedly rorting the public purse. The complaints that we make rarely cut through, which means, in many ways, the CCC is yet another government institution that fails Aboriginal people—and dismally.

I am like Dennis. I have been in the job for a long time. I am completely disheartened and deflated at the whole process. In my respectful submission, there is an urgent need for the establishment of

an independent body which oversees police conduct, which is properly resourced, but, most importantly, looks at complaints made by Aboriginal people through a cultural lens. I could be wrong but my strong suspicion is there is probably not one person who is Aboriginal who is employed at the CCC. In our experience of them, the CCC is completely tone deaf when it comes to dealing with Aboriginal people and issues. The issues do not relate just to excessive force. Dog bites are, obviously, the centrepiece of our submission, and other examples of excessive force, but what really needs to be looked at, which is so readily brushed away, is police misconduct involving the improper use of police discretion, which happens all too frequently, is rarely scrutinised, and goes largely unchecked, and means that that sort of misconduct and impropriety never really gets exposed, and it impacts Aboriginal people on a daily basis. Can I give you a couple of quick examples?

[12 noon]

The CHAIR: Please.

Mr COLLINS: In 1997, I did a coronial inquest in Broome for an Aboriginal man who shoplifted a bottle of Southern Comfort from Woolies. Police were called. He was in the car park of Woolies. They asked him to give them the bottle back and he sculled it in their presence. He was already drunk. He was taken in a police van to the police station and put into a cell. Derby Hospital is literally across the road from Derby Police Station—less than 50 metres away. He died in police custody from the effects of acute alcohol intoxication. Guess what? His blood alcohol reading was 0.656. There was not a flicker of recognition in the coronial process that the police might have done the wrong thing.

In 2005, I acted for a 16-year-old Aboriginal boy from Onslow who spent two weeks in custody after being refused police bail, and then being refused bail by police where the police opposed bail in court. His crime was attempting to steal a \$2.30 ice cream. No-one ever looked at the impropriety involved in the police charging him in the first place, let alone refusing him police bail and let alone then again opposing bail before the magistrate.

In 2008, there was the tragic death of Mr Ward in indescribably gruesome circumstances. What the coronial inquest did not investigate, because the information was not provided to the coroner and to the ALS before the inquest, was the fact that Mr Ward and countless other Aboriginal people in Laverton were the subject of over 100 checks by the police prior to Mr Ward being arrested for drink-driving. They were arrest checks for arrest warrants, for names and addresses and for all manner of things. If that is not harassment of the basest kind, I do not know what is, but that is what goes on in some of these regional and remote communities in terms of the interactions between Aboriginal people and the police.

In 2011, I acted for a 15-year-old boy with a severe intellectual disability who was charged with receiving a soft toy. He was given curfew bail conditions. He was arrested in breach of the curfew condition and spent three days in custody.

In 2017, there was an Aboriginal boy, 12 years old and had never been in trouble, with his 11-year-old mate, who seem to have walked onto the verge of someone's house and the occupant thought they had stolen a tent peg. His response was to get into a four-wheel-drive and drive after them like a maniac. He then confronted the boy, grabbed him and threw him around. The family complained to the police and got a brush-off from Geraldton police. ALS gets involved and makes a complaint to the OIC. The response is, "We're not going to charge him, but we're thinking about charging those two boys with trespass and theft of a peg." It required the intervention of the commissioner for the driver to be charged with assault and reckless driving.

Hon ALISON XAMON: The police commissioner?

Mr COLLINS: Yes. I had to write him a letter. It was last week, so these are not sort of historical things that happened a long time ago. I was contacted by the ALS lawyer in Broome in relation to one of his clients, a 14-year-old boy who had never been in trouble, from a remote community 300 kilometres from Derby. He had been charged with the unlawful possession of a pram. The pram had been stolen in a burglary, which he had nothing to do with. He was seen pushing the pram around in the community with one of those big stereo rock boxes in it. Derby detectives travelled 300 kilometres to the community to charge him. We made a submission to police prosecutions in the West Kimberley saying, "This charge should be withdrawn on public interest grounds." The curt response was, "No. He had an opportunity to tell the police where he got it from and he did not, so it is in the public interest to continue." I have to be careful with this because this was provided as part of police disclosure. This is a photo of the boy. Here he is. He looks about eight, I think you would all agree. There is the stereo. It is nearly bigger than him. It is outrageous. It is absolutely outrageous. I wrote to the commissioner explaining my concern and made the obvious point that if this had been a 14-year-old boy from the affluent western suburbs of Perth with professional parents, do you reckon he would have been charged? We all know the answer to that question. The charge has been withdrawn. But this sort of thing happens all the time.

