



Joint Standing Committee on the Corruption and Crime Commission

The timeliness of misconduct investigations undertaken or overseen by the CCC:

An interim report

**Report No. 4
August 2013**

Parliament of Western Australia

Committee Members

Chairman	Hon. Nick Goiran, BCom, LLB, MLC Member for the South Metropolitan Region
Deputy Chairman	Mr Paul Papalia, CSC, MLA Member for Warnbro
Members	Hon. Ms Adele Farina, BA, LLB, MLC Member for South West Region Mr Sean L'Estrange, BEd, DipT, MEd, GradDipResourceMan, GradDipMan, psc(j), MLA Member for Churchlands

Committee Staff

Principal Research Officer	Dr David Worth, DipAeroEng, MBA, PhD
Research Officer	Ms Jovita Hogan, BA (Hons)

Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7469
Fax: (08) 9222 7804
Email: jscccc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au/jscccc

Published by the Parliament of Western Australia, Perth.

August 2013.

ISBN: 978-1-921865-78-7

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committees on the Corruption and Crime Commission. Report 4)

328.365

**Joint Standing Committee
on the Corruption and Crime Commission**

The timeliness of misconduct
investigations undertaken or
overseen by the CCC:

An interim report

Report No. 4

Presented by

Hon Nick Goiran, MLC and Mr Paul Papalia CSC, MLA

Laid on the Table of the Legislative Assembly and the Legislative Council
on 15 August 2013

Chairman's Foreword

A key aspect of an effective and equitable justice system is that it ensures the timely resolution of matters. The Joint Standing Committee was surprised to be told during a hearing with the Commissioner of the Corruption and Crime Commission (CCC) in November 2012 that the CCC did not have guidelines for how long investigations should take by it or other State agencies into a complaint about misconduct. With the prorogation of Parliament imminent, the Committee resolved that the matter was of sufficient import not to be capable of awaiting the outcome of the March 2013 election and the subsequent re-establishment of the Committee. Accordingly, it referred this issue of timeliness to the Parliamentary Inspector (PI) of the CCC, Hon Michael Murray, for inquiry. His report is presented today as an interim one as the Committee has asked him to continue his enquiries into a matter that has arisen following his initial enquiries.

The CCC provided information to the PI on 13 recent investigations that had been underway for at least 15 months. Of particular note, one inquiry by the Department of Corrective Services took three years to complete. This length of time is unsatisfactory and, to the credit of Commissioner Macknay, the CCC acknowledges this. The PI's efforts to gather data about these matters has already led Commissioner Macknay to respond that he "forthrightly accepted that the failures on the part of the Commission ... were unacceptable by its own standards, and cannot be justified."¹

The matter of the timeliness of investigations is also of concern in other jurisdictions. Dr Ken Levy, the Acting Chairperson and Chief Executive Officer of the Queensland Crime and Misconduct Commission, recently told the Queensland Parliament that "long and sensitive hearings should have some oversight at a number of stages so they are met within a reasonable time."² He said that New South Wales had a performance standard of completing investigations within a 12 month period.

Commissioner Macknay told the PI that one outcome of this Inquiry was that he had caused four major changes to be made to the CCC's procedures. The Committee has recommended that the Commissioner review his new processes to ensure that the number of inquiries that are delayed beyond 12 months is substantially lower than at present. Commissioner Macknay also informed the PI that he and the Commissioner of

1 Hon Michael Murray, Parliamentary Inspector, 'REPORT IN RESPONSE TO A REFERENCE BY THE JOINT STANDING COMMITTEE OF THE CORRUPTION AND CRIME COMMISSION TO INQUIRE INTO AND REPORT UPON THE TIMELINESS OF MISCONDUCT INVESTIGATIONS UNDERTAKEN OR OVERSEEN BY THE CORRUPTION AND CRIME COMMISSION', Perth, 31 May 2013, p8.

2 Dr Ken Levy, Acting Chairperson and Chief Executive Officer, Queensland Crime and Misconduct Commission, Queensland, *Parliamentary Debates* (Hansard), Estimates— Justice and Attorney-General, 18 July 2013, p2.

Police were negotiating a new memorandum of understanding between their agencies in relation to the management and oversight of misconduct investigations.

An unfortunate aspect of the PI's Inquiry is that both the CCC and WA Police were given draft copies of his report and in their responses both blamed the other agency for delays in completing investigations. The PI reported that "the Police do not accept that they have unnecessarily or intentionally delayed responses to requests for information from the Commission".³

One matter remains outstanding from the PI's Inquiry. This is the remote electronic access granted by WA Police to the CCC in 2007 to its complaint/investigation management system. The Committee supports the PI continuing his investigations on this matter. Hence, this is an interim report and the Committee aims to table a final report later in 2013 when the PI has concluded his Inquiry.

I would like to thank the Parliamentary Inspector, Hon Michael Murray, and his Executive Assistant, Mr Murray Alder, for their work on this inquiry.

I also would like to acknowledge the work on this report by my new Committee colleagues for the 39th Parliament: the Deputy Chairman, Mr Paul Papalia CSC MLA, the Member for Churchlands, Sean L'Estrange MLA, and the member for the South West Region, Hon Adele Farina MLC. Finally I wish to thank the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan, for their efforts.



HON NICK GOIRAN, MLC
CHAIRMAN

3 Hon Michael Murray, Parliamentary Inspector, 'REPORT IN RESPONSE TO A REFERENCE BY THE JOINT STANDING COMMITTEE OF THE CORRUPTION AND CRIME COMMISSION TO INQUIRE INTO AND REPORT UPON THE TIMELINESS OF MISCONDUCT INVESTIGATIONS UNDERTAKEN OR OVERSEEN BY THE CORRUPTION AND CRIME COMMISSION', Perth, 31 May 2013, p12.

