



***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  
in the 38<sup>th</sup> Parliament**

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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

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FORCE BY POLICE**

**Report No. 18**

Presented by:

**Hon Nick Goiran, MLC and John Hyde, MLA**

Laid on the Table of the Legislative Council and Legislative Assembly  
on 8 September 2011



# COMMITTEE MEMBERS

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**Principal Research Officer**

John King, MEd, BA, Grad. DipEd

**Research Officer**

Emma Clegg, BA, MCrim  
Michael Burton, BEc, BA (Hons)

# COMMITTEE ADDRESS

Joint Standing Committee on the Corruption and Crime Commission  
Legislative Assembly  
Parliament House  
Harvest Terrace  
PERTH WA 6000

Tel: (08) 9222 7494  
Fax: (08) 9222 7804  
Email: [jscccc@parliament.wa.gov.au](mailto:jscccc@parliament.wa.gov.au)  
Website: [www.parliament.wa.gov.au/jscccc](http://www.parliament.wa.gov.au/jscccc)



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## COMMITTEE'S FUNCTIONS AND POWERS

On 25 November 2008 the Legislative Council concurred with a resolution of the Legislative Assembly to establish the Joint Standing Committee on the Corruption and Crime Commission.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- (a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- (b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- (c) carry out any other functions conferred on the Committee under the *Corruption and Crime Commission Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.



## CHAIRMAN'S FOREWORD

In accordance with the convention established following the tabling of this Committee's second report to Parliament, on Thursday 11 August 2011 the Parliamentary Inspector of the Corruption and Crime Commission, the Honourable Chris Steytler QC, tabled a report with the Committee entitled *The Procedures Adopted by the CCC when Dealing with Complaints of the use of Excessive Force by Police*.

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

By virtue of his regular attendance before closed hearings of the Committee,<sup>1</sup> the Parliamentary Inspector had been keeping the Committee abreast of his inquiries into this matter for some time. This matter was and is of concern to the Committee: it should be noted that the Committee is presently engaged in a broad inquiry into how the Corruption and Crime Commission processes allegations and notifications of police misconduct.

After having considered the Parliamentary Inspector's report, the Committee resolved to table the report in Parliament, including the representations made by the CCC in response to the report, at the next possible opportunity. Accordingly, the report appears at Appendix One to this report; the representations made by the CCC to the Parliamentary Inspector appear at Appendix Two. Appendices Three and Four consist of the representations made by the CCC direct to the Committee in response to this report.

In his report, the Parliamentary Inspector outlines in some detail the particulars of two separate incidents, both of which generated complaints to his office. In his view, "[b]oth incidents warranted a thorough independent investigation by the CCC from the outset,"<sup>2</sup> yet neither incident was investigated in this manner. In the course of considering these complaints, the Parliamentary Inspector learned that "between 1 July 2009 and 31 March 2011 [the CCC has received] 381 complaints of the use of excessive force by [the WA Police] but has independently investigated only one of these."<sup>3</sup>

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<sup>1</sup> As part of its important oversight role, the Committee regularly convenes closed review hearings with the Parliamentary Inspector, as it does also with the CCC.

<sup>2</sup> Page 25 of this report.

<sup>3</sup> Page 28 of this report.

In its response to the Parliamentary Inspector's report, the CCC argues that there are two "opposing philosophical approaches to how police oversight should occur."<sup>4</sup> By this dichotomy, the job of investigating and resolving allegations made against police officers can either be done by an external, independent agency, or else police can themselves investigate and resolve such allegations, with the performance of this task subjected to monitoring and oversight by an external agency. The CCC's approach to its police oversight role accords with the second of these methodologies because, according to the CCC, this approach "results in lasting positive cultural and organisational change."<sup>5</sup>

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

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

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

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<sup>4</sup> Page 41 of this report.

<sup>5</sup> Page 42 of this report.

I would like to take this opportunity to thank the Parliamentary Inspector and the Assistant to the Parliamentary Inspector, Mr Murray Alder, for their work in bringing this matter to the attention of the Committee.

A handwritten signature in blue ink, consisting of a vertical line on the left, a horizontal line crossing it, and a large loop on the right.

HON NICK GOIRAN, MLC  
CHAIRMAN





## RECOMMENDATIONS

### **Recommendation 1** (*page 35*)

The CCC should change its procedures so as to implement the emphasis placed by the *CCC Act* on police misconduct by independently investigating instances at the upper end of the category of serious and credible complaints concerning the use of excessive force by police, especially complaints concerning the unnecessary discharge of a firearm or Taser.

### **Recommendation 2** (*page 35*)

Having regard for the CCC's understanding of the legislative intention conveyed by the CCC Act, consideration should be given to amending the Act, perhaps by way of an amendment to s7B (which specifies how the Act's purposes are to be achieved), so as to ensure that greater importance is accorded by the CCC to the need to conduct independent investigations into allegations of the kind identified in recommendation 1 above.

### **Recommendation 3** (*page 35*)

If the resources of the CCC are inadequate to give effect to recommendation 1, consideration should be given to providing the Commission with additional resources for that purpose.



## **MINISTERIAL RESPONSE**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Committee directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



## CHAPTER 1      **ADVICE TO PARLIAMENT**

### **The Parliamentary Inspector's recommendations**

1. In bringing this report to the attention of the Parliament, the Committee has elected to endorse the three recommendations made by the Parliamentary Inspector in his report. This is so because the Committee considers that the Parliamentary Inspector's recommendations deserve, in due course, a fulsome response from the Attorney General. The Committee has the power, in accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, to direct that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to any recommendations made within any report it makes to Parliament. As such, the Committee has chosen to formally adopt the recommendations made by the Parliamentary Inspector, so as to ensure this response.

### **Representations made by the CCC to the Committee**

2. By a letter from the Acting CCC Commissioner, Mr Mark Herron, to the Committee of 19 August 2011, the CCC expressed its opposition to the first of the Parliamentary Inspector's recommendations. According to the CCC:

*The Commission is cognisant of the relative importance of its oversight role in relation to the Western Australia Police as compared to the rest of the Western Australian public sector. It applies a multifaceted strategy in order to give effect to its police oversight role. This strategy is described at page 14 [pages 69 and 70 of this report] of the Commission's submissions to the Parliamentary Inspector.*

[...]

*Should the Commission now be required to put even more emphasis on dealing with the upper end of the category of serious and credible complaints concerning the use of excessive force by police, the question arises as to which activities in either of its current programs when dealing with Western Australia Police or in dealing with the Western Australian public sector more broadly should it discontinue?<sup>6</sup>*

3. The Committee acknowledges that the role performed by the CCC is complex and demanding, especially when due consideration is given to the breadth of the CCC's functions and jurisdiction. Indeed, the Committee has previously cited this fact in voicing its opposition to the stated intent of the government to increase the jurisdiction of the CCC to enable it to directly investigate organised crime.

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<sup>6</sup> Mr Mark Herron, Acting Commissioner of the Corruption and Crime Commission, letter to the Joint Standing Committee on the Corruption and Crime Commission of 19 August 2011. This letter appears as Appendix Three on page 81 of this report.

4. The Committee is not, however, in a position to offer an opinion as to how the CCC ought to allocate its finite resources so as to best achieve the objectives of the CCC Act. Accordingly, the Committee emphasises the third recommendation of the Parliamentary Inspector: If the resources of the CCC are inadequate to adequately discharge their functions, then plainly it is the case that additional resources should be provided to the CCC.

### **The format of this report**

5. After resolving to table this report, the Committee sought - and was provided with - electronic copies of the report and the CCC's representations from the Parliamentary Inspector and the CCC respectively. This has enabled the Committee to format this report in a consistent style throughout.

## CHAPTER 2      CHRONOLOGY LEADING TO THIS REPORT

### Chronology leading to this report

#### *Closed hearing with the Parliamentary Inspector*

6. In accordance with its important oversight role, the Committee regularly convenes closed review hearings with both the CCC and the Parliamentary Inspector, to discuss their work and recent activities. It was in one such closed hearing, attended by the Parliamentary Inspector on 25 May 2011, that the Committee was first informed by the Parliamentary Inspector that he was in the process of investigating the apparent failure by the CCC to independently investigate complaints alleging the excessive use of force by officers of the WA Police. During that hearing the Parliamentary Inspector informed the Committee that, in the ensuing months:

*There are likely to be three reports made by my office arising out of existing complaints. The first... arises out of what presently seem to me to be significant failures by the commission to conduct independent investigations into complaints alleging the excessive use of force by police. There were two incidents in particular that caused me to be concerned, and both seemed to me to raise credible complaints of the use of excessive force and bullying, intimidatory behaviour on the part of police.*

*[...]*

*You have two complainants, assuming that their complaints have substance, who are completely disillusioned with the system of justice, feel disempowered and really disillusioned by the whole system. That is the kind of thing that happens if there is not a willingness on the part of the commission to investigate police officers.<sup>7</sup>*

7. The Parliamentary Inspector further informed the Committee that he had recently presented a draft of this report to the CCC, and that the Committee could expect to receive the report in due course.

#### ***Parliamentary Inspector prepares draft report and submits it to the CCC for comment***

8. As the report explains, the Parliamentary Inspector prepared a draft version of the report dated 23 May 2011 and, pursuant to section 200 of the CCC Act, submitted this draft to the CCC to enable it to make representations as to its content.

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<sup>7</sup> The Honourable Chris Steytler QC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, (before a closed hearing of the Joint Standing Committee on the Corruption and Crime Commission) 25 May 2011, p 5 & p 12.

***CCC makes its representations to the Parliamentary Inspector***

9. On 1 August 2011 the CCC provided the Parliamentary Inspector with its representations as to the draft report.

***Receipt of the Parliamentary Inspector's report***

10. After having considered the representations made by the CCC, the Parliamentary Inspector made some amendments to the report and included the CCC's representations in full as an appendix to the report; this was then tabled with the Committee on 11 August 2011.
11. The Committee considered the Parliamentary Inspector's report at a meeting on 17 August 2011, and resolved to table the Parliamentary Inspector's report in full at the next possible opportunity.
12. Prior to having an opportunity to adopt a draft report, the Committee received two letters from the CCC, dated 19 and 26 August 2011. The Committee determined these letters to be submissions to the Committee in response to the Parliamentary Inspector's report; these letters appear as Appendix Three and Appendix Four to this report.

***The Committee seeks feedback***

13. At a meeting on 31 August 2011, the Committee considered and resolved a draft version of this report, to which both the Parliamentary Inspector's report and the representations made by the CCC to the Parliamentary Inspector and to the Committee were annexed. This draft Committee report was then provided to both the CCC and the Parliamentary Inspector, for final comment prior to tabling.

A handwritten signature in blue ink, consisting of a stylized 'N' and 'G' with a horizontal line extending to the right.

HON NICK GOIRAN, MLC  
CHAIRMAN



# APPENDIX ONE



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

## **THE PROCEDURES ADOPTED BY THE CCC WHEN DEALING WITH COMPLAINTS OF THE USE OF EXCESSIVE FORCE BY POLICE**

*S 201 of the Corruption and Crime Commission Act 2003 (WA)*

11 August 2011





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## CHAPTER 1 THE PURPOSE OF THIS REPORT

1. This report addresses deficiencies in the procedures adopted by the Corruption and Crime Commission ('CCC') under Part 3 of the *Corruption and Crime Commission Act 2003 (WA)* ('CCC Act') when dealing with complaints concerning the use of excessive force by officers of the Western Australia Police ('WAP').





## CHAPTER 2      BACKGROUND

2. During the past year I have twice expressed concern to the CCC arising out of the fact that serious complaints alleging the use of excessive force on the part of Western Australian police (WAP) officers are not being independently investigated by it.
3. The use of excessive force by police officers is always an issue of concern. Serious and credible complaints of this kind require robust investigation by an external agency so that a conflict of interest created by a police force investigating its own officers is avoided, the truth is ascertained, public confidence in the misconduct oversight regime is maintained and any trend towards the use of excessive force is recognised and discouraged.
4. A failure to persuade the CCC to independently investigate seemingly credible allegations concerning the use of excessive force leads to a loss of confidence in that body and in the system of justice. Because the option of taking private action in the courts is prohibitively expensive for the large majority of persons affected, those persons are left without any remedy when dissatisfied with the outcome of an internal police investigation.
5. For these reasons, and given the circumstances that have led to my concern, I have thought it necessary to prepare this report.







## CHAPTER 3 TWO INCIDENTS

6. The occasions upon which I expressed concern to the CCC arose out of two separate incidents.

### The first incident

7. The first incident concerned an allegation by a middle-aged woman. On 7 August 2009, she was stopped by WAP officers. She was driving without a valid driver's license. Her license had been suspended but, she says, she was not then aware of this. She was in the process of taking documents to the Department of Immigration. These were urgently needed in order to prevent the possible deportation of persons she was assisting in her capacity as a volunteer attached to the United Nations.
8. The woman was 55 years of age, weighed 55 kilograms and was 5'1" tall. She did not have a criminal record. Her version of events (disputed by the WAP in a number of respects) is as follows.
9. When stopped, she told the officers of the purpose of her journey and that she was not aware that her licence had been suspended. She was told that her car would be towed away and impounded. She became visibly emotional. This was contributed to by two factors. The first was the urgency of the task that she had been engaged upon. The second was the persistent refusal by one of the officers to believe her when she said that she had not known that her license was suspended. She reoccupied the driver's seat of her car and refused to get out when asked. She was told that she was under arrest for obstructing the officers during their impounding of her vehicle. She alleges that she was manhandled with unnecessary vigour when placed in the rear of the police van after being arrested.
10. The situation was exacerbated when a friend of the woman arrived at the scene. She had telephoned him and asked him to collect the documents that she had been taking to the Department of Immigration. She says (and is supported in this by the man) that the police deliberately delayed the man notwithstanding the urgency of his mission. The officers went so far as to suggest that the documents had been impounded along with the car.
11. The woman contends that, in the circumstances, the police should have made some allowance for her agitated state. Instead their conduct was confrontational, uncaring and deliberately provocative.
12. After being manhandled into the police van, the woman was taken to the Wembley Police Station where she was placed in a glass cell. She says that, while still in an emotional state, she was further provoked by a derogatory remark from one of the officers who had arrested her. This remark related to her work as a volunteer assisting refugees. She responded loudly. After she had



done so, a second officer shouted to her that ‘if she uttered another word, she would be taken to the East Perth lock-up on another charge of obstructing police’.

13. She responded by shouting back that she did not care. This infuriated the officer. He ‘yanked’ open the door of the glass room, grabbed both her arms very hard and pulled them high behind her back, causing her extreme pain. In the presence of other officers, he held her in this position whilst marching her outside to a police van.
14. She was placed in the back of the van. Her boots were taken off and were thrown by the officer so hard that they bounced off the ground. She was left in the van for some time, but was not taken to the Perth lock-up. She was then released. When leaving the station, she was subjected to other offensive comments concerning her work as a United Nations volunteer.
15. The woman subsequently appeared at Fremantle Magistrates Court, charged with one count of driving with a suspended driver’s licence, one count of obstructing the WAP officers (this related to the time she was first arrested) and one count of disorderly behaviour in a police station (this related to her shouting whilst locked in the glass cell). The woman and her legal representative were approached by the Police Prosecutor. He said that if she pleaded guilty to the first two charges, he would withdraw the charge of disorderly behaviour in the police station. She did so and that charge was withdrawn.
16. The woman says that the experience left her traumatised and disillusioned with the WAP.
17. She complained to the Commissioner of Police about her treatment. She had one meeting with a senior sergeant from the Wembley police station who was senior to, and supervised, the officers she complained about. This meeting took place in a café. A statement was not taken from her.
18. The woman believed that her complaint was not taken seriously. She considers that this was borne out by the outcome of the complaint process, being a finding (by the senior sergeant who had interviewed her) that there was no evidence of misconduct. She complained to the CCC about the conduct of the WAP officers and about her dissatisfaction with the WAP internal investigation. The CCC referred her complaint back to the WAP.
19. On 16 August 2010, a little more than a year after she was arrested, the WAP informed her that, as her renewed complaint to the CCC did not provide ‘any additional information’ to that originally made to the WAP, it would not be further considered. The CCC took no further action in respect of the woman’s complaint, being satisfied with the process followed by the WAP internal investigation. This was so despite the woman’s serious concerns about the adequacy of that investigation and her perception of a conflict of interest on the part of the senior officer who met with her.
20. The woman complained to me on 20 August 2010. After assessing the CCC’s file and obtaining further information from the woman, I wrote to Commissioner Roberts-Smith on 30 September 2010, expressing my concern. I suggested that complaints of the kind made were so serious as to require independent investigation by the CCC because, ‘if valid, they are evidence of a culture of



bullying, authoritarian behaviour, involving the excessive use of force, which must inevitably result in a loss of confidence in the justice system, to the detriment of society'. I also said that the basis for the charge that was subsequently withdrawn, and for the arrest in respect of it, was seriously in question (the 'disorderly' conduct having been provoked by a police officer).