As Dennis said, there is goodwill and good intent from highly capable people, like the commissioner and deputy commissioners, but that is not transferring onto the ground with police who have interactions with Aboriginal people on a daily basis. Complaints to the CCC, which invariably get pinged back to internal affairs because they are considered not to be serious enough for the CCC's attention, involve, of course, as we all know, police investigating police, and complaints are rarely substantiated. That is why my argument is that there should be an office of police integrity which examines these sorts of things. If you want to repair the completely fractured relationship between the Aboriginal community in Western Australia and the WA police service, you need to expose these things, you need to have public hearings and you need police to provide an account of why they do things. Underpinning all that is an acknowledgement by me that the police have a difficult job; there is no doubt about that. But what I am talking about is the policing of minor crime. If you cannot deal with that sort of stuff differently, which does not immerse Aboriginal children, in particular, in the criminal justice system, which in turn often leads to their detention in Banksia Hill, we may as well all give it away. The bottom line is that Western Australia has the worst numbers in the world almost in terms of arrests and disproportionate per capita overrepresentation of Aboriginal people in custody.

I will finish with this. The custody notification service was introduced last year. It is a fantastic innovation and the government needs to be congratulated for supporting it. We have received great cooperation from senior police in terms of its implementation and monitoring. It is a godsend, albeit that it only took 30 years after the royal commission for it to be introduced. But the numbers are really disturbing. Prior to COVID, there were about 600 calls per week. It is the highest in the country and more than two-thirds higher than the numbers the police quoted us that we could expect per week for the service. I get nearly every single email that is sent out from the service notifying our lawyers that an Aboriginal person has been in custody and usually charged. The numbers of Aboriginal people who are brought in and held in police custody and charged for minor offences is mind-boggling, as is the number of Aboriginal people who are arrested for breaches of bail, for breaches of police orders and for minor stuff. The system needs to change the way it approaches these things in order to keep these people out of custody.

I am sorry that I sound so angry, but I am. It is important, in my view, in my submission to this committee, that you are made aware of the sorts of things that are happening to Aboriginal people on an almost daily basis.

The CHAIR: Absolutely. Ms Barter.

Ms BARTER: Thank you, Madam Chair. When we are talking about police accountability, as Mr Eggington and Mr Collins have alluded to, I think we need to start with the historical context, and there is a fractured relationship between Aboriginal people and police in this state. Additionally, as Mr Eggington said, the police have a team and they have accoutrements—they have guns, tasers, batons, dogs and other things—at their disposal. They are always in a position of power and they are dealing with very vulnerable people—often people who have experienced trauma; often people who have lived through mental health and other issues.

The importance of the accountability of any police action cannot be overstated. The CCC is tasked with that job in this state. It is important that the community has confidence in the investigations that are done of police behaviour. The excessive use of force is an important element, but as Mr Eggington and Mr Collins said, it is in the context of racially derogatory comments, the incorrect use of police discretion and escalating matters, so that people end up being charged with more criminal offences than they should have been. We very rarely see the police de-escalating situations. They do, and I acknowledge that there are some really good police officers and they do a difficult job, but there is not enough de-escalation.

One of the examples that I would like to draw to your attention is a young client who was in a regional town, and the police were tasked to go and talk to him. They escalated the situation and he ended up being charged with criminal offences. The magistrate in that regional town wrote a written judgement, which is quite rare —

[12.10 pm]

Hon JIM CHOWN: How did they escalate the situation?

Ms BARTER: They touched him, pushed him down onto a seat and took his hat off and spoke to him in a verbal way that —

Mr COLLINS: Knocked it off.

Ms BARTER: —riled him up. Then he retaliated and was charged with criminal offences against the police. The magistrate was quite scathing of the police in her comments and she acquitted the child of the charges. We lodged a complaint with the WA police and with the Corruption and Crime Commission. The WA police investigated the matter and decided to have managerial action against the police officers but no criminal offence. The CCC reviewed this matter and, like I say, we have liaison meetings and we speak to them about individual matters. All our contact details are on our letters when we send them in. This is a very vulnerable young boy. The commission released a media release on 20 April 2020, which I can provide to you—it is available on the internet—and also released footage of this incident, with the young child de-identified. The commission had tried to contact the Aboriginal Legal Service office two business days prior, on the Thursday prior to the Monday, but I was not available and they did not get through to anyone else.