Contents

Executive Summary	i
Findings and Recommendations	v
1 The Joint Standing Committee's concern and reference to the Parliamentary Inspector	1
<hr/>	
Introduction	1
Committee reference to Parliamentary Inspector	2
Summary of Parliamentary Inspector's report	3
Tension between WAPOL and CCC	6
Appendices	9
<hr/>	
1 Parliamentary Inspector's Report	9
REPORT IN RESPONSE TO A REFERENCE BY THE JOINT STANDING COMMITTEE OF THE CORRUPTION AND CRIME COMMISSION TO INQUIRE INTO AND REPORT UPON THE TIMELINESS OF MISCONDUCT INVESTIGATIONS UNDERTAKEN OR OVERSEEN BY THE CORRUPTION AND CRIME COMMISSION	9
BACKGROUND	9
INQUIRY	9
Action taken by Acting Parliamentary Inspector Colvin SC	9
Action taken by me	10
Initial response from the Commission	11
The next response from the Commission	13
The final response from the Commission	14
3. OTHER COMPLAINTS WITH SIMILAR ISSUES	18
4. THE POLICE REPRESENTATIONS TO MY DRAFT REPORT	19
5. THE COMMISSION'S RESPONSE TO MY DRAFT REPORT	20
6. CONCLUSION	21
2 Committee's functions and powers	25

Executive Summary

This interim Report is based on a report delivered to the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) on 31 May 2013 by the Parliamentary Inspector of the Corruption and Crime Commission of Western Australia. It reports upon the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission (CCC). The Report's genesis was a public hearing attended by the CCC Commissioner, Mr Roger Macknay QC, and his staff on 7 November 2012.

The JSCCCC's Chairman questioned the Commissioner about when an investigation's duration becomes a point of concern for him. The Commissioner's initial reply was 'we do not currently have timelines'. At the hearing the Commissioner took a question on notice (QON) to provide the Committee more information on this matter. He provided an answer to the Committee on 14 November 2012.

The Committee considered this information at its meeting on 28 November 2012 and was conscious that it all likelihood Parliament would be prorogued imminently by the Premier. As the Committee considered that this matter could not warrant a half-year delay (by virtue of the March 2013 election), it resolved to write to the Acting Parliamentary Inspector, Mr Craig Colvin SC, to request that he inquire into this matter under s195(2)(d) of the *Corruption and Crime Commission Act 2003 (WA)* and report to the Committee by 1 June 2013. The Committee's terms of reference for this inquiry, and the answers provided by the Parliamentary Inspector in his report on 31 May 2013, are in relation to matters under investigation for a period greater than 15 months, and included:

1. the allegations that have resulted in the investigations:

Domestic assault; unlawful imprisonment; defamatory public remarks; biased investigation; assault; neglect of duty (two instances); abusive behaviour; inappropriate association; fraud (two instances); falsifying records; inappropriate sexual behaviour; inappropriate sexual relationship; and forgery.

There were nine investigations that had remained incomplete for at least 15 months on 1 February 2013 with allegations of: sexual assault; criminal association; inappropriate behaviour; stealing (five instances); and fraud.

2. which ‘appropriate authorities’ are currently conducting investigations that have been underway for a period greater than 15 months in total:

Table 1- 13 investigations underway for more than 15 months, as at 14 November 2012.

Agency	WA Police	Corrective Services	Education	Health	Transport	Treasury
Investigations	4 [#]	3	1	1	1	1

[#] One of the WAPOL investigations included three separate allegations.

Table 2- Nine investigations underway for more than 15 months, as at 1 February 2013.

Agency	WA Police	Education	Health	Transport
Investigations	8	1	5 [#]	1 [#]

[#] The Department of Health and Department of Transport investigations were shared with WAPOL.

3. reasons as to why each of these 18 investigations have been underway for a period greater than 15 months in total:

Table 3- 13 investigations underway for more than 15 months, as at 14 November 2012.

Agency	WA Police [#]	Corrective Services	Education	Health
No final report provided	5		1	
CCC failure to monitor investigation	1			
Final report completed after Nov. 2012	2			
CCC conducted own investigation upon receipt of final report		1		
Authority didn't complete its investigation				1
Public officer charged	1			
Final report remained incomplete	1			

[#] WAPOL have had five matters from other agencies handed over to it to conclude.

4. whether (and what) efforts have been made by the CCC to expedite the investigative process in each instance:

The CCC reported to the Parliamentary Inspector (PI) that in all 13 instances of the matters outstanding on 14 November 2012 it had sent the investigating authority multiple requests for status updates seeking information about the progress of these investigations. In one of the instances concerning the Department of Corrective Services (DCS), the CCC had sent one request for a status update but then neglected to send any further request before the investigation was completed by DCS three years later. The Commission has since, appropriately, openly acknowledged this oversight.

5. the extent of the CCC's 'active follow-up' in respect of each of the 16⁴ 'appropriate authority' investigations.

The CCC told the PI that in every relevant instance of delay it forwarded to the investigating authority a request for a status update to ascertain the progress of an investigation. In some instances these status updates were combined with telephone calls to the authority.

The CCC Commissioner reported to the Parliamentary Inspector that the 13 investigations outstanding on 14 November 2012 represented 0.14% of the 14,300 separate 'business processes conducted' by the CCC Corruption Prevention Directorate between 2010-12.

The PI said the Commissioner "forthrightly accepted that the failures on the part of the Commission which were demonstrated in some of the investigations the subject of this Report were unacceptable by its own standards, and cannot be justified."⁵ The Commissioner said that these failures occurred at a time of significant pressures within the Commission which have affected its capacity to properly manage the particular investigations identified.

The Commissioner told the PI that one outcome of this Inquiry was that he had caused four major changes to be made to the Commission's procedures, including:

The setting of new targets concerning misconduct investigations being conducted by authorities and being monitored by the Commission, so that 80% are completed within 9 months, 99% are completed within 12 months; a fortnightly reporting process as to each investigation's status is instituted; a new process for raising concerns over inappropriate delays to the authority's CEO is introduced; and generally, that a root and branch reform of the corruption prevention function occurs.

While it is useful that the CCC has key performance indicators such as these, the figure of 99% of misconduct investigations completed within 12 months may not actually lead to a lower number of delayed inquiries than there were in early 2013. The Committee has recommended that the Commissioner review his new processes to ensure that the

4 The CCC reduced the number of matters outstanding on 14 November 2012 when responding to the PI's request for information. It said that there were in fact 15 investigations of which two were being conducted by the CCC. This leaves 13 being undertaken by other agencies at that time.

5 Hon Michael Murray, Parliamentary Inspector, 'REPORT IN RESPONSE TO A REFERENCE BY THE JOINT STANDING COMMITTEE OF THE CORRUPTION AND CRIME COMMISSION TO INQUIRE INTO AND REPORT UPON THE TIMELINESS OF MISCONDUCT INVESTIGATIONS UNDERTAKEN OR OVERSEEN BY THE CORRUPTION AND CRIME COMMISSION', Perth, 31 May 2013, p8.

number of inquiries that are delayed beyond 12 months is substantially lower than at present.