21. On 8 October 2010, the Commissioner replied. He said, amongst other things, that:
1. the woman's complaint was serious, as are all complaints received by the CCC;
  2. the CCC has neither a legislative mandate, nor sufficient resources, to investigate all serious allegations;
  3. the CCC's decision-making process about whether to investigate a complaint of misconduct, or to refer it to the agency involved, includes consideration of how serious the allegation is in the context of all allegations received by the CCC, the adequacy of action taken by the agency itself, the complainant's views about the action taken by the agency, the likelihood of the CCC materially advancing the complaint and the CCC's competing demands and availability of resources;
  4. the CCC has resources to investigate only 10% of all complaints made to it;
  5. the CCC decided not to investigate the woman's complaint because the force used stemmed from lawful police action as a result of her driving offence, she was not injured, the force used was unlikely to amount to an unlawful assault and weapons were not used against her;
  6. the CCC concluded that the WAP internal investigation was reasonable in the circumstances, that it was proportionate to the complaint and its circumstances, that it was consistent with the WAP's policies and procedures and that it accorded with reasonable community expectations of transparency and accountability;
  7. the CCC was satisfied that all relevant evidence was collected by the WAP internal investigation, that the evidence was properly and logically analysed and the conclusion drawn by the WAP was reasonably open to it on the evidence and in the circumstances;
  8. the version given by the WAP officers complained about was different to that given by the woman, so the WAP internal investigation finding that her complaint is 'unsustained' was a finding reasonably open to it;
  9. the woman's dissatisfaction with the WAP internal investigation was not a sufficient reason for the CCC to investigate her complaint;
  10. the CCC could not justify infringing the liberties of the WAP officers by conducting a private examination in order to ascertain the truth of the woman's complaint;



11. the woman's complaint, if true, amounted to the use of minor force and intimidation and her behaviour contributed to the way events unfolded; and
  12. four complaints received by the CCC and accepted for investigation remained unallocated to investigators for over a month due to a shortage of resources and that any new investigation would not likely be allocated until January 2011.
22. The Commissioner concluded his letter by saying that the CCC had already invested considerable time and effort into the woman's allegations, including answering my letter dated 30 September 2010 in which I outlined her complaint, and that this was at the expense of relatively more serious allegations.

## **The second incident**

23. The second incident involved a man ('A') and a woman ('B') who (on their version of events) were wrongly made the subject of police attention. A's version of events is as follows.
24. In the early hours of 2 November 2008, A was walking near the Esplanade Hotel in Fremantle with B and another friend after celebrating A's birthday. A had not been drinking. A and his friends came across two men in the street. One had fallen into a garden bed and the other was trying to pull him out. A and his friends were asked to help pull the man out (he had become wedged in the bushes). In the course of lending aid, A was pushed from behind by an unknown person into the same garden bed.
25. After A had extricated himself from the garden bed, he saw that two WAP officers were speaking to B nearby. As she turned and walked away from the officers, one of them grabbed her by the arm. She screamed in pain.
26. A approached the officer, to ask what was going on. As he approached, he heard the officer say to B, in an aggressive tone, 'You are required to leave Fremantle'. She replied 'That's not really possible. I live in Fremantle'. This comment related to a 'move-on' notice that the officer was attempting to issue in respect of B.
27. A approached the officer and told him that he was a solicitor (although working as an Associate Professor of Law at a Perth university, he maintains a right to practise in this jurisdiction). As he said this, the other WAP officer grabbed A by the arm. A repeated that he was a solicitor and asked why B was receiving a move-on notice. Both WAP officers then placed A's hands behind his back and one officer removed his handcuffs from his armaments belt.
28. As the officers pulled A's arms behind his back, he asked them to be careful with his left shoulder, as a football injury had restricted the movement of his left arm. One officer pushed A onto the street whilst handcuffing him. Once he had been handcuffed, the other officer kicked A very hard in the legs a number of times in an attempt to trip him, notwithstanding that he was wearing spectacles.



29. A was pushed further into the street towards a parked police van. He heard a person shouting from a balcony on the nearby Esplanade Hotel to the WAP officers that they should ‘stop the violence’ and that he was recording the incident. A was then tasered, causing excruciating pain in his back and thigh. He fell to the ground on his face whilst handcuffed. He suffered several electric shocks to his back as he lay on the road.
30. B was also tasered.
31. A more senior WAP officer arrived. A told him that he was a solicitor and that all that he had done was to ask one of the officers a question. The officer responded by saying words to the effect ‘Mate, we don’t give a fuck who you are, or what you were doing.’
32. A saw the arresting officers looking up towards the balcony from which the person had shouted earlier. They were counting the floors leading to that balcony. A was then roughly put into the back of the police van, along with B. He asked several WAP officers why he was under arrest. His question was ignored. At no time was A told that he was under arrest. A asked that his handcuffs be loosened, as he was in pain because they had been over-tightened. His request was ignored.
33. At the Fremantle Police Station, A asked if he could be given medical assistance. One of the officers replied ‘We don’t give a shit about you mate. You can make your way to the hospital when we let you out of here.’ Shortly afterwards, B, who was nearby, made a call on her mobile telephone. While in mid-sentence, an officer took the telephone from her and said words to the effect ‘If you know of anyone else with a camera, tell them to bring it down here so we can delete the images.’
34. A, whose wrists were bleeding and who was suffering after-effects from having been tasered, again asked for medical assistance. This was refused. A asked if he could speak with the most senior officer at the station. His request was eventually granted and he was taken to a separate room where he spoke to a Sergeant. A told her what had happened.
35. Afterwards, A was provided with a bail form which contained a condition preventing him from attending the Esplanade Hotel (A had planned to return to the hotel to see if he could find any witnesses to the incident). He refused to sign a bail form containing this condition. Eventually, this condition was removed. After being charged and released (A and B were charged with the offence of resisting arrest), A and B were spoken to, outside the station, by the Sergeant to whom A had earlier complained. A says that the Sergeant said:
- Look guys, I am really sorry about what happened to you two tonight. We have a problem in WA whereby there is a shortage of police. Recently, the government has been recruiting police officers from the U.K. Many of these guys have had little training and they can go a little overboard at times. Look, I am really sorry, ok?*
36. A, B and their friend then spoke to several workers at the Esplanade Hotel. One worker told them that the police had come over to the hotel and that he had let them into one of the upstairs rooms.



37. A later issued a summons in order to obtain the contact details of each patron who had been in a room of the Esplanade Hotel overlooking the incident at the material time. He eventually identified and spoke to a person (C) who had witnessed and recorded the incident. C provided details of two other people who had witnessed the event.
38. A and B pleaded not guilty to the criminal charges. On 2 March 2009, A received from the WAP disclosure materials in respect of the prosecution. This included CCTV footage obtained from Marine House in Essex Street, Fremantle. On or about 9 March 2009, A's office at the university at which he lectures was broken into and his external hard drive was stolen, along with the CCTV footage of the incident he received during the disclosure process. However, the CCTV footage made available for the trial by the WAP had numerous gaps, including gaps of 13 seconds, 1 minute and 12 seconds and 32 seconds respectively. The first of those occurred at the approximate time that A was being kicked and tripped. The second and third occurred at the approximate times when A and B were being tasered.

### **The hearing at the Fremantle Magistrates Court on 29 April 2010**

39. On 29 April 2010, the charges against A and B were heard at Fremantle Magistrates Court.
40. After cross-examination of the first witness called by the prosecution (one of the arresting officers), the police prosecutor suggested to A's legal representative that he make a 'no case' submission. This submission was made and accepted by the Magistrate. The charges were dismissed and \$15,000 costs were ordered in favour of A and B.
41. The Magistrate was critical of the officer who gave evidence and stated that he [the Magistrate] was not satisfied that the officers involved in A's arrest acted appropriately or lawfully. In dismissing the charges, the Magistrate said:

*I found that the testimony given [by the arresting officer] was extremely evasive, it was imprecise, and ... his evidence lacked recollection, was extremely vague [and] he was, in my view, unreliable and unconvincing during the course of his testimony. He constantly stated that he could not remember, he was fatigued. He admitted versions of his statement were inaccurate. ...*

*He admitted that the summary of facts was inaccurate. He admitted that [the] actions [of the sergeant who had tasered A and B] may have been inappropriate in relation to the use of the taser in [the] circumstances.*

*[He] denied that there was collusion with [his colleague] regarding the formulation of the statements made by both officers that were put to him. That was a most unconvincing explanation for the reason given in relation to the spelling error made in both statements and also in relation to the terminology used as alleged by himself and in the statement of [his colleague] that it may not have been accurate. If there had not been collusion, how else could such an exact statement have been recalled by both he and [his colleague]?*



*There was clearly an attempt to minimize his role ... and also the other officers' roles in the overall set of circumstances and, in all the circumstances, the CCTV speaks for itself.*

*On the evidence I am not satisfied that there is a case to answer, that the officer acted appropriately and/or lawfully. His evidence lacked such credibility and reliability that it should be totally rejected and, accordingly, I am not satisfied that [B] acted in manner that breached the peace initially, I am not satisfied there was any lawful reason for ... any demand for her to give her name and address. There was no lawful reason as to why [the other arresting officer] should have grabbed her by the arm. I am not satisfied that she was notified as to why her name and address was required.*

*There is no evidence to suggest that, having rejected the evidence of [the arresting officer] that that was the case and, accordingly, the actions taken by the officers after the intervention of [A] give rise to a conclusion that there is no case to answer concerning the lawfulness of their behaviour towards him after he intervened ...*

## **A's complaints**

42. On 12 December 2008, some months prior to the hearing in the Fremantle Magistrates' Court, A complained to the CCC about the incident. The CCC referred his complaint to the WAP for investigation. The WAP found no evidence of misconduct on the part of the officers involved.
43. On 31 May 2010, after being acquitted on the charge that had been brought against him, A wrote to the WAP providing further information about the incident and mentioning the circumstance of his acquittal. He asked the WAP to reopen its investigation. He was told on 3 June 2010 that the WAP would review the court proceedings to determine whether a reinvestigation of his complaint was warranted.
44. A also wrote again to the CCC on 31 May 2010. He asked it to investigate his complaint, given the outcome of the prosecution against him. He provided details of 12 witnesses, 7 of whom had witnessed the incident.
45. On 5 July 2010, the CCC wrote to A, telling him that it had formed the opinion that misconduct on the part of one or more WAP officers may have occurred. A was also told that the CCC had asked for the WAP file.
46. On 12 July 2010, the WAP wrote to A, telling him that, having reconsidered his complaint in light of the failed prosecution, it would not reinvestigate his complaint but that it would arrange for 'managerial action' to be taken in relation to the WAP officer's 'performance as a witness'.
47. On 21 July 2010, the CCC wrote to A, informing him that it had decided to refer his complaint back to the WAP for 'investigatory or other action'.



48. On 31 August 2010, A complained to me about the procedure adopted by the CCC in dealing with his complaint. After assessing the CCC's file, I wrote to Commissioner Roberts-Smith on 21 September 2010, urging the CCC to independently investigate A's complaint.
49. The Commissioner replied on 29 September 2010. He informed me that, having regard for a number of considerations and notwithstanding his concerns about the matter, he considered that 'the best course at this stage at least is to let the police investigation run, subject to close monitoring by the Commission'. The considerations relied upon by him were essentially the fact that 'the Commission presently has little capacity to take on additional investigations' and competing demands on its resources.
50. A was advised of the outcome of the internal WAP investigation in early December 2010. It effectively found that police officers had acted appropriately. A complained to the CCC by letter dated 9 December 2010. He expressed gross dissatisfaction with the process and outcome of the WAP investigation. He raised what he saw as serious discrepancies in the investigation. The CCC referred these to the WAP for further investigation by it.
51. On 14 March 2011, Acting Commissioner Herron of the CCC informed me that the CCC had reviewed this investigation and assessed its outcome as appropriate in the circumstances. He attached a letter sent by the CCC to A on 14 March 2011 ('letter of explanation') explaining what the CCC had done and why it did not intend to take any further action in respect of his complaints.
52. The more pertinent information provided by the letter of explanation (which addressed only the matters raised by A in his letter dated 9 December 2010) was as follows.
1. The review by the CCC had consisted of examining:
    - A's 'statement of complaint';
    - correspondence between A and the CCC;
    - statements and reports from WAP officers involved;
    - WAP internal investigation reports;
    - court transcript regarding the evidence given by the police officer who had testified at the trial of A and B;
    - WAP policy concerning 'use of force issues';
    - conversations with witnesses whose details had been provided by A, including the witness, C, who had filmed events from the Esplanade hotel balcony; and
    - CCTV footage from the Esplanade Hotel and the Fremantle Police 'Lock Up'.





2. The CCC had spoken to C, who had said that his memory was ‘clouded’ and that he had not witnessed tasers being used. He did not wish to become involved. However C had confirmed that, during the night in question, he had been interviewed by police who had determined that the images recorded by him had no evidentiary value because the video footage was ‘too dark for anything to be made out’. C had deleted the images that night.
3. The sergeant who had tasered B did so because B was ‘on the back of [one of the police officers] with her arm around his throat area’. He thought that she might injure the officer.
4. The same sergeant tasered A. He did so because he formed the opinion that the two officers who were arresting him appeared to be suffering fatigue and were in danger of being injured.
5. WAP policy FR 1.6.4, which governs the use of tasers, stipulates that:

*The use of taser should be reasonable and appropriate in the circumstances and members will be accountable for any excessive use of force. The taser shall only be used to prevent injury to any person and shall not be used as a compliance tool.*

In this instance the taser was used to prevent injury and accordingly fell within this policy.

6. The CCC had telephoned 8 of 12 witnesses who had been listed by A as persons who might have been able to contradict the police version of events (the CCC had been unsuccessful in its attempts to contact the other 4). One of the persons contacted had witnessed the incident but he now had no recollection of it. The other 7 had not witnessed the incident.
  7. There was no evidence that police officers had ‘conferred with each other to deliberately bring about a false outcome’.
53. On 22 March 2011, A again complained to me about the CCC’s investigation. He reiterated his intense dissatisfaction with it. Once again, I obtained the CCC’s file. I examined the information given to the CCC by the WAP upon which the CCC’s final assessment of A’s complaint was based. My examination disclosed that:
1. The WAP internal investigation was conducted by officers from Fremantle Police Station, where the three officers about whom A had complained were stationed.
  2. The CCTV footage from the Esplanade Hotel was described in the CCC’s review of the police investigation in terms which are consistent with A’s version of events up to the time at which he was handcuffed. However, events were said to have moved ‘out of the CCTV range’ at that point. Immediately prior to that point, the CCTV is said to have shown that one of the officers ‘pushed [B] in the chest area quite forcibly as she attempted to assist [A]’.