Hon JIM CHOWN: So they left a message of some kind?

Ms BARTER: No.

Hon JIM CHOWN: Nothing?

Ms BARTER: No.

Hon JIM CHOWN: How do you know they notified you?

Ms BARTER: Because when I raised it with them afterwards, they told me. We have raised this in a formal sense with the commissioner. What they said in the media release, the first that we had heard of it, was that —

The Commission is of the view that the reasoning applied by the WA Police Force investigator to justify not criminally charging the officer with assault, on the one hand, but sanctioning the officer for unnecessary use of force on the other, as ‘inconsistent and flawed’.

That demonstrates a few things. This poor kid, who had already been disadvantaged and disempowered by the system, is further disempowered by the way this was handled. Secondly, the commission did not agree with the WA police internal investigation, but their response is toothless. It is ineffectual. They have not done anything about it. The police have told me that they are not really looking into the incident—that it is finished and it is done. That is an ongoing matter, but it is a public matter that I wanted to draw to your attention.

I also wanted to speak to you about the dog bites.

The CHAIR: Before you go on, why was the media release and video issued? Was this a matter which had been canvassed in the media previously?

Ms BARTER: No.

Mr M. HUGHES: This is the Fremantle matter is it not?

The CHAIR: No, it is in a country town.

Hon ALISON XAMON: The arrest of a child.

Ms BARTER: Yes.

Mr M. HUGHES: Sorry, I apologise. Got it.

Ms BARTER: As I was saying, in relation to the liaison meetings and the transparency between the commission and the Aboriginal Legal Service, it is quite difficult for me to guarantee what the processes are, even after reading their submissions very carefully. There is still a lack of transparency as to which matters they will cherry-pick to look into further, to investigate, to oversight and to actively oversight. I have been doing this job for seven years and I am still confused as to which level means what and how they actually oversee things—at what level.

Hon ALISON XAMON: Do you have any view as to whether a matter is more likely to be investigated if there is accompanying video footage, or does that not seem to factor in to when a matter is investigated or not?

Ms BARTER: In relation to the commission —

Hon ALISON XAMON: I am specifically interested in the commission, please.

Ms BARTER: Yes. In relation to the commission, I have limited information, as I have noted, because we have stopped sending things to them. In relation to the police, there is always an evidentiary problem, so whenever you have got footage, the evidentiary problems are lessened. We have hundreds of complaints that we do not always lodge because the clients do not necessarily want to. The clients do not always come to us with complaints. Often, it is their word against the police officer’s word. Where there is no other evidence, it is very unlikely that anything is going to come of it. We have 80 per cent of our matters unsustainable—not exonerated, but unsustainable, meaning there is not enough evidence to take that matter further. The issue of footage is really important in that sense.

Hon ALISON XAMON: Ms Barter, how often will the ALS meet with the CCC to talk about matters? You alluded to regular meetings.

Ms BARTER: Yes, I think we were doing them about three times a year. We had them set up in the calendar, but they did not always happen every three months, from both sides, particularly when personnel moved, which happens all the time. We have tried, from our end, to continue those. In those meetings we have raised systemic issues. They have told us, as they have said publicly and in their submission, that vulnerable people and Aboriginal people and how they are treated by police is a priority area for them. We do not see that translate into our matters that get picked up.

Hon ALISON XAMON: There is no explanation given as to why that is not being prioritised?

Ms BARTER: No. I have no idea of the assessment process, as to which ones get taken on. I have no insight into that.

Hon JIM CHOWN: Did you just say that you have stopped sending evidence to the CCC in regard to complaints being made by the ALS?

Ms BARTER: When we receive a complaint from a client, we talk to them about their options and we look at how serious it is and which area it is and our relationships with the internal affairs superintendent, for example, or the police conduct investigation unit. The majority we will send to the police conduct investigation unit, Mr Sorgiovanni, but if it is a serious matter where we think that there will be evidence and there will be a criminal charge, we will send it directly to the internal affairs unit. We meet with them. We have meetings with them very regularly. I am on the phone to their —

Hon JIM CHOWN: But not the CCC.

Ms BARTER: No, we have cc'd letters. We have very limited resources, and we have decided to put those resources into dealing with the police directly.

Hon JIM CHOWN: Is that because you get a better response from the police as opposed to the CCC?