The Commissioner also informed the PI that he and the Commissioner of Police were negotiating a new memorandum of understanding between their agencies in relation to the management and oversight of misconduct investigations. The PI thought this was an appropriate course to take, and he expected to be informed of the final outcome.

In his report, the PI said that since commencing his role he had observed in other complaints to his office significant delay on the part of the WA Police in providing information requested by the CCC. He reports on two such matters and informed the CCC's Commissioner that the failure of the Police to provide the requested information to the Commission was unacceptable and undermined the transparency and effectiveness of Western Australia's misconduct framework. The PI also informed the Commissioner that this had inappropriately delayed the fulfilment of his own oversight functions.

The PI provided a draft copy of his report to both the CCC and WAPOL. In their responses, both blamed the other agency for delays in completing investigations. The PI reports that "the Police do not accept that they have unnecessarily or intentionally delayed responses to requests for information from the Commission, that such requests are given due priority and that complaints from the Commission have not been received in this regard."⁶

One matter remains outstanding from the PI's Inquiry. This is the remote electronic access granted by WA Police to the CCC in 2007 to its complaint/investigation management system. The PI said that there has been insufficient time for him to examine this issue and see how effectively the CCC is making use of this access in its oversight role of misconduct investigations undertaken by the State's agencies.

The Committee supports the PI continuing his investigations on this matter. Hence, this is an interim report and it is anticipated that the Committee will table a final report later in 2013 when the PI has concluded his Inquiry.

6 Ibid, p12.

Findings and Recommendations

Finding 1

Page 6

The inquiry by the Parliamentary Inspector on the timeliness of inquiries overseen by the Corruption and Crime Commission has led to four major changes in procedures being implemented by CCC Commissioner Roger Macknay QC.

Recommendation 1

Page 6

The Commissioner of the Corruption and Crime Commission should, within a year of implementation, review his new timeliness performance indicator and processes to assess whether they have substantially lowered the number of inquiries by the CCC and other agencies that remain unresolved after 12 months.

Recommendation 2

Page 6

Future annual reports of the Corruption and Crime Commission should include a summary of the inquiries that it has undertaken or overseen that do not meet its timeliness performance indicator.

Finding 2

Page 6

The majority of the 15 inquiries as at February 2013 that had taken longer than 15 months to finalise involve the WA Police.

Recommendation 3

Page 6

The Corruption and Crime Commission work with the WA Police to assist them to implement timeliness performance indicators for inquiries into allegations of misconduct, similar to those it has developed, and encourage WAPOL to include a summary of this data in their future annual reports.

Finding 3

Page 8

The WA Police's response to the Parliamentary Inspector's draft report on timeliness indicates tension between it and the Corruption and Crime Commission in relation to the handling of inquiries of misconduct allegations against police.

Chapter 1

The Joint Standing Committee's concern and reference to the Parliamentary Inspector

“We do not currently have timelines.” – CCC Commissioner Macknay (November 2012)

Introduction

The Parliamentary Inspector (PI) of the Corruption and Crime Commission of Western Australia's report delivered to the JSCCCC on 31 May 2013 reports upon the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission (CCC). It is included in Appendix 1 and is the culmination of inquiries initiated at a public hearing attended by the CCC Commissioner, Mr Roger Macknay QC, and his staff on 7 November 2012.

The JSCCCC Chairman's question to the Commissioner at that hearing that initiated this PI's report was:

...is there some form of arbitrary time period that you personally think becomes a point of concern for you and you say, “The Commission has had a complaint about the WA Police”, for example, for 12 months and you, as commissioner, say, “12 months causes me concern and I would personally like to look at the file.” Is there something like that?⁷

The Commissioner's initial reply was that ‘we do not currently have timelines’ but he later added that:

As appears from our Report, the average time taken for an investigation includes a corruption prevention investigation, a preliminary investigation under section 32 and an investigation under section 33. The average time taken was 88 days, according to our Annual Report.⁸

During the following discussions between the Commissioner and Committee members, the Commissioner took a question on notice (QON) to provide the Committee more information on this issue.

⁷ Hon Nick Goiran MLC, Western Australia, Legislative Assembly, *Parliamentary Debates* (Hansard), 7 November 2012, p15.

⁸ Ibid.

Chapter 1

The Commissioner provided an answer to the QON on 14 November 2012 and said:

In relation to investigations pursuant to section 33 of the Corruption and Crime Commission Act 2003 ("the CCC Act"), one matter is a continuing investigation and one matter is a draft report subject to requirements pursuant to section 86 of the CCC Act.

The Commission monitors matters referred to appropriate authorities for them to investigate upon the completion of which the authority is required to prepare, and provide to the Commission, a detailed report on the action it has taken in relation to the allegation pursuant to sections 40(1) and 40(2) of the CCC Act. In relation to this, there are 16 matters which fit into the category of "15 months or older". The Commission has an active follow-up system for these matters.⁹

Committee reference to Parliamentary Inspector

The Committee considered this information from the Commissioner at its meeting on 28 November 2012 and resolved to write to the Acting Parliamentary Inspector, Mr Craig Colvin SC, to request that he inquire into this matter under s195(2)(d) of the *Corruption and Crime Commission Act 2003 (WA)* and report to the Committee by 1 June 2013.

The Committee's terms of reference were that in relation to matters under investigation for a period great than 15 months, it wanted to know:

1. the allegations that have resulted in the investigations;
2. which 'appropriate authorities' are currently conducting investigations that have been underway for a period greater than 15 months in total;
3. reasons as to why each of these 18¹⁰ investigations have been underway for a period greater than 15 months in total;
4. whether (and what) efforts have been made by the CCC to expedite the investigative process in each instance; and
5. the extent of the CCC's 'active follow-up' in respect of each of the 16 'appropriate authority' investigations.

9 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 14 November 2012, p2.

10 In a letter dated 14 November 2012, the Commissioner responded to questions on notice from a hearing that there were 16 'live' matters relating to sections 40(1) and 40(2) of the CCC Act ('appropriate authorities') that had proceeded for 15 months or longer. There were also one section 33 ('CCC inquiry') and one section 86 ('person subject to adverse report entitled to make representations') matters still being investigated that had taken longer than 15 months.

The Acting Parliamentary Inspector informed the Committee on 5 December 2012 that he would take up the reference under s195(1)(c) of the CCC Act which allows him to “to assess the effectiveness and appropriateness of the Commission’s procedures”.¹¹

Hon Michael Murray QC was appointed as Parliamentary Inspector on 8 January 2013. He took over this matter and his report is contained in Appendix 1.