3. One of the arresting officers had said that B was told that she would be issued with a 'move on' notice because she was behaving in a disorderly manner. A was 'forcibly arrested' because, having 'attempted to reach [B]', he was told to 'back off' and 'refused to back down'.
4. One of the arresting officers had said that, upon arresting A, he attempted to handcuff him. After handcuffing one of A's wrists behind his back, the officer attempted to force A onto the ground by pulling downwards on the handcuffs and kneeling A in his left leg as hard as he could. The officer said he felt 'completely exhausted' at that point. He held A against the police van and radioed for urgent assistance.
5. The other arresting officer said that, while he and his colleague began to arrest A, B took hold of the officer's arm. The officer pushed her away and told her to stay back. The officer said that he and his colleague continued to struggle with A, but he felt fatigued and feared for his safety. He said that B again grabbed him by the arm and pulled him away. A struggle ensued in the course of which B put both her arms around his neck and jumped on his back. A short time later, the arresting officer heard someone running up behind him and B suddenly fell off his back.
6. The sergeant who tasered A and B had prepared a statement on 4 November 2008. In it, he said that he attended the scene after hearing a radio call for urgent assistance. He saw B with her arm around one of the arresting officers' throat. The sergeant immediately yelled 'taser, taser, taser'. When B did not release her arm from the officer's throat, he tasered her on the lower back and then tasered her again on her right thigh.
7. The sergeant also said that he then saw the two arresting officers struggling with A. He shouted to the officers that they should use their tasers. He asserts that they did not do so because they were fatigued. He then tasered A in the lower back and again on his right thigh, at which point A fell to the ground.
8. There appears to be no evidence suggesting that A posed any threat to police prior to his arrest, other than that he is said to have wagged his finger at them in an aggressive manner. Nor does there appear to be any evidence to contradict his evidence that he struggled to keep his footing when the police tried to trip him because of concern that his spectacles would break.
9. CCTV footage from the Fremantle police station reveals that B used a telephone provided by police. During the conversation, one of the officers took the telephone from her and said to the person to whom B had been speaking, 'Hello. Yeah, bring it with you mate we'll be seizing it as evidence. Thank you bye'.
10. On 2 November 2008, the sergeant submitted a 'use of force report' in which he recorded the circumstances of the incident and the reason why he had used his taser. He wrote that B was attacking both officers before he arrived and, upon arrival, he saw the woman with her right arm around an officer's throat. The sergeant said that he used his taser on both A and



B in order for the arresting officers to avoid injury. Finally, he recorded that ‘empty hand control’ against A and B was ‘also already ineffective’ (a reference presumably made to the two arresting officers, as the sergeant did not use any means other than his taser to subdue A and B).

11. The sergeant who used the taser was not interviewed by the police officer who investigated the complaint or by the CCC.
12. A senior police officer from Fremantle, who reviewed the WAP internal investigation, was present during a ‘small portion’ of the evidence given by the only arresting officer who was called in the WAP prosecution of A and B at Fremantle Magistrates Court on 29 April 2010. The senior officer dismissed the Magistrate’s ‘scathing’ criticism of the arresting officer’s evidence, saying that it was ‘well known that [the officer] was not prepared to be confronted with aggressive defence tactics and showed that he was insufficiently prepared to think positively’. The senior officer rejected the suggestion that the arresting officer may have colluded with his colleague in preparing his evidence. He also suggested that the dismissal of the charges by the magistrate, and his criticism of the evidence adduced, did ‘not negate the fact the offences did occur’.
13. The senior officer dismissed that aspect of the arresting officer’s evidence which conceded that the sergeant’s use of the taser against A and his partner may have been ‘inappropriate’ by concluding that it was only the sergeant himself who could give such evidence. As the sergeant was ‘exonerated’ by the previous WAP internal investigation in respect of this aspect of A’s complaint, the senior officer did not further examine this issue.





## CHAPTER 4            CONCERNS RAISED BY THESE TWO INCIDENTS

54. These two incidents give rise to significant concern regarding the CCC's procedures relating to complaints to it concerning the use of excessive force by WAP.
55. Both incidents involve allegations of bullying, authoritarian behaviour and the use of excessive force. In the first case there was at the very least a serious question whether the police had any adequate basis for the second charge brought against the woman concerned and hence any basis for marching her to a police van and placing her in it. In the second case, a magistrate has found that there was no lawful reason why a police officer should have grabbed B's arm and nor was there any lawful basis for the arrest of A (the two events which seemingly led to events getting out of hand).
56. Both complainants have been left traumatised by their experience. Both say that they have lost faith in the justice system because of their experience, coupled with their disillusionment at the internal police investigation(s) and the failure of the CCC to conduct its own independent investigation (in the first case) or any adequate investigation (in the second case).
57. Both incidents warranted a thorough independent investigation by the CCC from the outset. I have enunciated the facts of each case at length because they demonstrate the need for independent investigation, if for no other reason than the maintenance of public confidence in the system of justice. That is so even accepting that, in each case, the complainant's version was in some respects disputed by the WAP. As I have said, a failure to persuade the CCC to independently investigate seemingly credible allegations concerning the use of excessive force leads to a loss of confidence in that body and in the system of justice.
58. Moreover, the decision not to conduct an investigation in respect of the second incident was made after the then Commissioner had himself expressed concern at the allegations made. Although the CCC has since conducted some degree of independent examination, that can plainly not be described as a full investigation.
59. The CCC's decision not to conduct a full independent investigation in respect of the second incident must be seen in the light of the fact, mentioned by the magistrate, that the police officer who gave evidence at the trial had admitted that the actions of the sergeant who had tasered A and B 'may have been inappropriate in relation to the use of the taser in the circumstances'. This, of itself, was enough to warrant independent investigation. The dismissal of this evidence by the senior police officer who reviewed the complaint was insupportable.
60. Further, the complaint raised some suggestion of tampering with evidence by WAP officers and the magistrate had found that there had been collusion concerning the preparation of statements,



notwithstanding the witness's denial that this had taken place. These issues, of themselves, were enough to warrant independent investigation.

61. Still further, it might reasonably be thought that, if the CCC had intervened when first asked to do so, reliable eyewitness evidence might have been obtained from two witnesses who were not interviewed by police and who now (many months after the incident occurred) have unreliable memories.
62. Finally, in this context, the decision of the CCC not to conduct an independent investigation into the second incident must be seen in a context in which a taser was repeatedly used (apparently without even arguable justification as regards its use on A) during that incident. In its *Summary Report on the Use of Taser Weapons by the Western Australian Police* dated October 2010, the CCC has remarked that:
- Taser weapons are causing injury and there is a risk that Taser weapon use will lead to death; and
  - there is evidence in Western Australia of an increasing trend of the use of Taser weapons in situations for which they were not intended to be used and where such use is potentially excessive or improper.<sup>1</sup>
63. I have stressed, already, that a failure to independently investigate complaints of the kind made in the two cases I have identified has serious consequences for the administration of justice. At no time has the CCC suggested, in either case, that the failure to conduct an independent investigation was attributable to a belief that the complainants lacked credibility.

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<sup>1</sup> Page 2 of the report.



## CHAPTER 5 INFORMATION PROVIDED BY THE CCC IN RELATION TO COMPLAINTS OF THE USE OF EXCESSIVE FORCE

64. By letter dated 28 April 2011, I asked the CCC to let me know:
- (a) how many complaints concerning the alleged use of excessive force by WAP officers were made to the CCC (including complaints of which it was notified by WAP) during:
    - (i) the year ending on 30 June 2010; and
    - (ii) the financial year to date; and
  - (b) how many of those complaints were independently investigated by the CCC (as opposed to monitoring an internal police investigation).
65. The CCC responded by letter dated 12 May 2011. Its answers were as follows:

**‘Question (a)(i): Number of Complaints During the Year Ending 30 June 2010.**

In 2009-2010 the Commission received 235 WAPOL excessive force allegations. This equates to 19% of the 1,221 WAPOL allegations received.

**Question (a)(ii): Number of Complaints During the Financial Year to Date.**

The Commission has used, for ease of reference, 31 March 2011 as a relevant cut-off point for “the financial year to date”. In the period 1 July 2010 to 30 March 2011 the Commission received 146 WAPOL excessive force allegations. This equates to 18% of the 802 WAPOL allegations received during that period.

**Question (b): Number of Complaints Investigated Independently by the Commission.**

- The Commission commenced an independent investigation into one of these excessive force allegations – the deployment of Taser weapons against Mr Kevin John Spratt at the Perth Watch House on or after 31 August 2008.
- The Commission also commenced an investigation into an excessive force allegation from an earlier period – the alleged shooting of Mr Ian Quartermaine on 4 December 1990.’



## Mr Kevin Spratt

66. The circumstances of the investigation in respect of the deployment of Taser weapons against Mr Spratt are well known. It is unnecessary to detail them here, other than by mentioning that it involved the use of a Taser against a lone individual no less than 13 times in a controlled environment (Perth Watch House) in circumstances in which he had refused to undergo a strip search.<sup>1</sup>

## Mr Ian Quartermaine

67. The circumstances attending the investigation by the CCC of Mr Quartermaine's allegations raise questions which formed the subject of a separate report previously published by me. In it, I concluded that there were serious shortcomings in the CCC's processes that had led it to fail to investigate what, by any measure, were allegations of the most serious kind (involving the shooting of Mr Quartermaine and what were alleged to be acts of serious misconduct, encompassing perjury, in an attempt to conceal the circumstances of the shooting) until after complaint from me.

## What the information provided by the CCC reveals

68. The information provided by the CCC is troubling. It reveals that the CCC has, between 1 July 2009 and 31 March 2011, received 381 complaints of the use of excessive force by WAP but has independently investigated only one of these.
69. Moreover, it seems that this state of affairs extends to complaints which, prima facie, are both serious and credible. Each of the complaints made in the two incidents described in III above seem to me to fall into that category. Furthermore, the incident involving Mr Quartermaine plainly fell within that category, as the CCC ultimately recognised, but this was, as I have said, investigated only after my intervention, some years after the complaint was made.

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<sup>1</sup> Case Study Five in the CCC's summary report, dated October 2010, *The Use of Taser Weapons by the Western Australia Police*.





## CHAPTER 6 THE CCC'S SUBMISSIONS

70. On 23 May 2011, I provided the CCC with a draft of this report. It responded with a set of submissions on 1 August 2011. Those submissions are included as an annexure to this report. Essentially, the following propositions are advanced (these are taken from the summary on pages 14 and 15 of the CCC's submissions):
1. The intent of the *CCC Act* is that WAP should take primary responsibility for dealing with allegations of police misconduct. This reflects recommendations of the Police Royal Commission.
  2. This reflects an approach that promotes WAP's ownership of its responsibility for misconduct and the necessary systems for dealing with it effectively. The intention of this approach is to promote lasting, positive cultural and organisational change.
  3. The *CCC Act* recognises that despite the conflict of interest in WAP itself investigating excessive force allegations against its officers, the police should retain responsibility for these investigations.
  4. Section 34 of the *CCC Act* prescribes what the CCC is to have regard to when deciding to conduct an investigation under s 33. The majority of excessive force allegations do not meet those criteria.
  5. Dealing with allegations of excessive force by public officers, including police, is a major component of the CCC's work. It must deal with these allegations in the context of about 3,200 allegations it receives each year, the fact that it is not a complaints resolution agency, and that allegations are one of several sources of information to the CCC about public sector misconduct.
  6. Consistent with the findings of the Police Royal Commission, the CCC's overall approach to allegations of WAP excessive force rests on giving priority to WAP culture, organisational systems and processes.
  7. WAP excessive force allegations amounted to about 40% of all public sector excessive force allegations in 2009/10. Focussing on WAP excessive force allegations to the exclusion of other public authorities would appear counter-productive given the CCC's whole of public sector role.
  8. If more resources were to be made available to the CCC there are other misconduct issues that could benefit from closer scrutiny, for example excessive use of force in the Department of Education. The CCC would still need to balance its role in investigating misconduct in all agencies against the various priorities that arise on a day-to-day basis.



9. Section 40 requires WAP, as it does all public authorities, to report the outcomes of its internal investigation to the CCC. When the CCC reviews those investigations it can, and does, from time to time, conduct further inquiries (as it did in relation to the second of the two incidents described above).
10. In the circumstances of the first of the two incidents described above, the CCC considers its decision not to exercise its discretion to formally investigate the case was correct. The CCC contends that this case did not involve allegations of serious misconduct and, taken at their highest, the allegations amounted to no more than common assault accompanied by rudeness and/or bad temper. These sorts of allegations of police heavy-handedness are said to be 'commonplace' and at the heart of the types of cases that the *CCC Act* requires WAP to itself investigate (as it did, in a manner which the CCC does not regard as inadequate).
11. Although the CCC could have reasonably exercised its jurisdiction to formally investigate the second incident under the *CCC Act*, the decision as to how to proceed is a matter of discretion. The CCC believes that it exercised its discretion reasonably in the circumstances of the case.

71. The CCC draws the following conclusions:

- Its current approach to misconduct allegations, including WAP excessive force allegations, reflects the intent and requirements of the *CCC Act*.
- The CCC balances its activities appropriately between WAP and the rest of the public sector so that it focuses relatively more on misconduct in WAP than the rest of the public sector, but not to the exclusion of the rest of the public sector.
- The CCC acted effectively, appropriately and reasonably in relation to the two incidents.

72. The CCC is unable to implement recommendations by me that it should independently investigate credible and serious complaints concerning the use of excessive force by the WAP, especially complaints concerning the unnecessary discharge of a firearm or Taser weapon, as this is contrary to the intention of Parliament as reflected in the purposes and powers of the *CCC Act*.