Ms BARTER: Yes.

Hon JIM CHOWN: So your relationship with the CCC is virtually non-existent now?

Ms BARTER: Correct.

Hon JIM CHOWN: Because of a lack of professionalism or lack of communication?

Ms BARTER: Lack of communication.

The CHAIR: And interest.

Hon JIM CHOWN: And obviously interest.

Ms BARTER: It really was brought to the fore in April this year. There was some ongoing correspondence about that issue, but from where we sit, that relationship has not been repaired.

The CHAIR: When you say April, was that the case that you just cited?

Ms BARTER: Yes.

Mr COLLINS: Chair, a good example of the non-engagement by the CCC is in relation to the Aviemore investigation into the conviction of Gene Gibson. I met with investigators from the CCC in relation to that, as did the lawyer from the ALS who acted for Mr Gibson in his criminal proceedings, and the strong sense I got from them was that they were profoundly disinterested in what we had to say. We were very concerned —

Hon JIM CHOWN: But you would demand an explanation, surely?

Mr COLLINS: Well, we go nowhere. As Alice has said, there is no use flogging dead horses. We have so much other work to do. If you are not going to get a result, and if they do not want to engage

with you, you have no choice. In a sense, in relation to Gibson, the big issue for us was the way in which the police investigation unfolded. This might not sound terribly important, but it was really important in terms of our acting for Gibson in relation to the admissibility of his record of interview. There were reams of email correspondence passing between various investigating police pertaining to the interviews with Mr Gibson. They were provided to us in a really piecemeal way, but worse still, they were provided to us by topic heading rather than by date—chronological order. We had to go away and cut out the emails and cut and paste them to put them into a chronological order in order to make sense of them. That was a deliberate thing. There is no two ways about it: that was a deliberate thing done by the police to make life difficult for the ALS. That should not happen. That should not happen in a modern policing environment. There were issues around other disclosure. They were not interested.

Hon ALISON XAMON: You never brought this to the CCC's attention?

Mr COLLINS: We talked about it to the CCC in the interview that we had with them, but they were not interested.

Hon ALISON XAMON: They were not interested.

The CHAIR: In other words, they narrowed the scope of what they were prepared to look at?

Mr COLLINS: Yes.

The CHAIR: But, as you put it, they are serious matters of misconduct, I would have thought.

[12.20 pm]

Mr COLLINS: Very arguably so.

The CHAIR: I think you were present in the room when I put it to the commissioner about the use of dogs. Have you had any joy in relation to your liaison with police or the CCC on that issue?

Ms BARTER: It is a long and protracted story. It has been an ongoing issue since at least 2013, when I started in this job. I note in the police's submission they refer to a number of three dog bites, and I am not quite sure how those statistics are defined and how use of force is defined, but we have over 20 on our books, and not all of those are open matters. We have definitely submitted 11 complaints to either PCIU, internal affairs or the CCC. In 2017, we sent three to the Corruption and Crime Commission and I wrote a cover letter saying that this was a systemic issue and that it needed to be looked into seriously, just like the commission did with that fantastic taser report a few years ago. We were just told: not interested. Those matters were referred by the commission back to the police, to the canine squad, to investigate. It is an ongoing issue where people who are very close to the subject officers are investigating. It just cannot be objective; there is no way it can be. I think every single complaint except for one that we have lodged about dog bites has been unsustainable. One matter in particular was unsustainable at the police complaint level, and the commission had oversight of that because it referred it back to the police and we commenced civil action. I will not go into that, but we had a different outcome.

The CHAIR: The other thing is the definition of excessive use of force. I am wondering whether, given the issues that are arising at the moment in terms of racism and policing, there should be a lower bar so that if, for example, there is some use of force that might not be excessive but was accompanied by racial epithets, insults or comments, that should be escalated in terms of seriousness and whether it should, for example, automatically warrant investigation by the CCC?

Mr EGGINGTON: Chair, at the very beginning I was going to mention a young Noongar boy, a young man, who had great potential. The treatment itself was not excessive and it was not in a way that caused any kind of damage, but it made this young man—who was a great footballer, great musician

and was going to be a really top role model for his family and a leader in his own community—the way he was treated by minor things made him take his own life. It became so serious—a minor incident—that he actually took his own life. We were successful in getting a coronial inquest into that, so I support the idea and I think that is the sort of thing you are hearing from us. We do get some very serious ones, and some of those dog bites are just horrific—the sort of thing you see in *Django Unchained* and movies like that. But it is the huge numbers of things, including suicide. Because of the way the police treated this young man, they should be investigated and the bar should be lowered because that is the constant harassment. The serious nature of this is an issue for us as well; the three of us are trying to paint a picture. I do not want to use the slogan, “black lives matter”, but it just does not seem to matter, even to something like the CCC, which should be making life better for us in the twenty-first century. I agree with what you are saying, Chair.