Summary of Parliamentary Inspector’s report

In his report, Hon Michael Murray QC responded to the five terms of references provided by the Committee with the following information:

1. the allegations that have resulted in the investigations:

Domestic assault; unlawful imprisonment; defamatory public remarks; biased investigation; assault; neglect of duty (two instances); abusive behaviour; inappropriate association; fraud (two instances); falsifying records; inappropriate sexual behaviour; inappropriate sexual relationship; and forgery.

There were nine investigations that had remained incomplete for at least 15 months on 1 February 2013 with allegations of: sexual assault; criminal association; inappropriate behaviour; stealing (five instances); and fraud.

2. which ‘appropriate authorities’ are currently conducting investigations that have been underway for a period greater than 15 months in total:

Table 1- 13 investigations underway for more than 15 months, as at 14 November 2012.

Agency	WA Police	Corrective Services	Education	Health	Transport	Treasury
Investigations	4 [#]	3	1	1	1	1

[#] One of the WAPOL investigations included three separate allegations.

Table 2- Nine investigations underway for more than 15 months, as at 1 February 2013.

Agency	WA Police	Education	Health	Transport
Investigations	8	1	5 [#]	1 [#]

[#] The Department of Health and Department of Transport investigations were shared with WAPOL.

11 Austlii, *Corruption and Crime Commission Act 2003 - SECT 195*, 2003. Available at: www.austlii.edu.au/au/legis/wa/consol_act/cacca2003338/s195.html. Accessed on 3 July 2013.

Chapter 1

3. reasons as to why each of these 18 investigations have been underway for a period greater than 15 months in total:

Table 3- 13 investigations underway for more than 15 months, as at 14 November 2012.

Agency	WA Police [#]	Corrective Services	Education	Health
No final report provided	5		1	
CCC failure to monitor investigation	1			
Final report completed after Nov. 2012	2			
CCC conducted own investigation upon receipt of final report		1		
Authority didn't complete its investigation				1
Public officer charged	1			
Final report remained incomplete	1			

[#] WAPOL have had five matters from other agencies handed over to it to conclude.

4. whether (and what) efforts have been made by the CCC to expedite the investigative process in each instance:

The CCC reported to the Parliamentary Inspector (PI) that in all 13 instances of the matters outstanding on 14 November 2012 it had sent the investigating authority multiple requests for status updates seeking information about the progress of these investigations. In one of the instances concerning the Department of Corrective Services (DCS), the CCC had sent one request for a status update but then neglected to send any further request before the investigation was completed by DCS three years later. The Commission openly acknowledged this oversight.

5. the extent of the CCC's 'active follow-up' in respect of each of the 16¹² 'appropriate authority' investigations.

The CCC told the PI that in every relevant instance of delay it forwarded to the investigating authority a request for a status update to ascertain the progress of an investigation. In some instances these status updates were combined with telephone calls to the authority.

The CCC Commissioner reported to the Parliamentary Inspector that the 13 investigations outstanding on 14 November 2012 represented 0.14% of the 14,300 separate 'business processes conducted' by the CCC Corruption Prevention Directorate between 2010-12.

12 The CCC reduced the number of matters outstanding on 14 November 2012 when responding to the PI's request for information. It said that there were in fact 15 investigations of which two were being conducted by the CCC. This leaves 13 being undertaken by other agencies at that time.

The PI said the Commissioner “forthrightly accepted that the failures on the part of the Commission which were demonstrated in some of the investigations the subject of this Report were unacceptable by its own standards, and cannot be justified.”¹³ The Commissioner said that these failures occurred at a time of significant pressures within the Commission which have affected its capacity to properly manage the particular investigations identified.

The Commissioner told the PI that one outcome of this Inquiry was that he had caused four major changes to be made to the Commission’s procedures, as well as:

*The setting of new targets concerning misconduct investigations being conducted by authorities and being monitored by the Commission, so that 80% are completed within 9 months, 99% are completed within 12 months; a fortnightly reporting process as to each investigation’s status is instituted; a new process for raising concerns over inappropriate delays to the authority’s CEO is introduced; and generally, that a root and branch reform of the corruption prevention function occurs.*¹⁴

While it is useful that the CCC has key performance indicators such as these, the figure of 99% of misconduct investigations completed within 12 months may not actually lead to a lower number of lengthy inquiries than there were in early 2013. In his report, the PI outlines that the CCC received “in excess of 4,300 [misconduct allegations] in the 2011/12 financial year”. Additionally, the PI was told that “the Corruption Prevention Directorate monitored over 2,600 investigations which were being conducted by authorities during the financial years 2010/11 and 2011/12”. This is a rate of about 1,300 per year. One percent of this number is 13- about the number of inquiries that had proceeded more than 15 months in early 2013 and were the focus of the PI’s report.

The Commissioner also informed the PI that he and the Commissioner of Police were negotiating a new memorandum of understanding between their agencies in relation to the management and oversight of misconduct investigations. The PI thought this was an appropriate course to take, and he expect to be informed of the final outcome.

In his report to the JSCCCC, the PI said that since commencing his role he had observed in other complaints to his office significant delay on the part of the WA Police in providing information requested by the Commission. He provides a summary of two such matters in his report and informed the CCC’s Commissioner that the failure of the

13 Hon Michael Murray QC, Parliamentary Inspector, 'REPORT IN RESPONSE TO A REFERENCE BY THE JOINT STANDING COMMITTEE OF THE CORRUPTION AND CRIME COMMISSION TO INQUIRE INTO AND REPORT UPON THE TIMELINESS OF MISCONDUCT INVESTIGATIONS UNDERTAKEN OR OVERSEEN BY THE CORRUPTION AND CRIME COMMISSION', Perth, 31 May 2013, p8.

14 Ibid, p9.

Chapter 1

Police to provide the requested information to the Commission was unacceptable and undermined the transparency and effectiveness of Western Australia's misconduct framework. The PI also informed the Commissioner that this had inappropriately delayed the fulfilment of his own oversight functions.

Finding 1

The inquiry by the Parliamentary Inspector on the timeliness of inquiries overseen by the Corruption and Crime Commission has led to four major changes in procedures being implemented by CCC Commissioner Roger Macknay QC.