## CHAPTER 7 MY ASSESSMENT

73. The information provided by the CCC is indicative of a serious problem in respect of the CCC's performance of its important function of investigating complaints concerning the use of excessive force by police. Police officers are in many ways the front line of the justice system. Abuses of power by police officers, especially those involving the use of excessive force, undermine the integrity of, and respect for, the justice system. The system is further undermined when the body relevantly tasked with the external oversight of WAP fails, almost entirely, to conduct independent investigations into serious and credible allegations concerning the use of excessive force. There can be no public confidence in the justice system in the absence of a vigorous, independent investigation of complaints of this kind
74. Before turning to my reasons for this conclusion that there is a serious problem with the CCC's performance in this respect, I should identify an important point raised by the CCC with which I agree. It is that WAP should take primary responsibility for dealing with allegations of police misconduct. As the CCC says, this promotes ownership of the responsibility for misconduct and of the need to deal with it effectively. That, in turn, promotes lasting positive cultural and organisational change. Moreover, as the CCC also points out, this reflects the Police Royal Commission recommendation that the Commissioner of Police should have 'the *primary* responsibility for dealing with complaints about police conduct' (my emphasis).
75. That said, this does not mean that the CCC should never itself investigate complaints of serious police misconduct. As the CCC seemingly recognises, its role in this respect requires a balancing of priorities having regard for its wide range of responsibilities and limited resources. However, I find it impossible to accept that the commencement of only one independent investigation in respect of 381 excessive force allegations reflects an appropriate balance. That is especially so when regard is had to the fact that, although the CCC says in defence of its position that the number of WAP excessive force allegations received by it, as a proportion of all excessive force allegations, is declining (page 8, par (d) of its submissions), it also says that:
- there was a noticeable jump in serious misconduct excessive force allegations, including WAP, in 2010/2011 (page 8, par (c));
  - the CCC has itself been 'testing the hypothesis that much WA Police use of force goes unreported' (footnote 4 on page 8);
  - although the WAP misconduct management system 'generally works well', WAP 'is not above criticism and the Commission's draft report (to be tabled shortly) *Misconduct Management in WA Police* will identify a range of concerns' (page 6); and



- the CCC's 'preliminary research indicates that there may be issues with the way force used by police officers is recorded *and reviewed* [my emphasis] within WA Police' (pars 19 and 29 of Appendix 1 of the CCC's submissions).
76. In its submissions (Annexure 1) the CCC identifies a total of only 12 formal investigations undertaken by it involving the use of force by police. Only one of these (concerning the repeated tasing of Mr Spratt) related to the period covered by my enquiry. Another was the investigation relating to Mr Quartermaine. Six of the remaining 10 appear to have involved other serious allegations in addition to the use of excessive force. One of the remaining four involved a shooting by a police officer and two of these respectively involved the use of excessive force by a group of suburban detectives ('analysis and inquiries' were unable to advance the information received) and an allegation that two police officers and two 'bikies' were involved in the abduction, assault and possible murder of two men (the CCC investigation did not substantiate the allegation).
77. The CCC's submissions, and its response to the two complaints identified, show that the threshold used by it in deciding whether to investigate complaints of serious levels of excessive force on the part of WAP officers is set too high.
78. The first of the two incidents which led to my investigation and, ultimately, this report, was regarded by the CCC as serious only in the sense that 'all complaints' received by the CCC are 'serious'. I have said that the CCC took into account its view that the complaint, if true, involved only 'minor force and intimidation' and that the complainant's behaviour contributed to the way events unfolded. The complainant does not regard the force used as having been minor. In any event, no amount of unnecessary force is acceptable. Moreover, the CCC's view ignores the complainant's allegations concerning what amounted to callous, authoritarian and highly provocative behaviour on the part of WAP officers.
79. It might be true, as the CCC contends, that a common assault does not amount to 'misconduct' within the definition in s 4 of the *CCC Act*, but this overlooks the fact that the CCC's jurisdiction in respect of WAP is extended by s 21A of the Act to 'reviewable police action', which encompasses, amongst other things, any action taken by a police officer that is 'unreasonable', 'unjust' or 'oppressive'. All three of those epithets are applicable to the allegations made in respect of this incident.
80. As regards the second incident, the CCC's decision to refer the second of A's complaints to it (that made after his acquittal) back to the WAP for investigation by it was made in circumstances in which it knew that:
- the allegations made by A involved a serious misuse of force (involving the repeated tasing of a man whose only misdemeanour appears by then to have been, at most, an aggressively wagged finger), abuse of authority and the possibility that evidence had been interfered with;
  - the first WAP investigation had cleared the officers in question of any misconduct;



- a magistrate had subsequently made very serious criticisms regarding those officers; and
  - the WAP had already decided, after A had complained to it a second time, that it would not reinvestigate his complaint.
81. The CCC appears also to be taking into account considerations that should play no part in its decision making process. I have said that, amongst the considerations identified to me by the CCC in respect of its decision not to conduct its own investigation into the first incident were that:
- the version given by the WAP officers complained about was different to that given by the woman, so the WAP internal investigation finding that her complaint is ‘unsustained’ was a finding reasonably open to it; and
  - the CCC could not justify infringing the liberties of the WAP officers by conducting a private examination in order to ascertain the truth of the woman’s complaint.
82. Accepting that these were only two of a number of considerations taken into account by the CCC and that they must be seen in context, neither should have been taken into account.
83. But even if these two incidents are put to one side, the statistical information provided by the CCC and the view that it takes of its responsibility in respect of police misconduct (and its construction of the *CCC Act* in this respect) seem to me to reveal a fundamental problem with the CCC’s approach.
84. The CCC’s view of the intended operation of the Act, as reflected in its submissions, seems to me to be unsustainable. No doubt it is true, for the reasons earlier given, that the large majority of WAP misconduct allegations are best left to the WAP to investigate, subject to oversight by the CCC and that the legislature would have contemplated, at the time of enacting the *CCC Act*, that this would be so. But that can never justify what amounts to an almost total failure to conduct independent investigations.
85. I had proposed, in my draft report, that credible and serious complaints concerning the use of excessive force by the WAP, especially complaints concerning the unnecessary discharge of a firearm or Taser weapon, should be independently investigated by the CCC. If, as the CCC appears to be suggesting in its submissions, there are so many of these that it could not investigate all of them, even if it wanted to do so (a factor that would underline the importance of investigating at least some of them), then it should at least be investigating those that are the most serious in this category. At least the second of the two incidents to which I have referred (in which a Taser was repeatedly used against A, seemingly with no justification) appears to me inevitably to fall within that description (as did the allegations made by Mr Quartermaine, addressed in my earlier report).
86. The *CCC Act* contemplates that the CCC will retain ‘power to itself investigate cases of misconduct, particularly serious misconduct’ (s 7B(3)). It also contemplates that the CCC will



play a more active role in investigating police misconduct than other forms of public service misconduct. That is why s 21A was enacted, requiring the Commissioner of Police to notify the CCC of 'matters concerning, or that may concern, reviewable police action' and giving to the CCC the power to deal with a matter so notified as if it were an allegation of misconduct. Moreover, an almost complete failure to conduct independent investigations into allegations of the use of excessive force by police will do nothing to promote a culture of accountability. Rather, it is more likely to have the opposite effect. It will also result in a loss of faith in the justice system by those affected, coupled with disillusionment at the role played by the CCC.

87. If, as I suggested in the draft report sent to the CCC, the failure to investigate more than one of 381 allegations might have been contributed to by a lack of resources (which seems now to be questionable, having regard for the Commission's submissions concerning the intended operation of the *CCC Act*, and its suggestion that any additional resources are more likely to be expended investigating excessive use of force in the Department of Education), then it seems to me to be essential that additional resources be made available to the CCC for that purpose.



## CHAPTER 8 MY RECOMMENDATIONS

88. My recommendations are as follows:

1. The CCC should change its procedures so as to implement the emphasis placed by the *CCC Act* on police misconduct by independently investigating instances at the upper end of the category of serious and credible complaints concerning the use of excessive force by police, especially complaints concerning the unnecessary discharge of a firearm or Taser.
2. Having regard for the CCC's understanding of the legislative intention conveyed by the *CCC Act*, consideration should be given to amending the Act, perhaps by way of an amendment to s7B (which specifies how the Act's purposes are to be achieved), so as to ensure that greater importance is accorded by the CCC to the need to conduct independent investigations into allegations of the kind identified in recommendation 1 above.
3. If the resources of the CCC are inadequate to give effect to recommendation 1, consideration should be given to providing the Commission with additional resources for that purpose.

**C D STEYTLER QC**  
**PARLIAMENTARY INSPECTOR**





## APPENDIX TWO



### REPRESENTATIONS ON THE PARLIAMENTARY INSPECTOR'S DRAFT REPORT

**“THE PROCEDURES ADOPTED BY THE CCC WHEN  
DEALING WITH COMPLAINTS OF THE USE OF  
EXCESSIVE FORCE BY POLICE”**



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## CHAPTER 1 REPRESENTATIONS ON THE PARLIAMENTARY INSPECTOR'S DRAFT REPORT

### **“The Procedures Adopted by the CCC when Dealing with Complaints of the use of Excessive Force by Police”**

1. These are the Corruption and Crime Commission’s representations in respect of the Parliamentary Inspector’s draft report entitled ‘*The Procedures Adopted by the CCC When Dealing with Complaints of the Use of Excessive Force by Police*’ (‘the draft report’). The Commission understands that the draft report has its basis in section 195(1)(c) of the CCC Act. Consequently, these representations are made in terms of section 200.

### **The draft report’s recommendations**

2. The draft report focuses on concerns arising from two contemporary incidents and one historical incident of alleged excessive use of force by Western Australia Police (WA Police). Its two recommendations are:
  1. *The CCC should independently investigate credible and serious complaints concerning the use of excessive force by the WAP, especially complaints concerning the unnecessary discharge of a firearm or Taser weapon.*
  2. *If the resources of the CCC are inadequate for that purpose, additional resources should be made available to it.*
3. These recommendations reflect the views of one of two principal but opposing philosophical approaches to how oversight of police should occur. This first approach is that, given the very considerable discretion available to police officers and the potential this provides for real and perceived abuses of power leading to a loss of community confidence in police, the police should not be relied upon to deal with allegations of police misconduct. Implicit in this perspective is that the police, subject to perceived and actual conflicts of interest, are unable to themselves deal effectively and appropriately with allegations of police misconduct. In recent years, there has been increased public discussion arising from criticism of Queensland Police and the way the Crime and Misconduct Commission exercises its oversight of the police based on this first approach.
4. The alternate, second principal approach is that police should have primary responsibility for dealing with allegations of misconduct concerning police officers but be subject to an effective monitoring and oversight regime.

5. The essence of this approach is that by requiring authorities to have primary responsibility for dealing with misconduct, including serious misconduct, the end result is the development of their ownership of responsibility for misconduct that arises in their organisations and the necessity of having appropriate systems and processes for dealing with it. This approach applies to both police and other public authorities. The success of such an approach depends on an effective oversight system that is able to monitor and review the way the respective authorities deal with misconduct and to hold them to account as necessary. This approach accepts that real and perceived conflicts of interest occur and these need to be managed but should not, in most circumstances, prevent authorities themselves dealing with the misconduct matters.
6. This second approach takes time but results in lasting positive cultural and organisational change. The other approach, discussed above, ensures the symptoms of misconduct are addressed but is unlikely to result in lasting positive cultural and organisational change.
7. It is this second approach that the *Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers* (the Police Royal Commission) adopted and recommended and which applies in Western Australia as reflected in the CCC Act.

## The Police Royal Commission recommendations

8. Justice Kennedy, in the Interim Report of the Police Royal Commission, stated:

*“...I make the following recommendations: ...The **primary responsibility** for dealing with complaints about police conduct and investigating suspected police misconduct continue to lie with the **Commissioner of Police**, with the [Corruption and Crime Commission] **exercising a monitoring role**, including the ability to investigate; ...”<sup>1</sup>.(emphasis added)*

9. The Police Royal Commission revisited the issue in its Final Report:

*“...The issue of the primary responsibility for the investigation of police misconduct was dealt with in the Interim Report of the Royal Commission...Notwithstanding the recognition of the problems identified by Wood, the conclusion was reached that it is **essential** that the Commissioner of Police have primary responsibility for internal investigations. That position has been recognised in Western Australia (“WA”) since the Parliamentary Commissioner Act 1984, which authorised the Ombudsman to investigate complaints against police officers, but only after the Commissioner of Police had been provided with a reasonable opportunity to conduct his own investigation. WAPS and the Ombudsman have entered into a Memorandum of Understanding that records arrangements by which police complaints will be investigated by the Commissioner of Police and reviewed by the Ombudsman. These arrangements were discussed in previous Chapters of the Report.*

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<sup>1</sup> *Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. Interim Report. 20 December 2002, p 105*

*The Anti-Corruption Commission (“ACC”) also had the capacity to oversee internal investigations by WAPS pursuant to the powers provided by the Anti-Corruption Commission Act 1988. The ACC and WAPS have also entered into a Memorandum of Understanding regulating the dealing between the two organisations. The Royal Commission has recommended the continuation of that position by the Corruption and Crime Commission (“CCC”), which is to fulfil the external oversight role previously carried out by the ACC and the Ombudsman. **However it is an implied condition that WAPS discharge its responsibility in an efficient and timely manner...**”<sup>2</sup> (emphasis added)*

## The CCC Act

10. The CCC Act provides the statutory basis for the Commission’s operations. Section 7A(b) identifies the CCC Act’s misconduct purpose as being ‘to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector’.
11. Section 7B(3) specifies how the Act’s misconduct function is to be achieved. It requires the Commission ‘...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.’ (emphasis added). Sections 17 and 18 and Part 3 prescribe how the Commission is to provide that help to public authorities.
12. Section 17 addresses the Commission’s prevention and education function, a function to assist public authorities prevent misconduct. Section 18 addresses the Commission’s misconduct function, while Part 3 prescribes the misconduct function with the powers and constraints to include extensive discretionary powers.
13. Part 3 includes section 34, which prescribes what the Commission is to have regard to when deciding to conduct an investigation under section 33 of the CCC Act. These considerations, in summary, are:
  - (a) the seniority of the officer(s) involved;
  - (b) whether serious misconduct has or may have, is or may be, is or may be about to be, or is likely to occur; and
  - (c) whether an independent investigation is warranted in the circumstances.
14. The Commission’s view is that the intent of the Parliament, as reflected in Part 3, is that first and foremost it is the responsibility of the relevant notifying authority (CEO/principal officer), which includes the Commissioner of Police, to first prevent misconduct, and then appropriately deal with it should it arise, within their respective authorities. The Commission views its role as being to

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<sup>2</sup> *Royal Commission Into Whether There Has Been Any Corrupt or Criminal Conduct by Western Australian Police Officers. Final Report.* 30 January 2004, p 236, vol II.

support and assist those authorities to meet their obligations, while reserving the right to itself act if the relevant authority is unwilling, unable or incapable of acting, or the matter warrants its own investigation in accordance with section 34 of the CCC Act.

15. The CCC Act distinguishes between WA Police and the rest of the public sector in so far as section 21A imposes the requirement for police to notify reviewable police action, a form of improper conduct for which the Commission has no equivalent jurisdiction for the rest of the public sector. This additional scrutiny reflects a requirement to give some priority to oversight of WA Police. Otherwise, the CCC Act makes no distinction in respect of WA Police and other authorities.
16. In this view of the CCC Act, it falls to public authorities to deal with the overwhelming majority of their own misconduct allegations, including serious misconduct, subject to the Commission's oversight. This approach accepts that misconduct typically involves public officers pursuing their private interests at the expense of the public interest. Misconduct therefore has the potential to seriously undermine the efficiency and effectiveness of public authorities. The desired result is for the requirement to deal with misconduct to be a part of the core business of public authorities.
17. For the Commission, this means that its prevention and education function and misconduct function are not ends in themselves. Applied in tandem they enable progress towards a misconduct resistant public sector comprised of public authorities with some reasonable capacity to both limit the occurrence of misconduct and to competently identify and deal with it when it does occur. It is this view that conditions and underlies the Commission's approach to dealing with misconduct.

## **The Commission's approach to dealing with misconduct**

18. The basis for the first approach (paragraph 3 above), i.e. removing responsibility for investigating allegations of misconduct about police, from police, is contrary to the CCC Act and the need for the Commission to comply with the statutory requirements and constraints of its Act.
19. The second approach which is expressed in the CCC Act, is similarly reflected in public policy approaches and parallel legislation in New South Wales, Queensland and Victoria. It also appears to apply in a similar way in the federal jurisdiction where the Australian Commission for Law Enforcement Integrity oversees the Australian Federal Police, the Australian Crime Commission and the Australian Customs Service.
20. Appendix One, "*The Application of the CCC Act to Achieve its Misconduct Purpose*" provides a detailed description of its approach to dealing with misconduct.
21. The CCC Act is singularly focussed on dealing with allegations of misconduct. It makes no provisions for dealing with complaints other than dealing with a complaint under the *Parliamentary Commission Act 1971* (PC Act) referred to the Commission, see Section 35. Even then that complaint is dealt with only in so far as it is a misconduct allegation.



22. By contrast, the Ombudsman is established as a complaints agency. It deals with complaints about matters of administration. It is required to both inform persons who make complaints about any decision not to act and of the outcome of its investigation (Sections 18 and 26 of the PC Act).
23. The Commission is not a complaints handling agency, nor is it a complaints resolution agency. While it is obliged to notify informants of any decision not to act on their allegations, there is no statutory obligation to notify informants of the outcome of its dealings with their allegations.
24. Despite having no obligation to do so, the Commission routinely notifies informants of the outcome of its dealings with their allegations. It does this as a matter of good administration. In doing this, the Commission rarely provides informants with operational information or copies of documents and other things it has gathered in the course of its inquiries.