Hon JIM CHOWN: Mr Eggington, you are the CEO of the ALS in Western Australia.

Mr EGGINGTON: Yes, that is right.

Hon JIM CHOWN: I would assume you get a lot of complaints in regard to the use of excessive force by the police—from your people.

Mr EGGINGTON: Yes.

Hon JIM CHOWN: Do you have an internal process with regard to the complaints you receive—an internal process that says, “This is worth pursuing; this is frivolous; and this is really not a complaint at all, this is somebody just having a go”? Can you explain what your process is and how you come to assess which complaints are worth pursuing with the CCC or the police?

Mr EGGINGTON: It is driven internally by us because up until yesterday the commonwealth made us accountable for how we spend its money, so there are a lot of merit tests put on issues. Peter or Alice might want to answer that, but I can say that there are conditions put on, merit tests and so on, from our funding bodies, but we do that internally as well.

Ms BARTER: It is a resourcing issue as much as anything. We do not take on every single police complaint matter. It depends on the client’s capacity and their vulnerability, as well as the seriousness of the offence. Some clients have the ability to ring the PCIU themselves and make the complaint, and we will encourage them to do that if we think it is a more minor matter and that they have the capacity to do that. When I say “more minor”, I mean things like pulling hair while being arrested or putting cuffs on too tightly so that there are marks on the wrists; it is not anything less than that. But particularly if it is someone in a regional area, we will assist them with the complaint. Once the police complaint comes back, usually unsustainable, that is when we assess whether there is another option we can take under the civil law, or whether internal affairs should be looking at it under criminal law. At the end of the day, any normal person who is not a police officer cannot just go and touch people; the slightest touch is a battery action. If the police are touching people in any way that is unlawful, that is beyond their power, even if it is quite a minor touch, then that is unlawful.

Hon JIM CHOWN: Okay.

Ms BARTER: I just add to that that so many clients do not come to us in the first place, and so many clients do not want to continue on with the process. In a lot of our really serious matters and some of our dog bite matters, clients are juveniles who have a lot going on in their lives. Like I was saying before, they might have other vulnerabilities such as mental health issues or addiction issues, and often they do not come back to us. This is the tip of the iceberg, what we are talking about. There are a whole lot of other matters that do not even get to us, or the clients discontinue engaging with us because they do not have the time or energy.

Mr COLLINS: The other point to make, Mr Chown, is that only the serious stuff goes to the CCC from us. They are not getting —

Hon JIM CHOWN: That is really where I was going.

Mr COLLINS: I thought you might have been. The trivial stuff does not make its way to the CCC; we are very judicious in what we consider passing on to the CCC.

Hon ALISON XAMON: Yet you still find that that is not being investigated?

Mr COLLINS: No, it does not cut through. This is the troubling thing, because although a minor touch can constitute an assault, there are often examples of —

Hon JIM CHOWN: It is not excessive force, though.

Mr COLLINS: No, that is right, but —

Hon JIM CHOWN: We are talking about excessive force here.

Mr COLLINS: We have a current client who allegedly spat on a police officer. That is not a good thing to do; no-one is arguing against that. The response was to punch him in the head, which sent him across the room. We have made a complaint. I am not sure; has that gone to the CCC, Alice?

Ms BARTER: It has not yet.

Mr COLLINS: But the response from police is “No, we’re not going to charge.” That is troubling in the sense that it may well be that if a civilian was charged with assault in those circumstances, they would successfully rely upon, depending on the charge, the defence of provocation and be acquitted. But the point remains that they would be charged because the police would not adopt the position of being the adjudicator on the lawfulness of the response, but when the shoe is on the other foot, it does not necessarily pan out that way. But to answer your question, Mr Chown, there is no way that the ALS inundates the CCC with trivial or what might be considered to be vexatious complaints; in fact, it is the opposite.

Hon ALISON XAMON: When you put your complaints to the CCC, they will obviously always respond to at least indicate that they are not prepared to investigate. Generally speaking, what are the reasons given by the CCC for not investigating a matter further?