Recommendation 1

The Commissioner of the Corruption and Crime Commission should, within a year of implementation, review his new timeliness performance indicator and processes to assess whether they have substantially lowered the number of inquiries by the CCC and other agencies that remain unresolved after 12 months.

Recommendation 2

Future annual reports of the Corruption and Crime Commission should include a summary of the inquiries that it has undertaken or overseen that do not meet its timeliness performance indicator.

Finding 2

The majority of the 15 inquiries as at February 2013 that had taken longer than 15 months to finalise involve the WA Police.

Recommendation 3

The Corruption and Crime Commission work with the WA Police to assist them to implement timeliness performance indicators for inquiries into allegations of misconduct, similar to those it has developed, and encourage WAPOL to include a summary of this data in their future annual reports.

Tension between WAPOL and CCC

The PI provided a draft copy of his report to both the CCC and WAPOL. In their responses, both blamed the other agency for delays in completing investigations. The

PI reports that “the Police do not accept that they have unnecessarily or intentionally delayed responses to requests for information from the Commission”.¹⁵

In relation to this communication problem between the CCC and WAPOL, one matter remains outstanding. This is the remote electronic access granted by WA Police to the CCC in 2007 to its IAPro complaint/investigation management system. The PI said that there has been insufficient time for him to examine this issue and see how effectively the CCC is making use of this access in its oversight role of misconduct investigations undertaken by the State’s agencies.

On the 12 June 2013 the Committee wrote to the Parliamentary Inspector thanking him for the report and advising that it intended to table the report in Parliament as an interim report. It also requested the PI to continue his investigations under the current Committee reference with a focus on the extent of the effective use by the CCC of the remote electronic access granted by WA Police to it in 2007 to its IAPro complaint/investigation management system. The PI was requested to finalise this matter by 15 September 2013.

Additionally, the Committee requested that the PI provide it with a copy of the original responses to the draft of his report that had been provided by both WA Police (WAPOL) and the CCC. This material was provided on the 26 June 2013. It was considered by the Committee which resolved that there was no matter in these documents that would add to that already reported to it by the PI.

However, the Committee was concerned by aspects of the response from WAPOL prepared by Mr Dominic Staltari, APM, Assistant Commissioner for Professional Standards. The PI had written to the Police Commissioner on 16 May 2013 under s200 of the *Corruption and Crime Commission Act 2003*, which affords a reasonable opportunity to a person or body to make representations prior to the tabling of a report. The WAPOL seven-page response of 22 May 2013 stated in relation to the delay in investigating complaints:

*WA Police does not accept it has either unnecessarily or intentionally delayed responses to requests for information from the Commission and would welcome the opportunity to respond to specific cases. All requests for information and materials by the Commission are facilitated by WA Police in a reasonable time and the production is prioritised. **Complaints have not been received from the Commission in this regard.** (emphasis added)¹⁶*

15 Ibid, p12.

16 Mr Dominic Staltari, APM, Assistant Commissioner for Professional Standards, WA Police, Letter to Hon Michael Murray QC, Parliamentary Inspector, 22 May 2013, p4.

Chapter 1

The WAPOL response then concluded:

*In providing this response, my intention is not to be particularly defensive, however **WA Police continues to be frustrated at the often provocative tone and content of Commission comments and reports when examining WA Police and the way it deals with complaint management and investigation.** There seems a clear reluctance by the Commission to acknowledge the achievements of WA Police in this regard and when it does, it often presents itself as premise for them when in fact they have no or limited influence.*

*What needs to be said is that **WA Police is often frustrated by the way the Commission does its business. To say Commission business is overtaken by Commission bureaucracy and is slow to make decisions, is an understatement, and it often places WA Police in a position of not being able to deal managerially with officers in a timely manner and to effectively mitigate risks that present.*** (emphasis added)¹⁷

Finding 3

The WA Police's response to the Parliamentary Inspector's draft report on timeliness indicates tension between it and the Corruption and Crime Commission in relation to the handling of inquiries of misconduct allegations against police.

The Committee notes that it is indeed normal for there to be times of tension between bodies when one is charged with investigating and/or overseeing the other. Nevertheless it is critical that neither party's occasional frustration turn to exasperation. For the present time the Committee will maintain a watching briefing on this issue pending the receipt of the supplementary report from the PI later in the year.

The Committee thanks the Parliamentary Inspector for undertaking this inquiry in a thorough manner and looks forward to his final report.

¹⁷ Ibid, pp6-7.

Appendix One

Parliamentary Inspector's Report

REPORT IN RESPONSE TO A REFERENCE BY THE JOINT STANDING COMMITTEE OF THE CORRUPTION AND CRIME COMMISSION TO INQUIRE INTO AND REPORT UPON THE TIMELINESS OF MISCONDUCT INVESTIGATIONS UNDERTAKEN OR OVERSEEN BY THE CORRUPTION AND CRIME COMMISSION

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

31 May 2013

BACKGROUND

This Report is in response to a reference made under s195(2) of the *Corruption and Crime Commission Act 2003 (WA)* (Act) by the Joint Standing Committee of the Corruption and Crime Commission (Committee) on 30 November 2012 to Acting Parliamentary Inspector Craig Colvin SC.

The Committee's reference requested Acting Inspector Colvin SC to inquire into and to report upon the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission (Commission). The Committee asked for the Report to be tabled by 1 June 2013.

Acting Inspector Colvin SC informed the Committee on 5 December 2012 that he would exercise his audit functions under s195(1)(c) of the Act in respect of the reference. He also envisaged that the next Parliamentary Inspector, whose appointment he understood at that time to be imminent, would likely assume responsibility for the reference by virtue of the presumption contained in Part 13, Division 1 of the Act that the functions of the Parliamentary Inspector would be fulfilled by the substantive occupant of that office.

I was appointed Parliamentary Inspector on 8 January 2013, and at that time I assumed responsibility for the Committee's reference, the Inquiry and this Report.

INQUIRY

Action taken by Acting Parliamentary Inspector Colvin SC

On 3 December 2012 Acting Inspector Colvin SC wrote to Commissioner Roger Macknay QC (Commissioner) and informed him of the Committee's reference and of

his Inquiry. Acting Inspector Colvin SC requested the Commissioner to provide by 1 February 2013 his initial response to the five terms of reference provided by the Committee. The terms of reference are that in relation to matters under investigation for a period great than 15 months, the Committee desires to be informed of:

1. the allegations that have resulted in the investigations;
2. which 'appropriate authorities' are currently conducting investigations that have been underway for a period greater than 15 months in total;
3. reasons as to why each of these 18 investigations have been underway for a period greater than 15 months in total;
4. whether (and what) efforts have been made by the CCC to expedite the investigative process in each instance; and
5. the extent of the CCC's 'active follow-up' in respect of each of the 16 'appropriate authority' investigations.