### **Dealing with excessive use of force allegations**

25. Dealing with allegations of excessive use of force by public officers including WA Police, is a major component of the Commission's work. In the reporting period (FY2009/10) in which the first of the two incidents referred to in the draft report occurred, the Commission received over 3,200 allegations of which 1,221 related to WA Police. Further, in that same period, the Commission received a total of 563 excessive use of force allegations of which 235 (42%) concerned WA Police and 326 (58%) concerned the non-WA Police public authorities, being primarily the Departments of Education, Child Protection, Corrective Services and WA Health.
26. Dealing with about 3,200 allegations each year raises special challenges for the Commission and requires procedures that are efficient, in terms of the resources and methods applied to deal with them, as well as necessarily being both effective and appropriate. It also necessitates prioritising the treatment of these allegations and the CCC Act provides no guidance about how this is to occur, other than giving prominence to serious misconduct.
27. Further, in dealing with misconduct allegations the Commission is not a complaints resolution agency, its focus is on building a misconduct resistant public sector. Allegations are but one, albeit important, source of information to the Commission about misconduct in the public sector. Insofar as allegations are concerned the Commission's focus is on assisting public authorities deal with allegations of misconduct appropriately, effectively, transparently and accountably in the context of their organisational culture, systems and processes for preventing misconduct and being able to identify allegations of misconduct and deal with them when they do occur.

### **WA Police misconduct allegations**

28. The Commission's overall approach to allegations of WA Police excessive use of force rests on giving priority to WA Police culture, organisational systems and processes rather than solely or primarily focussing on individual acts. Getting the balance right in this regard is challenging.

29. In dealing with WA Police misconduct allegations, the Commission's approach takes into account a number of factors. First, the Commission is acutely aware that police are granted far greater discretion in the exercise of powers and authority, including the lawful use of force, well-beyond those available to the citizens it polices. Consequently, police warrant particular attention. The Commission contends that the requirements of section 21A, its recent report concerning the use of Taser weapons, its draft report reviewing police misconduct procedures, its continuing Systems Based Evaluations of police misconduct procedures and its current project looking at non-allegation based concerns with WA Police use of force, is indicative of that attention.
30. Secondly, WA Police has been subject to extensive external oversight since 1985, initially by the Ombudsman and the Anti-Corruption Commission and more recently this Commission. In response to this protracted and particular attention, WA Police has established a comprehensive misconduct management mechanism that in the Commission's view generally works well. That being said, WA Police is not above criticism and the Commission's draft report (to be tabled shortly) *Misconduct Management in WA Police* will identify a range of concerns and makes recommendations to address them.
31. Thirdly, the Commission's view is that the Commissioner WA Police, as with other heads of public authorities, has primary responsibility for appropriately dealing with misconduct within WA Police. As noted earlier, this particular responsibility was reinforced by the Interim and Final Reports of the Police Royal Commission, the recommendations of which led to the CCC Act.
32. Fourthly, while there are additional considerations in respect of WA Police, which lead to a relatively greater focus by the Commission on misconduct in the police than misconduct in the rest of the public sector, these additional considerations do not lead the Commission to adopt different procedures when dealing with WA Police misconduct in comparison to other public authorities. There is no capacity under the CCC Act for this to occur. The CCC Act requires all public authorities to take primary responsibility for dealing with misconduct and requires that the Commission deal with all public authorities using the same procedures.
33. Relevant to assisting WA Police prevent, identify and deal with misconduct is the question of how and why misconduct occurs in police services. The Police Royal Commission provided guidance on this issue:

*...The reports (of various commissions of inquiry in Australia, the United States of America and the United Kingdom) show a consistent analysis of the causes of corruption and the prescription for the measures for the control of it. The "rotten apple" theory is long gone and there is now no room for doubt that **culture and poor management** are principal factors in allowing corruption to continue unimpeded. Consistently, the focus of recommendations for increasing corruption resistance in police services has been the improvement of the administration of the organisation...<sup>3</sup> (emphasis added)*

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<sup>3</sup> Kennedy 2004: 'Royal Commission into whether there has been any Corrupt or Criminal Conduct by any Western Australian Police Officer; Vol I, p 55.

34. The Police Royal Commission made clear that culture and poor management were also principal factors in the various instances of police corruption detailed in Volume I of its Final Report. The blueprint for administrative change outlined in Volume II primarily sought to tackle these cultural and management issues in order to improve the corruption resistance of WA Police. These findings reinforce this Commission's approach to focussing on organisational culture, systems and procedures in the application of both its misconduct function and prevention and education function.

### **Excessive use of force allegations**

35. In dealing with WA Police excessive use of force allegations it is important to place these in the broader context of public sector excessive use of force allegations. As noted in paragraph 25 above, police excessive use of force allegations amounted to about 40% of all public sector excessive use of force allegations in 2009/10.
36. Recent analysis by the Commission of public sector excessive use of force is summarised as follows:
- (a) The Commission receives approximately 235 WA Police excessive force allegations each year and about 326 relating to the rest of the public sector.
  - (b) There is no discernible trend, in the overall number of WA Police excessive force allegations. The number received each year is relatively stable.
  - (c) The majority of excessive force allegations against police are reviewable police action and non-serious misconduct allegations. This notwithstanding, there was a noticeable jump in serious misconduct excessive force allegations, including WA Police, in 2010/2011.
  - (d) However, the number of WA Police excessive force allegations, as a proportion of all excessive force allegations received by the Commission, is declining. The significant factor in that decline is the increase in the Department of Education's use of excessive force allegations, which are approaching the same level as WA Police excessive force allegations. Excessive force allegations from other public authorities are also increasing. This increase is likely to be indicative of more effective misconduct management and notification regimes as a result of the Commission's prevention and education programs, rather than an actual increase in the use of excessive force.
  - (e) Focussing on WA Police excessive force allegations to the exclusion of other public authorities would appear counter-productive given the Commission's whole of public sector role. An approach to the issue involving an appropriate focus on WA Police excessive force allegations, while exploring the nature and consequence of excessive force in other public authorities, including their capacity to manage these allegations is, in the Commission's view, more appropriate.

- (f) The Commission ought to be, and is, concerned about the way WA Police deals with excessive force allegations. However, it must balance that concern with the need to also effectively and appropriately deal with other misconduct matters, among others:
- (i) instances of excessive force in WA Police for which allegations are not received;<sup>4</sup>
  - (ii) the use of force in public authorities which do not have effective systems and processes to deal with misconduct;
  - (iii) significant misconduct issues that are not being substantively addressed by public authorities, such as the control of Schedule Four and Schedule Eight drugs in WA Health and financial misconduct issues in local government;
  - (iv) inappropriate police associations;
  - (v) sexual contact between teachers and students; and
  - (vi) bribery of public officers.

37. Providing the Commission with more resources in order to increase the Commission's capacity to investigate use of excessive force by police is not necessarily the answer. If more resources were to be made available to the Commission there are other misconduct issues that could benefit from closer scrutiny, for example excessive use of force in the Department of Education. The Commission would still need to balance its role in investigating misconduct in all agencies against the various priorities that arise on a day-to-day basis.
38. Overall, the Commission favours an approach to dealing with misconduct that takes account of all misconduct issues, misconduct allegations and the effectiveness of misconduct management systems used in public authorities. Its approach to dealing with misconduct matters requires the adoption of effective and appropriate procedures to include the thoughtful prioritisation of those matters it deals with.
39. The requirement for prioritisation particularly affects those matters selected for formal investigation. While section 34 prescribes those factors, the Commission also necessarily has regard to the likelihood that any investigation will enable the identification of misconduct. This is a particular focus of the Commission's assessment and review procedures as it assists with the prioritisation and effective and appropriate application of the Commission's investigative resources.

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<sup>4</sup> The Commission's concern with the issue of excessive use of force by WA Police has been a particular focus of a major corruption prevention activity since mid 2010. This has seen the Commission corruption prevention focus shift from allegation based inquiries into use of force to testing the hypothesis that much WA Police use of force goes unreported. Its preliminary analysis of use of force reports appears to support its hypothesis. If proven then this will have considerable consequences for the Commission's oversight of police use of force matters.

40. Also, whatever the case and regardless of the resources available, Commission decisions to refer serious misconduct allegations to appropriate authorities, and subsequent review by the Commission, is a very effective way of both ensuring serious matters are properly dealt with and the capacity of agencies to deal with misconduct is enhanced. This approach promotes lasting, positive organisation and cultural change.
41. The Commission does not accept that the draft report's description of the procedures used by the Commission to deal with WA Police excessive force allegations accurately represents the Commission's procedures or practical application of them. Appendix One describes these procedures in some detail.
42. The Commission's jurisdiction is complex and extensive, comprising over 143,000 public officers and over 278 public authorities. The result is that it requires procedures to enable it to assess about 3,200 allegations each year, to include the need to deal, not only with the over 200 WA Police excessive force allegations, but also the additional over 3,000 other allegations it receives.
43. The Commission believes that the draft report should acknowledge the complexity and breadth of its jurisdiction and the way the CCC Act prescribes the extent of the Commission's response to dealing with misconduct, which accords with the recommendations of the Police Royal Commission.

## The first two incidents

44. The draft report's recommendations are made on the basis of its assessment of the first two incidents that:

*...While it is obvious that the CCC could not (and should not) investigate every complaint of this kind, no matter how trivial or lacking in credibility those complaints might be, it seems to me to be essential that serious complaints that are apparently credible should be independently investigated. Routinely leaving complaints falling within this last category for review of a (WA Police) internal investigation is not, and never can be, a sufficient performance by the (Commission) of its function. Still less can it be seen to be enough to maintain public confidence that this function is being properly carried out.*

*The CCC's response to these complaints shows that the threshold used by it in deciding whether to investigate complaints of serious levels of excessive force on the part of WA Police officers is too high.*

## Analysis of the first two incidents

45. The Commission provides a brief analysis of the first and second incidents at Appendices Two and Three respective.

46. The Commission's view of its dealings with those two incidents in responding to the draft report is summarised as follows:

(a) **Incident One**

- (i) The first incident does not involve allegations of serious misconduct. Taken at their highest, these allegations amount to no more than common assault accompanied by rudeness and/or bad temper.
- (ii) These sorts of allegations of police heavy-handedness are commonplace and at the heart of the types of cases that the CCC Act requires WA Police to itself investigate. The Commission does not believe the WA Police internal investigation was inadequate.
- (iii) The Commission's view is that its decision not to exercise its discretion to formally investigate this case under the CCC Act was appropriate in the circumstances. To do otherwise would have resulted, in the context of all the matters the Commission has to deal with, in an ineffective use of the Commission's resources.

(b) **Incident Two**

- (i) Although this incident is a case in which the Commission could have exercised its discretion to investigate, it was reasonably open to the Commission to conduct inquiries into the case as part of its review of the adequacy of the WA Police internal investigation.
- (ii) The Commission did conduct its own inquiries into this case as the draft report acknowledges. In doing so it interviewed eight witnesses and reviewed CCTV footage of the incident and of events at the police station. The Commission believes that its inquiries were thorough.
- (iii) This investigative process revealed that it was unlikely that any further more formal investigation would yield a clear conclusion as to what occurred and whether there was misconduct.
- (iv) As a result, the Commission implicitly made a decision not to conduct a formal investigation under section 33 of the CCC Act, and possibly exercise its coercive powers in doing so.
- (v) The Commission has finite resources, it was reasonable and appropriate in the circumstances for the Commission to decide not to further investigate this matter.



- (vi) Although the Commission could have reasonably exercised its discretion to formally investigate the case under the CCC Act the decision as to how to proceed is a matter of discretion. The Commission believes the way in which it dealt with the matter was a reasonable exercise of its discretion.

## The CCC Act and WA Police excessive force allegations

47. When the Commission makes formal decisions under the CCC Act about whether or not to conduct investigations it must do so pursuant to section 34.
48. Putting to one side the question of resources, if, as the draft report proposes, the Commission should formally investigate all serious and credible WA Police excessive force allegations, it must do so in accordance with section 34. However, the majority of excessive force allegations are not serious misconduct allegations because they rarely involve corrupt acts [sections 4(a) and 4(b)] nor offences punishable by two or more years imprisonment [section 4(c)].
49. Further, the overwhelming bulk of WA Police excessive force allegations involve relatively junior officers. Allegations against commissioned officers, for example, are rare. Under section 34(2)(a), there is a lesser imperative for the Commission to investigate allegations against junior officers in accordance with Section 33.
50. Finally, investigation into all excessive force allegations is contrary to the intent of the CCC Act as explained in paragraph 18 above.
51. The Commission's research into misconduct management in WA Police<sup>5</sup> concludes that WA Police is generally capable of dealing with such allegations itself.
52. Arguing that the Commission should formally investigate all such allegations necessarily involves adopting a position that the public interest merits such investigations because WA Police is inherently conflicted in doing so, or cannot be trusted to do so, or is incapable of doing so. On this point it is relevant that the background comments in the draft report include that:
- ...The use of excessive force by police officers is always an issue of concern. Serious and credible complaints of this kind require robust investigation by an external agency so that a conflict of interest created by a police force investigating its own officers is avoided, the truth is ascertained, public confidence in the misconduct oversight regime is maintained...*
53. This, and similar, arguments emerge for all allegations involving WA Police and all other public authorities. The Commission's view is that excessive use of force allegations concerning any public officer, whether police officers, school teachers or prison officers warrants appropriate attention. They all involve allegations that persons in authority used excessive force against others, in circumstances where some actual or perceived relative power differential existed.

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<sup>5</sup> A conclusion drawn from the Commission's draft report *Misconduct Management in WA Police* to be tabled shortly.

54. The CCC Act recognises, despite any conflict of interest risk, WA Police are expressly required to take primary responsibility for dealing with allegations of police misconduct.
55. When an excessive force allegation involves serious misconduct allegations, section 34 enables the Commission to have regard to that when assessing whether to investigate the matter or not. However, in the absence of evidence that WA Police is generally incapable of itself dealing with serious misconduct excessive force allegations or the particular matter at hand specifically, the Commission's view is that WA Police should continue to deal with the majority of allegations and the Commission should continue to oversee WA Police's handling of them.
56. Without substantive evidence that WA Police is generally incapable of itself dealing with excessive force allegations, the only way the Commission can reasonably exercise its discretion to formally investigate these cases under the CCC Act is by considering each case on its own merits. It is unwise to attempt to articulate all of the circumstances that might result in the Commission reasonably exercising its discretion to independently investigate such cases, but an inadequate police internal investigation of an allegation linked to a significant systemic issue might result in the Commission investigating independently.
57. In exercising its discretion the Commission must also consider what other courses of action are reasonably open to it. Consistent with the powers to monitor and review completed WA Police investigations, in sections 40 and 41 of the CCC Act, and the power to report the outcome of its work, pursuant to section 84, the Commission may decide to discuss with WA Police inadequacies in the approach taken by it and make recommendations in a report pursuant to sections 84, 85 or 88. The Commission is taking this approach in its draft report *Misconduct Management in WA Police*, which it intends tabling in the Parliament shortly.