[12.30 pm]

Ms BARTER: There are not any. I have reviewed a couple of files in the last couple of days, and they just say, “Under section 33, we refer it to the appropriate authority to investigate”—that is, to WA police.

Hon ALISON XAMON: So no reasons are ever given. Have you ever contemplated pursuing it further through the parliamentary inspector, or even to send a complaint through to this committee, which has responsibility for oversight of the CCC?

Ms BARTER: I do not think we have done any individual complaints to the parliamentary inspector or to this committee. We have raised systemic issues with the parliamentary inspector previously. We did raise with him the issue of the lack of resourcing, or lack of matters being taken on in the last few years, which I think I referred to in the submission. I can provide further information if you need it.

Hon ALISON XAMON: Can I suggest that other people are less shy about bringing things to our attention, and to the parliamentary inspector. I just say that as a comment. Mr Collins, I am very interested in hearing further from you. You may or may not be aware that there is the talk about wanting to have an overview of the CCC act as a whole. You have talked about potentially a new model that you think would better serve the interests of dealing with particular complaints of

offences against Aboriginal people. Could you please elaborate a bit more about the elements of that and what that would look like that you think would make that more effective?

Mr COLLINS: The title I have landed on, which was Office of Police Integrity, or whatever you want to call it, would need to be —

Hon ALISON XAMON: I am more interested in how you would see the function operate differently from what is currently in train under the act.

Mr COLLINS: I think it would need to be presided over by a judicial officer or a senior barrister or someone of that ilk who has an understanding of particularly the criminal law, because that is the rubric under which most of these complaints would be made.

Hon ALISON XAMON: Of course we have that with the CCC now.

Mr COLLINS: I know. That said—I do not want to be distracted from your question—the other thing that looms large in the ALS’s practice is the conduct of the department of child protection and family services in relation to Aboriginal children in care, which raises a whole other hornet’s nest of issues in many respects in how that department is accountable for its decisions outside the formal court processes. It is probably not my area, but I think a body that is set up to examine police conduct would need to have in WA staff who do not exclusively come from a police background but have the skill set to be able to properly investigate the allegations. We also need to embed in these offices Aboriginal people, appropriately qualified and with the right skill set, because otherwise it simply becomes another non-Aboriginal entity that can over time become completely tone deaf to the Aboriginal issues that are being raised before it.

I am very strongly of the view that that agency, whether created separately or operating within the parameters of the CCC, should have public examinations. In my submission, it is absolutely critical—where appropriate; it does not have to happen all the time—that where there are systemic issues, a la police dog bites, people have to give evidence on oath and be subject to cross-examination in public so that people know what goes on, and those who are responsible for the decisions that lead to harm are accountable and are required to provide explanations that everybody will learn about in relation to why they took a particular course. That should be a hallmark of a modern democratic society in my view. Then everyone will know the basis upon which the police make decisions that impinge upon individual citizens. From where we sit, Aboriginal people are completely and utterly disenfranchised—they are. You only have to go to the ALS office and you will see that what has happened with the development in Wellington Square is that all the homeless people are on our doorstep. They sleep out the front of our office every day. They are in all states of dilapidation—mentally ill, drug and alcohol problems, you name it. There is violence. There are machetes in bags in the back lane immediately behind our office. There is all sorts of antisocial behaviour. They are a microcosm of what Aboriginal people experience in this state, regrettably, and they are the people who go before the courts.

The DEPUTY CHAIR: Mr Collins, you have stated that you have an internal process for assessing complaints against WAPOL for excessive force before you submit them to the CCC requesting that they be investigated by an independent body, and that is the CCC’s role. Would you have any numbers over the last couple of years of where you have submitted applications as such and had no action at all?

Mr COLLINS: I do not want to give Alice the hospital hand pass, but I do not; I am sorry. We can take it on notice, though, I think.

Ms BARTER: We do not have the resources for sophisticated statistical analysis, so it is me counting, but I have put in the submission that in the last five years, from 2015 to 2019—the end of last year

and the beginning of this year—there were just over 180 clients with police complaint matters, and that we referred less than seven per cent to the Corruption and Crime Commission. While I am on that, I just want to address—I did talk about the more minor offences, but we definitely have more serious —

The DEPUTY CHAIR: Of that seven per cent, how many were addressed by the CCC?