The 'investigations' to which these terms of reference relate are the number of misconduct investigations, either being conducted or overseen by the Commission, that remained incomplete for more than 15 months as of 14 November 2012. These investigations were cited by the Commission in a letter to the Committee of that date.

The Commission's letter to the Committee on 14 November 2012 was its response to Question on Notice No. 5 that arose from the Commissioner's appearance before the Committee on 7 November 2012.

Acting Inspector Colvin SC also requested the Commissioner to include in his response the number of any further misconduct investigations which, by 1 February 2013, became outstanding by more than 15 months.

Action taken by me

I considered the information initially received from the Commissioner on 18 February 2013, which is identified below. After taking into account the different nature of the complaints which formed the basis of the investigations, the various reasons why those investigations remained incomplete, the relatively few authorities involved in those investigations and the number of additional investigations which became outstanding on 1 February 2013, I determined that the next step to take was to discuss the problem with the Commissioner with a view to identifying any systemic failings in the Commission's oversight procedures.

An important element of my consideration of the Commission's procedures was how the Commission reacted to tardiness, or unjustified delay, on the part of any other

authority in providing the Commission with information it had requested as part of its oversight and review of internal investigations conducted by the authorities of complaints of misconduct.

During the following three months I requested from the Commissioner updated information concerning the progress of the investigations to which the Inquiry related. That information is described below.

Coinciding with the Inquiry was my assessment of complaints to my office which were not the subject of the Inquiry, but which nevertheless exhibited similar problems to the investigations in the Inquiry. I have included in Part 3 of this Report a reference to these complaints, and my actions taken in respect of them, because in combination they have contributed to the Commissioner's proactive decision to change the procedures of the Commission which, when they take effect, should assist to address the unnecessary delays in the finalisation of misconduct investigations which are the subject of this Report.

Initial response from the Commission

The Commissioner provided his initial reply to me on 18 February 2013 after requesting an extension of time. He said he had met with the Corruption Prevention Director and Managers and instituted new procedures to ensure that he would be regularly briefed on matters which have been in review or monitor mode for more than six months.

The Commissioner corrected the number of investigations originally quoted to the Committee as being outstanding for at least 15 months as of 14 November 2012 from 18 to 13. This is because the correct number of investigations was in fact 15 and that 2 of these investigations were actually being conducted by the Commission itself.

The response the Commissioner provided concerning the five terms of reference is summarised as follows, referring to the terms of reference as they are numbered on page 2 of this Report:

1. The allegations made in respect of the original 13 investigations: Domestic Assault; Unlawful Imprisonment; Defamatory Public Remarks; Biased Investigation; Assault; Neglect of Duty (two instances); Abusive Behaviour; Inappropriate Association; Fraud (two instances); Falsifying Records; Inappropriate Sexual Behaviour; Inappropriate Sexual Relationship; and Forgery.

In respect of the 9 investigations which remained incomplete for at least 15 months on 1 February 2013 the allegations were: Sexual Assault; Criminal Association; Inappropriate Behaviour; Stealing (five instances); and Fraud.

2. In respect of the original 13 investigations the authorities were: WA Police (4); Department of Corrective Services (3); Department of Education (1); Department of Health (1); Department of Transport (1); and Department of Treasury (1).

In respect of the 9 investigations which remained incomplete for at least 15 months on 1 February 2013 the authorities were: W.A. Police (8); Department of Education (1); Department of Health (5); and Department of Transport (1).¹⁸

3. In respect of the original 13 investigations, the reasons provided by the Commission as to why they remained incomplete were:

- (a) failure by the authority to provide a final report (WA Police (5); the Department of Education (1));
- (b) failure by the Commission to monitor the authority's investigation (WA Police (1));
- (c) a final report was completed by the authority after the commencement of the Inquiry (WA Police (2));
- (d) the Commission elected to conduct its own investigation upon receipt of the authority's final investigation report (Department of Corrective Services (1));
- (e) failure by the authority to complete its investigation (Department of Health (1));
- (f) authority charged the public officer criminally (WA Police (1)); and
- (g) a final report by the authority remained incomplete (WA Police (1)).

In respect of the investigations which remained incomplete for at least 15 months on 1 February 2013, the reasons provided by the Commission were:

- (a) a final report by the authority remained incomplete (WA Police (4); Department of Education (1); Department of Health (3)); and
- (b) a final report was completed by the authority after the commencement of the Inquiry (WA Police (1); WA Police and Department of Health (2 shared investigations); and WA Police and Department of Transport (1 shared investigation)).

4. In respect of the original 13 investigations, the Commission said that in [all] instances (WA Police (9); Department of Corrective Services (2); Department of Education (1) and

¹⁸ Five of these investigations were shared by WA Police and the Department of Health and one investigation was shared by WA Police and the Department of Transport. Each of these investigations has been recorded in this Report against each authority as one investigation.

Department of Health (1)) it had sent the authority multiple requests for status updates during the authority's investigation seeking information about the progress of that investigation.

In one of the instances concerning the Department of Corrective Services, the Commission had sent one request for a status update, but then neglected to send any further request before the investigation was completed by the authority three years later. The Commission openly acknowledged this oversight to me.

In respect of the investigations which remained incomplete for at least 15 months on 1 February 2013, the Commission said that in a number of instances (WA Police (5); Department of Education (1); Department of Health (3)) it had sent the authority multiple requests for status updates during the authority's investigation seeking information about its progress.

5. In both groups of misconduct investigations examined during the Inquiry, the Commission said that in every relevant instance of delay it forwarded to the investigating authority a request for a status update (often repeated) to ascertain the progress of a particular investigation. In some instances these status updates were combined with telephone calls by the Commission to the authority involved. In one instance concerning the Department of Corrective Services, the Commission acted quickly to itself investigate a complaint after it received the Department's final investigation report (which revealed significant issues).

Further information relevant to this term of reference is discussed below.