## CHAPTER 2      SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

### Summary

58. In preparing its representation about the draft report, the Commission has reviewed the way it deals with WA Police excessive force allegations in the light of the draft report's analysis and recommendations. In the Commission's view:
- (a) The intent of the CCC Act is that WA Police should take primary responsibility for dealing with allegations of police misconduct. This reflects the recommendations of the Police Royal Commission as set out at paragraphs 6 and 7 above.
  - (b) This reflects an approach that promotes WA Police's ownership of its responsibility for misconduct and the necessary systems for dealing with it effectively. The intention of this approach is to promote lasting, positive cultural and organisational change.
  - (c) The CCC Act recognises that despite the conflict of interest in WA Police itself investigating excessive force allegations against its officers, the police should retain responsibility for these investigations.
  - (d) Section 34 of the CCC Act prescribes what the Commission is to have regard to when deciding to conduct an investigation under section 33 of the CCC Act. The majority of excessive force allegations do not meet the criteria outlined in section 34.
  - (e) Dealing with allegations of excessive force by public officers, including WA Police, is a major component of the Commission's work. The Commission must deal with these allegations in the context of about 3,200 allegations it receives each year, the fact that it is not a complaints resolution agency, and that allegations are one of several sources of information to the Commission about public sector misconduct.
  - (f) Consistent with the findings of the Police Royal Commission, the Commission's overall approach to allegations of WA Police excessive force rests on giving priority to WA Police culture, organisational systems and processes.
  - (g) WA Police excessive force allegations amounted to about 40% of all public sector excessive force allegations in 2009/10. Focussing on WA Police excessive force allegations to the exclusion of other public authorities would appear counter-productive given the Commission's whole of public sector role.
  - (h) If more resources were to be made available to the Commission there are other misconduct issues that could benefit from closer scrutiny, for example excessive use of

force in the Department of Education. The Commission would still need to balance its role in investigating misconduct in all agencies against the various priorities that arise on a day-to-day basis.

- (i) Section 40 requires WA Police, as it does all public authorities, to report the outcomes of its internal investigation to the Commission. When the Commission reviews those investigations it can, and does, from time-to-time, conduct further inquiries. The Commission did this in relation to Incident Two.
- (j) In the circumstances of Incident One, the Commission considers its decision not to exercise its discretion to formally investigate the case is correct and does not accept that the draft report's criticism is justified.
- (k) Although the Commission could have reasonably exercised its discretion to formally investigate Incident Two under the CCC Act, the decision as to how to proceed is a matter of discretion. The Commission believes it exercised its discretion reasonably in the circumstances of this case.

## Conclusions

- 59. Having reviewed its approach to WA Police excessive force allegations in the light of the draft report's analysis and recommendations, the Commission believes that:
  - (a) The Commission's current approach to misconduct allegations, including WA Police excessive force allegations, reflects the intent and requirements of the CCC Act.
  - (b) The Commission balances its activities appropriately between WA Police and the rest of the public sector so that it focuses relatively more on misconduct in WA Police than the rest of the public sector, but not to the exclusion of the rest of the public sector.
  - (c) The Commission acted effectively, appropriately and reasonably in relation to Incident One and Incident Two.
- 60. The Commission is unable to implement the draft report's recommendations as they are contrary to the intention of the Parliament as reflected in the purposes and powers of the CCC Act.

## Recommendations

- 61. In respect of the draft report's recommendations, the Commission believes that:
  - (d) Its procedures to deal with allegations of excessive use of force against police are appropriate and effective.

- (e) There is no need for it to independently investigate all credible and serious allegations concerning excessive use of force by WA police.
- (f) Additional resources, while welcome, would not enable it to independently investigate all public sector serious and credible excessive use of force allegations due to the number of them and that such an approach could be contrary to the CCC Act's legislative intent. However, if the Commission was required to formally investigate police use of excessive force allegations, additional resources would certainly be required.



Mark Herron

**ACTING COMMISSIONER**

1 August 2011



## APPENDIX ONE: THE APPLICATION OF THE CCC ACT TO ACHIEVE ITS MISCONDUCT PURPOSE

62. The Commission's approach to applying the CCC Act to attain the Act's misconduct purpose is grounded in the legislation, its experience and the practical realities of dealing with a jurisdiction that includes over 143,000 public officers employed in over 278 public authorities that give rise to about 3,200 allegations of misconduct each year.
63. Section 7B(3) directs the Commission to achieve the CCC Act's purpose by:
- ...help(ing) public authorities to effectively and appropriately with misconduct by increasing their capacity to do so while retaining the power to itself investigate cases of misconduct, particularly serious misconduct...*
64. As a result of its experience since 2004, and that of other comparable jurisdictions, the Commission's view is that the best way to do this is to help public authorities develop their capacity to prevent misconduct and identify and appropriately deal with misconduct when it does occur. The Commission defines preventing, identifying and dealing with misconduct as follows:
- **Preventing misconduct** means properly understanding the behaviours which can occur within public authorities which amount to misconduct, the related risk factors and circumstances which are likely to give rise to those behaviours, and developing appropriate treatment strategies to minimise the risk of those behaviours occurring.
  - **Identifying misconduct** means properly understanding misconduct and recognising misconduct behaviours when they arise.
  - **Dealing with misconduct** means officially responding to misconduct behaviours when they arise by:
    - recording the behaviours in official organisational records as having occurred;
    - notifying the Commission in accordance with section 28 of the CCC Act;
    - taking reasonable steps to stop the behaviours from continuing;
    - forming reasonable opinions about the harm caused by the behaviours;
    - rectifying the harm; and
    - if necessary, taking appropriate disciplinary action.

65. Part of the Commission's experience is that in 2004/2005, the first full year of its operation, the Commission received 2,412 allegations. In the subsequent six years steady, sustained growth in allegations occurred, with the result that in 2010/2011 the Commission received 3,178 allegations, a 32% increase since 2004/2005.
66. It is unlikely that this growth in allegations is attributable to increasing levels of misconduct in the public sector. More likely is that as awareness within public authorities of their responsibility to resist and respond to misconduct grows, so too does their capacity to identify, and therefore also notify the Commission of misconduct. It therefore seems likely that allegations will continue to grow steadily for some time.
67. The Commission must deal with the allegations it receives in ways that take account of its finite resources and which ensure that the level of attention they receive is commensurate with their significance. In particular, it is important that resources are available to deal with more serious cases.
68. The Commission's experience includes that gained from its serious misconduct investigations. This experience reinforces the link between misconduct by individual public officers, the organisational systems and cultures in which public officers work, and the capacity of public authorities to prevent misconduct and identify and deal with it appropriately and effectively when it does arise.

## CCC business model

69. Taking account of this experience, the Commission's approach to applying the CCC Act is built on a business model which employs the following four main strategies:
- **Analysing Organisational Systems and Cultures.** A range of activities are pursued involving Commission staff actively visiting public authorities, analysing systems and cultures and reporting the outcome of this work, with recommendations for change if necessary. The Commission does this in two main ways. It follows either a top down or bottom up approach.  
  
The top down approach, or organisational review, involves analysis of systems and cultures across an entire organisation. For example, in the Department of Health or individual local governments.  
  
The bottom up approach, or systems based evaluation, involves analysis of systems and cultures on a workplace-by-workplace basis. For example, in prisons, police districts or education districts.
  - **Exploiting the Outcomes of Commission Serious Misconduct Investigations.** The Commission exploits these investigations by examining the organisational systems and cultural contexts in which the investigated misconduct occurred and/or by examining

wider systemic influences that affect the public sector or particular groups of public authorities. Activity in this area is largely research based.

- **Research.** Research is conducted into particular organisational systems and cultural issues. For example, into the use of Taser weapons in WA Police, improper influence on vehicle and licence examiners in the Department of Transport, or misconduct risks associated with the receipt of gifts and benefits in the public sector.
- **Education and Training.** A range of activities are undertaken in this area, such as quarterly misconduct practitioner forums, publication of *On the Level*, the Commission's bi-monthly electronic newsletter and monthly *Understanding Misconduct* and *Misconduct Tips for Managers* education seminars.
- **Dealing with Misconduct Notifications.** Assessment/monitor/review work supports analysis of organisational systems and cultures, as well as ensuring the identification of cases which the Commission should investigate.
- **Investigating Serious Misconduct.** An integral part of the overall strategy is to conduct investigations into selected serious misconduct cases. Cases are selected for investigation on the basis of a number of criteria, including knowledge about the capacity of the public authority in which the case occurred to effectively deal with particular allegations and/or misconduct in general. These criteria are, in turn, used to inform decision-making under the criteria at section 34 of the CCC Act.

## Misconduct management capacity in the Public Sector

70. The approach taken by the Commission to applying the CCC Act in analysing organisational systems and cultures and conducting research has revealed that the systems within a number of public authorities do not have the capacity to reliably identify misconduct.
71. This is true, for example, in relation to unexplained losses of Schedule Four and Schedule Eight drugs in WA Health, fraud in local government, bribery of vehicle and driving licence examiners in the Department of Transport and bribery of public officers who purchase consumable goods in many public authorities.
72. The Commission's experience also indicates that some types of misconduct do not typically generate allegations. The victims of local government fraud and stolen scheduled drugs from public hospitals are not usually immediately identifiable individuals, and these issues are not often the subject of substantive allegations.
73. The critical point that emerges from this is that it is important for the Commission not to become a complaints resolution agency. That is, an organisation focussed on receiving, dealing with and resolving complaints. In order to effectively tackle public sector misconduct the Commission needs a broader focus in which allegations are one of a range of sources of information.

74. By contrast, the Ombudsman is established as a complaints agency. It deals with complaints about matters of administration. It is required to both inform persons who make complaints about any decision not to act and of the outcome of its investigation (Sections 18 and 26 of the *Parliamentary Commission Act 1971*).
75. The CCC Act requires the Commission to receive and assess allegations in the context of an oversight system. The primary purpose of that system is to provide some reasonable level of assurance to the wider community that public authorities effectively discharge their responsibility to deal with the misconduct which occurs within them. The capacity of public authorities to do so is, in turn, one of the sources of information which informs the Commission's investigating and prevention and education work.

## **WA Police and misconduct allegations**

76. Justice Kennedy noted that, at the time of publication of the Police Royal Commission Final Report, the Western Australian Ombudsman had been overseeing the way WA Police handled complaints, and itself investigating complaints, about police conduct for 19 years. Notwithstanding that a comprehensive complaint handling and oversight system had built up between 1985 and 2004, the Police Royal Commission findings indicate that this system had not prevented the spread of police corruption.
77. Although the effectiveness of this system's ability to handle complaints was not in question, the system had not proved to be effective in tackling the underlying police cultural and management issues which impact on police corruption. An inescapable observation is that this oversight system, based as it was on complaints, did not deliver a tangible reduction in corruption in WA Police. That is why the CCC Act directs attention to dealing with allegations about misconduct rather than complaints.
78. The experience of the Ombudsman's, complaint-based, oversight of WA Police, is further evidence that although complaints must play an important role in identifying underlying organisational cultural and management issues, as part of an effective police oversight system, there are other important sources of information that the oversight system needs to consider.
79. For example, the issues unearthed by the Commission's research into the use of Taser weapons in WA Police were identified by proactive research into their use. Although complaints to police, notifications from the police and allegations from informants to the Commission were relevant to this research, they were far from the primary source of information and tended to reinforce, rather than drive, the Commission's finding that Taser weapons were being increasingly used by police officers as a compliance tool rather than to prevent injury.
80. Another relevant example is research into the use of force by police officers. The Commission has been conducting preliminary research into the way WA Police both monitors and regulates force used by police officers since mid-2010. Notwithstanding that WA Police generally deals competently with excessive force allegations, the Commission's preliminary research indicates



that there may be issues with the way force used by police officers is recorded and reviewed within WA Police.

## **WA Police and the Commission's business model**

81. In the context of the philosophy of the Commission's approach to, and experience of, misconduct in WA Police, and following the scheme of the Commission's business model, as articulated earlier, the Commission pursues the following strategies in relation to WA Police:

### **Analysing organisational systems and cultures**

82. The Commission has completed a programme of systems based evaluations of all police districts, the Specialist Crime Division, the Specialist Operations Portfolio and the Internal Affairs Unit. The results of this work were provided to WA Police in a series of working papers and a draft report. Feedback has been received from WA Police.
83. The Commission's proposed report to Parliament, *Misconduct Management in WA Police*, covers the outcome of this programme of evaluations. It addresses the state of play of misconduct management in WA Police, incorporating the results of the Systems Based Evaluation programme and the outcome of several Commission investigations. The report makes a range of recommendations for change.
84. The proposed report also assesses:
- the effectiveness of the WA Police Management Intervention Model, including management action plans;
  - the quality assurance role of the Police Complaints Administration Centre;
  - investigation quality assurance in the Internal Affairs Unit; and
  - the relationship between district superintendents and their assistants.
85. A second round of Systems Based Evaluations of police districts is currently underway.

### **Exploiting the outcome of Commission serious misconduct investigations**

86. *Misconduct Management in WA Police*, examines three Commission serious misconduct investigations in the context of WA Police misconduct management systems and organisational cultures.

87. Although, as a general proposition, WA Police misconduct management systems might be said to be effective, these cases highlight that these systems do not always overcome entrenched organisational cultures.

## Research

88. A research project into the use of Taser weapons in WA Police culminated in a report which was tabled in the Parliament on 4 October 2010. This project identified and highlighted a number of critical issues related to Taser weapon use by WA Police, making ten recommendations for change. The Commissioner of Police subsequently agreed to implement the majority of these recommendations.
89. This was a large, resource intensive, project. It involved:
- a review of the available literature on Taser weapon use;
  - analysis of Taser weapon use policies in Australia and overseas;
  - analysis of 17 particular Taser weapon use cases;
  - analysis of WA Police use of force reports between 2007 and 2009; and
  - additional analysis of WA Police use of force reports for the periods 1 December to 31 December 2007, 1 July to 31 July 2008, and 1 July to 30 September 2009.
90. The Commission is in the early stages of conducting a research project into the way WA Police monitors force used by police officers. Preliminary results of that research indicate that there may be issues with the way force used by police officers is recorded and reviewed within WA Police.
91. The Commission has also completed a literature review on the factors which influence misconduct in policing environments, with a view to using the results of the review to refine its future strategies for dealing with WA Police.

## Education and training

92. The Commission's education and training activities in WA Police reflect the relative maturity of the approach of WA Police to preventing and dealing with misconduct, and existing training programmes employed by WA Police.
93. The Commission has recently reviewed its activities in this area and embarked on an education programme involving the following strategies:
- delivering education seminars to recruits as part of their recruit training;

- delivering education seminars at officer development courses;
- delivering education seminars at officer in charge and regional superintendent meetings; and
- providing briefings to newly appointed WA Police executives.

## **Dealing with misconduct notifications**

94. WA Police continues to be the largest notifier of allegations to the Commission. In 2010/2011 the Commission received 1,038 allegations relating to WA Police. This amounted to 33% of the 3,178 allegations received.
95. Despite this, allegations relating to WA Police have declined from 1,580 in 2004/2005 to 1,038 in 2010/2011, a drop of 34%. A corresponding 157% increase in non-WA Police allegations over the same period means that the overall share of WA Police allegations in allegations received by the Commission more than halved during this period, from 67% in 2004/2005 to 33% in 2010/2011.
96. When considered in conjunction with the relative maturity of WA Police misconduct management systems and structures and the 15% growth in serving police officers from 4,969 in 2004/2005 to 5,733 in 2009/2010, the decline in WA Police allegations might indicate declining levels of misconduct within WA Police. However, a significant part of the decline stems from changes to the way WA Police has recorded and notified the Commission of minor allegations in recent years.
97. The Commission has made recommendations to WA Police to address this issue and WA Police have indicated that these recommendations have been implemented. The extent to which other factors impinge on these statistics is unclear.
98. Because of the number of notifications the Commission receives relating to WA Police and the significance of WA Police to the Commission, the importance of ensuring that the Commission's assessment/monitor/review work is efficient and effective cannot be over-stated. The Commission has therefore invested heavily in finding efficiencies and increasing effectiveness in this area.
99. At a practical level this means ensuring that the Commission's existing focus on the more serious of WA Police cases in its assessment/monitor/review work is retained and enhanced.
100. The Commission retains and enhances this focus through its notification assessment committee process. These committees involve corruption prevention and investigating staff collectively finalising the assessment of allegations received in order to ensure that cases that ought to be investigated by the Commission are not overlooked.
101. This notwithstanding, all allegations are assessed on their own merits. This involves exercising careful judgement, based on knowledge and experience. The need for careful judgement is the

primary reason why the Commission approaches assessments through the notification assessment committee process.