Ms BARTER: I can bring to mind the one that I spoke about earlier; two that were in the commission's submission, of which one of them in particular we did not realise that the commission had any role to play, so that is one more stat that I did not realise until I read the submission—the actual investigation, zero; and oversight, perhaps a couple, including the April one. You have put me on the spot, and I am trying to think, but definitely no investigation. Like I say, what oversight actually means has not been clear to us.

The DEPUTY CHAIR: They open the file.

The CHAIR: Going back to your comments, Mr Collins, about cultural issues, two issues come to mind when you are talking about police dealing with Aboriginal people. The first is the capacity to de-escalate a situation. The other one is just being mindful of cultural issues. The other parliamentary committee of which I have been a member over the years had said the training is insufficient. Do you have any views about that? Is it still the case that there are pockets of police who are either not mindful of the need to de-escalate or ignore cultural factors?

Mr COLLINS: I think it is an ongoing and significant issue. I gave evidence before a parliamentary committee—I think you were chair of that one—in relation to the Commissioner of Police lock-ups, and this issue was discussed. That was some time ago. One of the important things from where I sit with policing is, yes, it is a very difficult job; and, yes, you are dealing with people who behave poorly in their interactions with the police. But when you are policing in particular in regional and remote areas—it does not apply to any lesser degree in the metro area as well—you need to reach out to the community that you are policing and engage with them. It is done well in other areas. Alice has a background and a particular interest in the Martu people in the Pilbara. Police have done really well in recent times engaging with the Martu and working constructively with them. That needs to be, I think, a formalised process that is rolled out across the entire state, because too much depends upon individual personalities. If you have a really good OIC who gets it, that has a filter down effect with police on the ground and the relationship with the Aboriginal community improves. If you do not, that is a recipe for things that are not great happening. To give a little example, an OIC went out to the Warburton Aboriginal community some time ago, and they put a Stop sign in, so 30 blackfellas got charged with going through the Stop sign.

[12.40 pm]

The CHAIR: Yes, I remember that.

Mr COLLINS: Go figure.

The CHAIR: It is the only Stop sign, I gather, within about 600 kilometres or something, too.

Mr COLLINS: Yes, between probably here and Alice Springs, almost.

The CHAIR: Yes.

Mr COLLINS: Things are improving on that score. We do not have all the answers, but they should be reaching out to us. I know it is an adversarial system, but we are willing to talk to police and provide our insights. It is happening at the top, and that is a really pleasing development. As Dennis said, we have got an excellent relationship with the commissioner, and he has been very proactive in the things that I have raised with him. I am not critical of him in the slightest, but it is getting down

to the troops on the ground. Look, we see it all the time. A while back, I was driving home from work one day and I saw an Aboriginal bloke with a leg cast up to his thigh get issued with a move-on notice. The police left. I did not want to get charged with hindering police, because I knew that would happen, so I said to him, “Do you know what you’ve got, mate?” He said no. I said, “This is a form that says you can’t be within Northbridge for the next 24 hours. How are you going to get out of here?” He goes, “I don’t know.” He was a monte to breach it and get locked up. I had to drive him out of the zone, and I said, “How are you going to get back in?” He goes, “I don’t know.” I mean, that is just such a serious disconnect. It is really disappointing.

Mr M. HUGHES: You advocate as an independent body. You said that the relationship with the police, at less than the commissioner level, is fractured and is not working, and there is, essentially, a cover-up that takes place with respect to complaints that might be made.

Mr COLLINS: Look, I do not think you can put it as starkly as a cover-up.

Mr M. HUGHES: So how would you characterise it?

Mr COLLINS: I think it just gets back to this fundamental issue that in no other—no, I will withdraw that. It is simply this: when it comes to complaints made against the police, it is completely inappropriate to have other police investigate. Despite all the goodwill and the safeguards and the checks and balances and the assurances, it makes it incredibly difficult for the police investigating and it does not look good. It is not a readily acknowledgeable process in terms of Aboriginal people saying, “I’m getting a fair go”, to have other police investigating the police.

Mr M. HUGHES: That is right, so the solution is for an independent body of some description.

Mr COLLINS: Yes.

Mr M. HUGHES: Let us imagine that that was not possible or did not occur; there was a resistance to that idea. I am really interested in terms of what you think needs to be done with respect to getting rid of the tone deafness of the CCC with respect to complaints. Now, we are really talking about excessive use of force, but really you are talking about the entire context—the broader implications of complaints—particularly in terms of the reference that they have made to a focus on Aboriginal people and vulnerable people in general in terms of the way in which they are managed by the system. If we do not have an independent body, what do we do?