The next response from the Commission

The Commissioner provided additional information to me on 28 February 2013. He said he had once again met with the Commission's Corruption Prevention Director and Managers to review the position concerning the misconduct investigations relevant to the Inquiry. The position as at 28 February 2013 was said to be that:

- (a) 60% of all misconduct investigations relevant to the Inquiry were complete;
- (b) the Commission continued to monitor the progress of the incomplete investigations, with some being assessed for investigation by the Commission itself (or were being so investigated), some involving public officers who had since resigned from the authority, and others where their completion was imminent;
- (c) whilst the number of investigations falling within the terms of reference of the Inquiry had been, from the Commissioner's point of view, unsatisfactory, that number represented 0.14% of the 14,300 separate 'business processes

conducted' by the Corruption Prevention Directorate in the financial years 2010/11 and 2011/12;

- (d) the Corruption Prevention Directorate assessed in excess of 9,000 allegations of misconduct during the financial years 2010/11 and 2011/12;
- (e) the Corruption Prevention Directorate monitored over 2,600 investigations which were being conducted by authorities during the financial years 2010/11 and 2011/12;
- (f) the Corruption Prevention Directorate reviewed over 2,790 investigations which had been conducted by authorities during the financial years 2010/11 and 2011/12;
- (g) the Commission throughout its existence has continually reviewed the efficiency and effectiveness of its processes and systems governing its misconduct investigation oversight function, and
- (h) the Corruption and Prevention Directorate has now reviewed and adjusted its processes to actively manage the timely finalisation of investigations subject to its oversight. This adjustment includes weekly reviews of tardy matters, the allocation of matters of concern to more senior officers of the Commission, and regular reports to the Commissioner about the timely progress of such investigations.

The final response from the Commission

The Commissioner provided his final response to me on 9 May 2013 in respect of the misconduct investigations being conducted by authorities that remained incomplete as of that date. A brief description of their individual nature and of their progress is as follows:

- a) A complaint received by the WA Police in August 2010 concerning the repeated use of a taser on a woman by Police in 2007. The Commissioner acknowledged that the Commission's procedures had not been followed in this matter, and as a consequence the Police internal investigation was not monitored as it should have been. The Police concluded that no misconduct by its officers had occurred.

Commission investigators interviewed and took a statement from the alleged victim. A Commission lawyer concluded that at the time of the incident the Police policies and procedures governing taser use were unclear and that the use of the weapon was on trial. Commission investigators determined that no

further investigation was required. The Commissioner is now personally reviewing the complaint.¹⁹

- b) A complaint received by the Commission in March 2011 concerning a Police officer who allegedly had an improper relationship with a gang, and who corruptly influenced a Police criminal investigation into members of that gang. The complaint was initially referred to the Commission's Investigations Unit, but was subsequently referred to the Police for investigation in July 2011.

The Police investigation was delayed for a number of reasons which appeared reasonable, including a decision to await the completion of a criminal prosecution which commenced in September 2012. The Commission wrote to the Police in February 2013 requiring a report into the matter within 14 days.²⁰ A further follow-up was sent by email in March 2013 and, in response, the Police provided information. The Police subsequently indicated that the complaint could not be proved, but that during its investigation a different reason for investigating the conduct of Police officers other than the original officer arose and was being pursued.

On 3 May 2013 the Commission obtained the Police records concerning the internal investigation by way of s95 notice, and is presently assessing those records.

- c) A complaint referred by the Commission to the Police on 4 July 2011 alleging that two Police officers failed to properly prioritise a 000 call. The Police investigation did not progress and on 14 February 2013 the Commission sought an update from the Police. On 18 February 2013 the Police informed the Commission that the investigating officer was on leave.

On 14 March 2013 the Police informed the Commission that the investigation was complete, but that the report had yet to be written. Some material was received by the Commission on 8 May 2013 and is presently being assessed.

¹⁹ On 22 May 2013 the Police, after receiving a draft copy of this Report under s200 of the Act, made representations to me. Concerning this particular investigation, the Police said that it received the complaint on 24 August 2010 from a person other than the person who was subjected to the use of the taser. The Police wrote to the person who had been tasered and to the complainant in September 2010, but neither engaged with the Police in its internal investigation. The Commission requested the Police file in December 2012 and received it in January 2013. The Police also said that its policies and procedures governing the use of tasers have been comprehensively reviewed and enhanced since 2010, with the direct involvement of the Commission.

²⁰ The Police in their representations to me said that there was no record of receipt of this letter from the Commission. The Police said that the only communication from the Commission in February 2013 was an email referring the matter for inquiry, and that the email did not make reference to a 14 days reporting requirement.

The Commission intends to then return the material to the Police so that the Internal Affairs Unit can complete its report.²¹

- d) A complaint that a Department of Corrective Services officer created false records to enable prisoners to obtain information by improper means. The Commission referred the complaint to the Department for investigation in June 2010. 7 status report requests were subsequently sent to the Department by the Commission, to which the Department replied that it was awaiting the outcome of a disciplinary proceeding, and that the file had been misplaced.

The Department's disciplinary proceedings ended in June 2011. However, the Department's final report raised significant issues. In response, the Commission formalised an investigation into the matter in January 2013.

The Commissioner acknowledged that the delay in this process was due to a combination of inaction by the Department and the Commission's failure to enforce its own procedures.

- e) A complaint that Police offered a lift to a complainant and then sexually assaulted the person in the rear of the Police vehicle. On 18 February 2013 the Police advised that the investigation was complete, but that the file was undergoing quality assurance processes. On 9 April 2013 the Commission requested an update. On 8 May 2013 the Commission received the Police file. The complaint was found by Police to be unsustainable.

The Commission concluded that the Police had not investigated the complaint in a timely fashion, but that the investigation appeared to be comprehensive and that it appeared to have been completed in late 2012.²²

In addition to this information, the Commissioner informed me that he and the Commissioner of Police are to shortly negotiate a new memorandum of understanding between their agencies in relation to the management and oversight of misconduct investigations. In my view this is an appropriate course to take, in the circumstances. I expect to be informed of the outcome of this dialogue.

The Commissioner forthrightly accepted that the failures on the part of the Commission which were demonstrated in some of the investigations the subject of this

²¹ The Police in their representations to me said that the senior officer who has responsibility for writing the investigation report has been delayed in completing that task due to performing higher duties. The Police also said that the Commission had been advised of the cause of that delay, and they had provided verbal briefings in respect of the matter when requested.

²² The Police in their representations to me disputed the Commission's conclusion about the timeliness of its investigation. It said that the investigation was concluded in February 2012, that the complainant and the Commission were advised of its outcome, and that the Commission had not made any adverse comment to the Police about its timeliness.