102. Because of the volume and nature of allegations received involving WA Police, the WA Police notification assessment committee adopts a two stage approach. Stage One involves three corruption prevention staff members meeting to categorise allegations by differentiating between serious and less serious allegations. Stage Two involves a senior corruption prevention officer, a corruption prevention manager and an analyst from the Investigations Unit meeting to decide how more serious allegations should be dealt with.

### **Stage one - Categorisation**

103. The primary task undertaken at Stage One is to categorise allegations as potentially serious enough or otherwise of interest to the Commission to warrant the Commission's further attention. This process is guided by such factors as whether the allegation involves any of the following:
- serious misconduct, as defined by subsections 4(a), (b) or (c) of the CCC Act;
  - a serious breach of propriety by a Police officer;
  - failure to act;
  - bias in a serious domestic violence or other dispute;
  - substantive evidence of unlawful arrest;
  - excessive force amounting to serious misconduct, for example because injuries were sustained;
  - medical treatment resulting from serious failure of duty of care while in police custody;
  - mistreatment of detainee with mental or physical impairment;
  - police shootings in which a substantive allegation of misconduct is made;
  - an issue of particular interest to the Commission (for example, the use of a Taser weapon); and
  - public interest in the allegation.
104. The majority of cases are sent to WA Police for action, without further monitoring and review by the Commission. Even though those cases are not subjected to further monitoring and review a percentage of them are considered during the Commission's Systems Based Evaluations of police districts and organisational units.

105. Examples of the types of allegations that are referred to WA Police but not monitored or reviewed by the Commission include:
- excessive force involving injuries;
  - rudeness;
  - breach of social networking policy;
  - neglect of duty;
  - harassment;
  - traffic violations; and
  - conduct unbecoming.

### **Stage two - Determination**

106. The primary task undertaken in Stage Two involves determining whether the Commission's interest in an allegation extends to conducting a formal investigation under the CCC Act or monitoring and reviewing the action taken by WA Police in relation to the allegation. The importance of this task is reflected by the relative seniority of the Commission staff making these decisions. Criteria used at Stage Two include:
- the availability of relevant evidence;
  - whether the allegation concerns an issue of interest to the Commission (for example, the use of Taser weapons);
  - the seniority of the officer(s) involved;
  - public interest in the allegation;
  - whether the allegation involves a real major risk of affecting community confidence in policing;
  - whether the Commission has intelligence holdings relating to the subject officers; and
  - whether the allegation raises systemic misconduct risk issues.
107. How to achieve further efficiency gains in dealing with WA Police notifications is currently being explored. One strategy under consideration is implementing bulk, electronic notifications for WA Police.

## Serious misconduct investigations

108. As well as the work discussed above, the Commission has conducted 82 formal misconduct investigations under the CCC Act into serious misconduct cases relating to police officers. These 82 investigations involve a range of matters from alleged use of excessive force, to alleged use of drugs by police officers, allegedly corrupt associations and alleged leaking of confidential information.
109. These cases also include, for example, the Commission's investigation into the arrest and prosecution of Mr Mallard, the use of Taser weapons against Mr Spratt and the adequacy of the police investigation into alleged crimes committed by Mr Dante Arthurs.
110. In 12 of these formal investigations under the CCC Act, the use of force was either the primary focus or an element of the investigation. These use of force related formal investigations under the CCC Act are briefly summarised below.

### *Case One*

111. An officer was off-duty and socialising at a bar in Northbridge. The officer was removed from the bar by a crowd controller and a struggle occurred between the officer and a number of others, during which the officer apparently showed his WA Police Identification Card.
112. On-duty police were alerted and attended. The off-duty officer allegedly assaulted one of the attending police officers. He was arrested and charged. The off-duty officer subsequently made a number of allegations relating to the handling of evidence and the role of the Internal Affairs Unit in preferring additional charges against him.
113. The Commission investigation did not sustain any of these allegations.

### *Case Two*

114. After a high speed chase a police shooting occurred in which an officer fired three shots into the driver's side door of a vehicle, shooting the driver once through the leg.
115. Internal and criminal investigations were conducted. The driver was charged with criminal offences. The officer was exonerated. The Commission decided to conduct an investigation after finding the WA Police internal investigation to be inadequate.
116. The Commission investigation resulted in:
- The identification of exculpatory evidence relating to the charges brought against the driver. This ultimately led to the dismissal of those charges.
  - Criminal charges being brought against the police officer involved. The charges were ultimately discontinued by the Director of Public Prosecutions.

- The identification of a number of significant policy and procedural issues with respect to WA Police investigations into firearms use by police officers and the conduct of investigations by the Internal Affairs Unit. Relevant recommendations were made.

### *Case Three*

117. The Commission received information about alleged use of excessive force by a group of suburban detectives. Analysis and inquiries into this information was unable to advance the information.

### *Case Four*

118. A 16-year-old male was apprehended by security staff at the Karrinyup Shopping Centre. Police attended to arrest the youth. On their way to the security office, a police officer was allegedly nearly run over in the shopping centre car park by associates of the youth. In the security office, the police officer allegedly hit the youth in the face with his hand.
119. A subsequent internal investigation undertaken by the WA Police concluded that the officer had used excessive force, but that there was insufficient evidence to commence a criminal prosecution for assault. In the alternative, disciplinary action was proposed.
120. The Commission reviewed the internal investigation and found it to be inadequate. Subsequently it conducted its own investigation into the matter. The Commission was particularly concerned that a security videotape had been 'over-taped', thereby erasing images of what happened in the security office.
121. At the conclusion of the Commission investigation the officer was charged and convicted of unlawful assault. A security officer was also charged and convicted of destroying evidence.

### *Case Five*

122. This case involved analysis and inquiries into intelligence that a former detective sergeant, possibly in company with serving police officers, was attending the homes of known drug dealers, assaulting the occupants and stealing their money.
123. Inquiries were not able to substantively advance this case.

### *Case Six*

124. It was alleged that a corrupt detective was stealing cash and using excessive force. Inquiries, including a controlled operation, were unable to substantively advance this allegation.

***Case Seven***

125. Two unnamed police officers and two bikies were allegedly involved in the abduction, assault and possible murder of two men on different occasions.
126. A Commission investigation did not substantiate the allegations.

***Case Eight***

127. Police attended a large group of youths fighting. A bystander recorded some of the events. She was seen by police, who seized her video recording and allegedly assaulted her in the process.
128. The Commission decided to investigate the case after determining that the police internal investigation was inadequate. The Commission investigation established that misconduct had not occurred.

***Case Nine***

129. This is the Commission investigation into the allegations made by Mr Quartermaine.

***Case Ten***

130. Between 29 August 2008 and 6 September 2008 Mr Spratt was subjected to multiple Taser weapon deployments by various police officers. The Commission determined that the subsequent internal investigation by WA Police was inadequate.
131. The Commission decided to investigate the case. The Commission investigation is currently ongoing.

***Case Eleven***

132. Upon the attendance of police, a man fled the scene of a domestic dispute, allegedly trying to run down a police officer in the process. Subsequently the man was located and arrested. The arresting officer allegedly assaulted the man when placing him into the rear of the police van by forcing the man's head into the rear of the van causing the rear glass window to shatter and the man to sustain a head injury.
133. A subsequent WA Police internal investigation determined that the force used by the officer was excessive, but did not amount to an assault. The Commission determined that the WA Police internal investigation was inadequate and decided to conduct its own investigation.



134. The Commission investigation resulted in the officer being charged with one count of assault occasioning bodily harm and one count of common assault. The man, who was the subject of the alleged assault in question, did not attend the trial and the officer was acquitted.

### *Case Twelve*

135. A 17 year old girl alleged that she had been indecently assaulted by a detective. Although this allegation could not be proven, a number of issues about the detective's behaviour and personality were identified by WA Police, but never substantively addressed.
136. The Commission reviewed the WA Police internal investigation and concluded that it was inadequate. A subsequent Commission investigation established that the detective:
- Misused registered police informants to meet and forge relationships with women.
  - Deliberately disclosed confidential police information.
  - Photographed sexual activity between himself and another woman, and provided the explicit photos to others without the woman's consent.
  - Made false and misleading entries in his official police diaries to cover up his inappropriate conduct.
137. The detective was charged with 22 counts of unlawful use of a restricted access computer. He was convicted of 20 charges including 16 counts of unlawful use of a restricted access computer under section 440A of *The Criminal Code*, two counts under the *Criminal Investigation Act 2006*; and two counts of disclosing official information. He was sentenced to two suspended prison sentences and a fine.

### **Summary**

138. The Commission's experience is that the best way to give effect to section 7B(3) of the CCC Act is to assist public authorities to develop their capacity to prevent, identify and appropriately deal with misconduct.
139. Based on its own experience, the Ombudsman's complaint-based oversight system that operated for 19 years prior to the establishment of the Commission, and the findings of the Police Royal Commission and others before it, the Commission adopts a broadly based, multi-faceted approach to misconduct in WA Police. This involves the following strategies:
- (a) **Analysing Organisational Systems and Cultures** – a programme of Systems Based Evaluations has been completed and another is underway.

- (b) **Exploiting the Outcome of Commission Serious Misconduct Investigations** - *Misconduct Management in WA Police*, examines three Commission serious misconduct investigations in the context of WA Police misconduct management systems and organisational cultures.
- (c) **Research** - A research project into the use of Taser weapons in WA Police culminated in a report which was tabled in the Parliament on 4 October 2010. The Commission is in the early stages of conducting a research project into the way WA Police monitors force used by police officers.
- (d) **Education and Training** - the Commission has recently reviewed its activities in this area and embarked on an education programme involving a range of strategies.
- (e) **Dealing with Misconduct Notifications** - WA Police continues to be the largest notifier of allegations to the Commission. The Commission adopts a two stage notification assessment committee to deal with these allegations.
- (f) **Serious Misconduct Investigations** - the Commission has conducted 82 formal misconduct investigations under the CCC Act into serious misconduct cases relating to police officers. Twelve of these involved the use of force as either the primary focus or an element of the investigation.

## **APPENDIX TWO: COMPLAINTS ABOUT EXCESSIVE USE OF FORCE BY WA POLICE**

### **The first incident**

140. The first incident involved allegations by a woman who was stopped by police while driving under suspension.
141. Police told her that her car would be towed away. She became visibly emotional, reoccupied the driver's seat of her car and refused to get out. She was arrested for obstructing police, who it is said “manhandled” her with “unnecessary vigour”.
142. There was a heated verbal exchange between police and the woman. Shortly thereafter a friend of the woman arrived to assist her. Police allegedly were deliberately rude and obstructive to her friend.
143. The woman was taken to a police station where she says she was further provoked. She responded loudly. An infuriated second officer is said to have then yanked open the door of the cell she was being held in, grabbed both her arms very hard and pulled them high behind her back, causing her extreme pain, and then marched her to a police van.
144. When placed in the back of the van her shoes were allegedly thrown by the officer so hard that they bounced off the ground. She was subsequently released, at which time she says she was subjected to further offensive comments.
145. The woman was charged with driving under suspension, obstructing police, and disorderly conduct in a police station. When she appeared in Court she entered into an agreement with the police prosecutor to plead guilty to the first two charges in return for police withdrawing the disorderly conduct charge.
146. A WA Police internal investigation into the case found that the officers involved did not use excessive force.

### **The Commission’s actions**

147. The completed WA Police internal investigation file was sent to the Commission for review. The Commission examined the file and formed the view that the WA Police internal investigation was adequate.

148. The Commission advised the complainant accordingly. She contacted the Commission explaining that she was unhappy with this outcome and wrote a comprehensive letter explaining why she thought the WA Police internal investigation was deficient.
149. The Commission reconsidered the outcome of its review in the light of her comments and correspondence but decided not to re-open its file.

## Analysis

### *Roadside*

150. It is not in question that police were acting in the lawful execution of their duties when they stopped the woman, impounded her vehicle and arrested and charged her with driving under suspension and obstructing police. After all, she pleaded guilty to these charges.
151. The draft report's analysis includes that the woman may not have known that her licence was suspended. Further, that she was urgently delivering papers to the Department of Immigration to prevent the possible deportation of a person she was assisting in her capacity as a United Nations volunteer.
152. The woman's knowledge of her suspended licence is disputed by police. Police do not concede that they were deliberately rude or obstructive, but do concede that they said things that were at least unprofessional.
153. Consideration of these issues neither add nor subtract anything of value to the central question of the force used against the woman. The relevant facts are that police were acting in the lawful execution of their duty when they "manhandled" the woman from the car.
154. Police were lawfully entitled to use reasonable force to remove her from the car. There was no lower level of force available to the officers than to "manhandle" her. The possibility that the force was excessive arises because it is alleged that the "manhandling" was unnecessarily vigorous.
155. It is not clear how the "manhandling" was unnecessarily vigorous. The complainant says that police held her in a grip that hurt. The allegation is denied by police who say that they did no more than grab her sleeve to get her to move.
156. The woman's roadside allegations do not amount to serious misconduct allegations. At its highest, and as unlikely as it seems, the alleged use of force could constitute common assault to the extent that the "manhandling" was unreasonably vigorous. Common assault does not amount to serious misconduct. Alleged rudeness and/or bad temper only amount to reviewable police action. Alleged common assault in conjunction with rudeness and/or bad temper does not amount to serious misconduct.

### ***Police Station***

157. Events at the police station similarly do not amount to serious misconduct.
158. No doubt the alleged grabbing the woman's arms very hard and pulling them high behind her back is an alleged assault. It might be argued that the extreme pain that this is said to have caused means that this is an alleged assault occasioning bodily harm. But causing pain does not amount to bodily injury and therefore does not satisfy the definition of doing bodily harm<sup>1</sup>. Therefore, the alleged facts amount to no more than common assault.
159. This is also denied by police who say they did no more than hold her right upper right arm, with no real force.
160. As with events at the roadside the alleged rudeness and/or bad temper, which are also denied by police, only amount to reviewable police action. Alleged common assault in conjunction with rudeness and/or bad temper does not amount to serious misconduct.
161. The draft report argues that *...there was at the very least a serious question whether the police had any adequate basis for the (third) charge brought against the woman concerned and hence any basis for marching her to a police van and placing her in it...*
162. The basis for this argument is unclear. Police say the woman was disorderly at the police station. They provided evidence in support of this. The fact that a negotiation with the police prosecutor occurred in which this charge was dropped in return for guilty pleas to the other two charges is no basis to opine that the charge may have been inadequate or improper.
163. Such negotiations occur daily, especially for minor charges such as disorderly conduct. They occur for reasons of efficiency, not to cover impropriety. Of course, this does not mean that a motivated police prosecutor might enter into such an agreement in order to hide some impropriety. But no substantive argument or evidence in support of that proposition has been advanced.

### ***Police Heavy-Handedness***

164. The woman's friend witnessed some of the events in question. But there were no independent witnesses to the initial roadside events or events at the police station. It is, therefore, not certain exactly what happened.
165. However, there is no doubt that the woman became agitated and that police responded to her agitation. There are good reasons to suspect that police were somewhat heavy-handed in dealing with the matter. But, in fairness, it must be said that the woman appears to have contributed to this by breaking the law, claiming ignorance, becoming agitated and trying to prevent police going about their lawful duties.

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<sup>1</sup> *Scatchard v R* (1987) 27 A Crim R 136.