Mr COLLINS: I understand the question. Look, I think Alice’s point was a really pertinent one. The processes within the CCC itself need to be transparent, but they need to be easily identifiable so that you know what you are dealing with. Secondly, the bar needs to be lowered. It needs to be less than serious misconduct and there needs to be a much broader ambit of behaviour covered by the CCC.

Hon JIM CHOWN: But that is across the board.

Mr COLLINS: Correct, if you do not mind me saying; yes.

Mr M. HUGHES: Not to put words in your mouth, you might have a division within the police for a particular matter, but within the CCC, if you had a specific unit that deals with issues to do with the way in which complaints about police misconduct and misbehaviour are managed by the CCC, is that something that you would put a tick to?

Mr COLLINS: Yes.

Hon ALISON XAMON: Can I get a little bit more information from Ms Barter, if you do not mind, about the matters over the years that you have referred through to the CCC? They have gone through your own triage process before you have actually even submitted that. I appreciate that you do not have a massive database that you are drawing from, but to the best of your recollection,

with the matters that you have referred, has it been difficult to also provide easy corroborating evidence such as video? We are obviously aware that the CCC has extraordinary powers to be able to garner evidence. We have also seen there has been a number of reports in recent times where the evidence which has been produced to back up CCC reports has been, as has been previously described, low-hanging fruit in the form of easily available video evidence. Is it the case that perhaps some of these matters not being followed through is because there also has not been an abundance of readily available evidence also supplied by you to the agency with the extraordinary powers to uncover that evidence? I am just trying to figure out the rationale for why matters are not being investigated.

Ms BARTER: Yes. Not to my recollection, as I sit here. I cannot think of that being an issue. The commission has never raised that as an issue with us before.

Hon ALISON XAMON: The lack of corroborating evidence?

Ms BARTER: Correct.

Hon ALISON XAMON: Do you tend to supply complaints with evidence?

Ms BARTER: Not corroborating evidence in the form of footage, usually.

Hon ALISON XAMON: Okay, so it would require them to actually uncover that evidence themselves, but instead the response is, “We are not going to be looking at this.”

Ms BARTER: Yes, that is right.

Hon ALISON XAMON: Okay.

Hon JIM CHOWN: Would the proliferation of body cameras not overcome the evidentiary shortfalls? One of the questions I actually omitted asking the commissioner is: how would, say, the ALS get hold of the camera footage?

Hon ALISON XAMON: Yes, do you have access to that?

Hon JIM CHOWN: Can you request that camera footage prior to making a complaint?

Ms BARTER: Under the civil laws, the freedom of information process, we find it very difficult to get any footage.

Hon ALISON XAMON: So you would be reliant on the CCC to actually undertake that investigation to uncover that footage?

Ms BARTER: Yes. Where matters have been to a criminal trial in the Magistrates or District Court, then often footage is played then.

The CHAIR: You get them under discovery.

Hon JIM CHOWN: Yes, but before you get to that point, you have to have a serious allegation investigated by the CCC.

Ms BARTER: Yes. No, sorry, when the client has been charged with a criminal offence, often there is footage—body-worn cameras, CCTV footage or civilian footage—that is provided to the ALS as part of the disclosure. But that is a separate issue from the police complaint, so we can only use it in limited circumstances as well.

Mr EGGINGTON: Or we rely on that relationship at the top level to be able to sometimes get the things that we need.

Hon ALISON XAMON: Which is about bypassing the CCC.

Mr COLLINS: The body-worn cameras are only useful if they are turned on.

Hon JIM CHOWN: Yes, I comprehend that completely, yes.

The CHAIR: Thank you for giving evidence before the committee today and also providing a very helpful submission. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

I note from your submission that you have marked it confidential. Would you mind considering whether or not that is something we can put on our website? You do not need to give the answer now.

Mr COLLINS: No, we can.

Ms BARTER: We have discussed it, Madam Chair, and we are happy for that.

The CHAIR: That is excellent, thank you very much.

Mr COLLINS: Madam Chair, just before we conclude our evidence, I showed the committee that photograph. It is of a juvenile, so can the usual —

The CHAIR: No, of course.

Hon ALISON XAMON: We have not asked you to table it.

Mr COLLINS: Thank you. I am speaking more perhaps to the people sitting behind me in terms of potential publication.

The CHAIR: Yes. Thank you.

Mr COLLINS: Thank you very much.

Hearing concluded at 12.49 pm