166. Without trivialising the incident, or seeking to excuse or justify any possible heavy-handedness by police, these sorts of circumstances are common. Moreover, they are likely to remain common for as long as people, including police officers, respond emotionally in the heat of the moment.
167. These sorts of cases are at the heart of the types of matters that the CCC Act requires WA Police to itself investigate. Consistent with the intent of the CCC Act and the oversight scheme at Part 3 of the CCC Act, the question of the CCC exercising its discretion to formally investigate these sorts of cases only realistically arises if the WA Police internal investigation is inadequate.

### **The complainant's dissatisfaction**

168. There is no doubt that the woman was dissatisfied with the WA Police internal investigation. She was dissatisfied because she disagreed with the outcome of that investigation. But this does not mean that the WA Police internal investigation was, in fact, inadequate. The test of adequacy involves asking whether the investigation gathered all of the reasonably available evidence, subjected that evidence to logical analysis and reached reasonable conclusions.
169. The Commission's independent, objective review of the police internal investigation file determined that these criteria had been met. No argument to the contrary has been advanced in the draft report.
170. The Commission is not a complaint resolution body. It does not seek to somehow resolve differences between WA Police and complainants.

### **Conclusions about the first incident**

171. The first incident does not involve allegations of serious misconduct. Taken at their highest these allegations amount to no more than common assault accompanied by rudeness and/or bad temper.
172. These sorts of allegations of police heavy-handedness are commonplace and at the heart of the types of cases that the CCC Act requires WA Police to itself investigate. In the absence of an inadequate WA Police internal investigations. The Commission does not believe the WA Police internal investigation was inadequate.
173. The Commission's view is that its decision not to exercise its discretion to formally investigate this case under the CCC Act was appropriate in the circumstances. To do otherwise would have resulted in the context of all the matters the Commission has to deal with, in an ineffective use of the Commission's resources.

## APPENDIX THREE: COMPLAINTS ABOUT EXCESSIVE USE OF FORCE BY WA POLICE

### The second incident

174. The second incident involved allegations by a man who was arrested by police in the early hours of the morning in an entertainment precinct.
175. The man (A) assisted two men who had fallen into a garden bed. He then saw two police officers grab the arm of his female companion (B). She allegedly screamed.
176. Police were allegedly issuing B with a 'move-on' notice. This led to a struggle in which A was handcuffed, police allegedly tried to trip A by kicking him, and both A and B were Tasered.
177. Police were subsequently allegedly rude towards A, both at the scene and later at the police station, and allegedly denied him medical attention.
178. A and B were acquitted of the charges brought against them, after a 'no case' submission was accepted by the Magistrate. As pointed out in the draft report, the following comments of the Magistrate about police are significant:

*...I found that the testimony given [by the arresting officer] was extremely evasive, it was imprecise, and ... his evidence lacked recollection, was extremely vague [and] he was, in my view, unreliable and unconvincing during the course of his testimony. He constantly stated that he could not remember, he was fatigued. He admitted versions of his statement were inaccurate. ...*

*He admitted that the summary of facts was inaccurate. He admitted that [the] actions [of the sergeant who had Tasered A and B] may have been inappropriate in relation to the use of the TASER in [the] circumstances.*

*[He] denied that there was collusion with [his colleague] regarding the formulation of the statements made by both officers that were put to him. That was a most unconvincing explanation for the reason given in relation to the spelling error made in both statements and also in relation to the terminology used as alleged by himself and in the statement of [his colleague] that it may not have been accurate. If there had not been collusion, how else could such an exact statement have been recalled by both he and [his colleague]?*

*[...]*

*There was clearly an attempt to minimize his role ... and also the other officers' roles in the overall set of circumstances and, in all the circumstances, the CCTV speaks for itself.*



*On the evidence I am not satisfied that there is a case to answer, that the officer acted appropriately and/or lawfully. His evidence lacked such credibility and reliability that it should be totally rejected and, accordingly, I am not satisfied that [B] acted in manner that breached the peace initially, I am not satisfied there was any lawful reason for ... any demand for her to give her name and address. There was no lawful reason as to why [the other arresting officer] should have grabbed her by the arm. I am not satisfied that she was notified as to why her name and address was required.*

*There is no evidence to suggest that, having rejected the evidence of [the arresting officer] that that was the case and, accordingly, the actions taken by the officers after the intervention of [A] give rise to a conclusion that there is no case to answer concerning the lawfulness of their behaviour towards him after he intervened ...*

179. The initial WA Police internal investigation found that the officers involved did not use excessive force. This internal investigation was concluded before the trial of A and B. A did not co-operate with the internal investigator.
180. A subsequently wrote to the Commission advising of his and B's acquittal of the charges brought against them and identifying an additional 12 witnesses to the incident. Consequently the Commission referred the case to the Police for further internal investigation. This second internal investigation also found that police did not use excessive force.

### **The Commission's actions**

181. The initial WA Police internal investigation was reviewed by the Commission and found to be adequate. Its adequacy was disputed by A, but the Commission did not agree. Relevantly at that time the trial of A and B was still pending and A did not disclose to the Commission that there were additional witnesses.
182. In response to questions posed by A the Commission told him that it was willing to review this decision if additional evidence came to light. The Commission's decision to refer the case to WA Police for further internal investigation stemmed from A advising of the outcome of his trial and the details of the additional witnesses.

### **The Commission's review of the second WA Police internal investigation**

183. The second completed WA Police internal investigation file was sent to the Commission for review. As well as examining this file, the Commission's review included interviewing eight of 12 witnesses provided by A, a witness who filmed the events in question and examining CCTV footage of the incident and events at the police station. The Commission was unable to locate four witnesses.



184. One witness had no recollection of the incident. The other seven did not witness the incident. The witness who filmed the events in question said that his memory was 'clouded' and that he had not witnessed Tasers being used. He confirmed that, during the night in question, he was interviewed by police who determined that the images recorded by him had no evidentiary value because the video footage was 'too dark for anything to be made out'. He deleted the images that night.
185. Examination of the CCTV footage did not advance A's allegations.
186. The Commission's inquiries established that no additional evidence existed. That is, there is simply no conclusive evidence available. In the light of the unavailability of conclusive evidence, the Commission decided not to exercise its discretion to conduct a formal investigation under section 33 of the CCC Act. It was determined that conducting a formal investigation would not have advanced the matter.
187. This is unfortunate for A, B and the police officers involved. If police did engage in misconduct then the lack of conclusive evidence robs A and B from seeing police brought to account. Similarly, if police did not engage in misconduct then the lack of conclusive evidence robs the officers of having their names cleared.
188. Although this is unfortunate, it is not uncommon. If there was some reasonable prospect of a formal investigation under the CCC Act unearthing conclusive evidence, then the Commission might reasonably be expected to conduct a formal investigation. However, this prospect does not exist.

## **Analysis**

189. The issues involved in the second incident are not so clear cut as the first incident as A sustained minor injuries. Therefore, the allegations amount to alleged assault occasioning bodily harm and, in turn, to serious misconduct allegations. The initial WA Police internal investigation did not gather and analyse all of the available evidence, albeit that A's non-cooperation with the internal investigator contributed to this.
190. Therefore, the second incident is a case that the Commission could have reasonably exercised its discretion to conduct a formal investigation under section 33 of the CCC Act.
191. However, it does not follow that because the Commission could have reasonably exercised its discretion to investigate the case, it should have done so. As discussed earlier, there are, and always will be, more things for the Commission to do than available resources allow. How the Commission allocates these resources is an issue about which reasonable minds will inevitably differ.
192. Bearing in mind the oversight mechanism at Part 3 of the CCC Act; the overall intent of the CCC Act; the particular circumstances of the case, which include that it occurred in the early hours of the morning in an entertainment precinct; that A's injuries were not significant; the nature of

police work; and the range of other, more serious, excessive force allegations that the Commission receives, it was reasonably open to the Commission to refer the case to WA Police for further internal investigation and to conduct its own inquiries during the course of reviewing that investigation ahead of making a decision about whether or not to proceed with a formal investigation under the CCC Act.

193. As a result of this review, following its own inquiries, the Commission decided as a result of that investigative process that it was unlikely that any further, more formal investigation, would yield a clear conclusion as to what had occurred and was misconduct. The direct consequence of conducting formal investigations in such circumstances is to rob other complainants and police officers of the opportunity to have the facts established when there is some reasonable prospect of identifying conclusive evidence.
194. The Commission also notes that the inquiries that it did undertake amount to an investigation insofar as common usage of the word is concerned. As a point of comparison many police criminal investigations involve the sorts of inquiries undertaken by the Commission in this case.
195. Moreover, it cannot be said that these inquiries were not thorough. In the end, all of the available evidence was gathered and analysed.

### **The complainant's satisfaction**

196. There is no doubt that A was dissatisfied with the Commission's decision not to formally investigate this case. He was dissatisfied because he disagreed with the outcome that his version of events could not be proven to be correct.
197. But this does not mean that the Commission should conduct a formal investigation. The Commission's independent, objective view is that a formal investigation would not advance the matter. No argument to the contrary has been advanced.

### **Conclusions about the second incident**

198. Although this incident is a case in which the Commission could have exercised its discretion to investigate, it was reasonably open to the Commission to conduct inquiries into the case as part of its review of the adequacy of the WA Police internal investigation.
199. The Commission did conduct its own inquiries into this case as the draft report acknowledges. In doing so it interviewed eight witnesses and reviewed CCTV footage of the incident and of events at the police station. The Commission believes that its inquiries were thorough.
200. This investigative process revealed that it was unlikely that any further more formal investigation would yield a clear conclusion as to what had occurred and whether there was misconduct.

201. As a result, the Commission implicitly made a decision not to conduct a formal investigation under section 33 of the CCC Act, and possibly exercise its coercive powers in doing so.
202. The Commission has finite resources, it was reasonable and appropriate in the circumstances for the Commission to decide not to further investigate this matter.
203. Although the Commission could have reasonably exercised its discretion to formally investigate the case under the CCC the decision as to how to proceed is a matter of discretion. The Commission believes the way in which it dealt with the matter was a reasonable exercise of its discretion.



## APPENDIX THREE

### LETTER FROM MR MARK HERRON, ACTING CCC COMMISSIONER, TO THE COMMITTEE DATED 19 AUGUST 2011

Dear Chairman

**REPORT BY THE PARLIAMENTARY INSPECTOR OF THE CORRUPTION AND  
CRIME COMMISSION TO THE JOINT STANDING COMMITTEE ON *THE  
PROCEDURES ADOPTED BY THE CCC WHEN DEALING WITH COMPLAINTS OF THE  
USE OF EXCESSIVE FORCE BY POLICE***

I refer to the report dated 11 August 2011 by the Parliamentary Inspector of the Corruption and Crime Commission of Western Australia ("the Parliamentary Inspector") to the Joint Standing Committee ("the Committee") on the procedures adopted by the Corruption and Crime Commission ("the Commission") when dealing with complaints of the use of excessive force by police.

The Parliamentary Inspector's report includes as an annexure a copy of the Commission's detailed submissions to him. I wish to bring these to your attention and request that in considering the Parliamentary Inspector's report you weigh it against those submissions.

In his report, the Parliamentary Inspector makes three recommendations, the first of which is the principal one. It addresses concerns arising from the Commission's dealings with two incidents and the Quartermaine matter. In respect of these, the first incident is not, in the Commission's view, sufficiently serious and credible to warrant further action by it. In respect to the second incident, the Commission did investigate and could take it no further. Please refer to the Commission's submissions to the Parliamentary Inspector for further details.

The Parliamentary Inspector's report also deals with the Quartermaine matter. The Commission conducted an extensive and rigorous investigation of that matter and concluded that, as with the second incident, the facts of the matter cannot be resolved. This was the Commission's view prior to undertaking the Quartermaine inquiry at the urging of the Parliamentary Inspector. Despite the expenditure of very considerable resources the matter was not able to be advanced.

The Commission is cognisant of the relative importance of its oversight role in relation to the Western Australia Police as compared to the rest of the Western Australian public sector. It applies a multifaceted strategy in order to give effect to its police oversight role. This strategy is described at page 14 [pages 69 and 70 of this report] of the Commission's submissions to the Parliamentary Inspector.

Further insight into the Commission's oversight strategy for the Western Australia Police in the context of its overall approach to overseeing misconduct management in the Western Australian public sector can be found in the Commission's report of 29 June 2011 entitled *Report on the Corruption Prevention and Education Function of the Corruption Commission* presented to the Committee and the Attorney General. The Commission proposes continuing the activities outlined in the submissions to the Parliamentary Inspector and its aforementioned report of 29 June 2011. In addition, it has undertaken to look at the way the Western Australia Police applies the *Prostitution Act 2000* and the *Misuse of Drugs Act 1981*.

Should the Commission now be required to put even more emphasis on dealing with the upper end of the category of serious and credible complaints concerning the use of excessive force by police, the question arises as to which activities in either of its current programs when dealing with Western Australia Police or in dealing with the Western Australian public sector more broadly should it discontinue?

[...]

Yours faithfully



Mark Herron

**ACTING COMMISSIONER**

19 August 2011

## APPENDIX FOUR

### LETTER FROM MR MARK HERRON, ACTING CCC COMMISSIONER, TO THE COMMITTEE DATED 26 AUGUST 2011

Dear Chairman

**REPORT BY THE PARLIAMENTARY INSPECTOR OF THE CORRUPTION AND  
CRIME COMMISSION TO THE JOINT STANDING COMMITTEE ON *THE  
PROCEDURES ADOPTED BY THE CCC WHEN DEALING WITH COMPLAINTS OF THE  
USE OF EXCESSIVE FORCE BY POLICE***

Further to my letter to you of 19 August 2011, concerning the Parliamentary Inspector's report of 11 August 2011, I take this opportunity to bring to your attention an article that appeared on page 13 of *The West Australian* newspaper of Wednesday 24 August 2011.<sup>1</sup>

The article entitled *Officer in festival arrest charged with assault*, in my view, exemplifies the line of reasoning proposed in the Commission's submissions to the Parliamentary Inspector of 1 August 2011, and by extension to your Committee, in respect of allegations of excessive use of force by the Western Australia Police (WAPOL). The Commission's preference is that WAPOL should deal with excessive force allegations and the Commission should assess and review the appropriateness of the police response as necessary. The 24 August 2011 article demonstrates that this is a robust and reliable approach.

The Commission was notified about this case, which is one of excessive force, by the Commissioner of Police (CoP) on 21 March 2011. Although the Commission did not receive a complaint from [the civilian], the CoP notified the Commission of the matter immediately following the conclusion of a trial in relation to a charge of Assault Public Officer against [the civilian]. In determining the matter at the Midland Magistrates Court, the Magistrate found [the civilian] not guilty of the charge and made some negative comments about Police and the procedures used during the incident. CoP advised that the internal investigation would examine actions of police officers involved in the incident and procedures adopted that gave rise to the Magistrate's comments.

In view of the seriousness of the matter and the fact that it had already received media coverage and the public interest had been roused, the Commission assessed the matter and advised WAPOL

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<sup>1</sup> A copy of this report was attached to the Acting Commissioner's letter; an earlier version of the same article can be found at <<http://au.news.yahoo.com/thewest/a/-/wa/10095227/cop-charged-with-swan-valley-assault/>>

that it was one which, following the police investigation, would require review by the Commission.

The Commission has been monitoring the status of the police internal investigation since referring it back to WAPOL for investigation. [Depending on the outcome, at the completion of the police internal investigation] the Commission will receive [the relevant files] for review in due course.

In summary, this matter demonstrates WAPOL's preparedness to take immediate action on a matter without prompting. It also reinforces the appropriateness of the Commission's existing assessment, monitoring and review processes for managing complaints about the use of excessive force by Police in meeting the requirements of the *Corruption and Crime Commission Act 2003*.

Yours faithfully



Mark Herron

**ACTING COMMISSIONER**

26 August 2011