Report were unacceptable by its own standards, and cannot be justified. He explained that these failures occurred at a time of significant pressures within the Commission which have affected its capacity to properly manage the particular investigations identified.

These pressures were that the number of allegations received by the Commission had grown from 2,400 in 2004 to in excess of 4,300 in the 2011/12 financial year, and that a greater focus was placed by the Commission on its corruption prevention and education programs which are designed to improve the capacity of authorities to prevent corrupt conduct and, when necessary, to respond more effectively when misconduct does occur.

The Commissioner said that the Commission's ability to undertake significant other organisational and process reform in the period 2009 to 2012 had been hampered because the government had foreshadowed an imminent legislative change that would see part of its corruption prevention and education functions transferred to the Public Sector Commission.

The Commissioner informed me that since his appointment in November 2011 and as a result of his own evaluation of the Commission's corruption prevention and education functions and of the way the Commission dealt with allegations of the use of excessive force by the Police, he has caused [four] major changes to be made to the Commission's procedures:

- (a) Far more attention is to be paid to dealing with allegations of the use of excessive force by Police, and that Police pursuits be included in this refocus. As a consequence, however, considerable pressure has been placed on the Corruption Prevention Directorate, including a change to its systems, processes and procedures in an environment where an already heavy workload was becoming more so;
- (b) A re-examination by that Directorate of its approach to corruption prevention;
- (c) A reorganisation of that Directorate to ensure the application of appropriate resources to meet the increased demands of the allegations assessment, monitoring and review function, and to take a more strategic approach to its corruption prevention and education function;
- (d) The setting of new targets concerning misconduct investigations being conducted by authorities and being monitored by the Commission, so that 80% are completed within 9 months, 99% are completed within 12 months; a fortnightly reporting process as to each investigation's status is instituted; a new process for raising concerns over inappropriate delays to the authority's

CEO is introduced; and generally, that a root and branch reform of the corruption prevention function occurs.

Finally, the Commissioner said that the Corruption Prevention Directorate has foreshadowed the need for further resources to cope with its rising workload. The Commissioner has not identified what, if any, additional resources might be needed in this respect. He considers that he will have a clearer picture of this once the changes he has required to be implemented take full effect.

3. OTHER COMPLAINTS WITH SIMILAR ISSUES

Since commencing my role as Parliamentary Inspector of the Corruption and Crime Commission, I have observed in other complaints to my office significant delay on the part of the WA Police in providing information requested by the Commission to enable it to monitor, or to review, the progress and effectiveness of Police internal misconduct investigations conducted against its own officers.

Complainants to my office have, typically, complained to the Police in the first instance about the conduct of its own officers. Being dissatisfied with the Police internal investigation, the complainants then complained to the Commission. Their complaints encompassed the Police conduct which gave rise to their original complaints and a request for the Commission to review the Police internal investigation. To conduct that review it was necessary for the Commission to obtain the Police internal investigation files. At times it was necessary for the Commission to obtain further information from the Police after receiving those files.

In one instance the Commission explained that a delay by the Police in providing rudimentary information to it, despite repeated requests, contributed to the complaint remaining incomplete for three years. The Commission resorted to s95 of the Act and served a notice on the Police to compulsorily obtain the information.

In another instance a Police misconduct investigation into a serious matter (which was being overseen by the Commission) took two years to complete. This delay occurred in part because the Commission permitted the Police (without justification, in my view) to conclude a second, closely-related misconduct investigation without concluding the first investigation. The second investigation arose during the first misconduct investigation and was conducted in conjunction with the Commission.

The Commission did not inform me of the existence of the second misconduct investigation during my assessment of a complaint to me about the first investigation. Nor did the Commission inform me of its decision to permit the Police to complete the second investigation before concluding its oversight of the first investigation. As a consequence, not only was my assessment of the complaint made to me about the first

investigation delayed, but it was concluded before the Commission provided me with a full explanation of the relevance of the second investigation.

While I did not have a direct interest in the conduct of the second misconduct investigation, in that a complaint had not been made to me about it, I would have had a direct interest in its existence and the course it took had I been informed of it. It provided a full context to the first investigation.

The Commission erred in adopting the approach it did. It impacted upon the timeliness of the fulfilment of my functions. I intend to pursue this issue with the Commissioner.

In general, in relation to these two matters, I informed the Commissioner that the failure of the Police to provide requested information to the Commission was unacceptable and undermined the transparency and effectiveness of Western Australia's misconduct framework. I also informed the Commissioner that, as a result of these deficiencies, the fulfilment of my functions had been inappropriately delayed.

My assessment of the effectiveness and appropriateness of the procedures of the Commission used in these two investigations resulted in recommendations being made to it. These recommendations included action by the Commissioner:

1. either through improvements to the Commission's procedures, or their enforcement, to ensure that complaints against the Police are dealt with more effectively and expeditiously;
2. designed to bring about timely rectification of delays by the Police when answering Commission requests for information; and
3. designed to bring about changes in the procedures of the Police to ensure that the Commission may be satisfied that all requested information will be provided in a timely fashion.

I am closely monitoring the results of the implementation of my recommendations. If they do not produce the degree of transparency and effectiveness in the State's misconduct framework necessary to instil confidence that complaints of Police misconduct are robustly investigated, or if they do not demonstrate that the problems inherent in the two instances of complaint to which I have referred have been resolved, I will consider taking further action.

4. THE POLICE REPRESENTATIONS TO MY DRAFT REPORT

As explained in footnotes 2-5 [above], the Police made representations to me in respect of my draft Report on 22 May 2013. The agency's representations were made in response to specific internal Police misconduct investigations, and in respect of

issues in its relationship with the Commission within the misconduct oversight framework which impacted upon the resolution of those investigations.

The representations made to me in response to specific investigations, the subject of this Inquiry, which were sufficiently material to mention in this Report have been referred to in the footnotes described. In relation to the other category of representations, those which were directly relevant to the subject-matter of this Report were as follows:

- a) an acknowledgement that in some cases delays have occurred in providing completed investigation files to the Commission, however such situations are in the minority;
- b) the completion of an investigation in a timely way is considered to be more important than the completion of the final Police report, and where there is a delay in the latter the outcome of the investigation is communicated to the Commission;
- c) a greater emphasis will be placed on investigation timeframes as part of a regular review of Police management processes;
- d) the Police do not accept that they have unnecessarily or intentionally delayed responses to requests for information from the Commission, that such requests are given due priority and that complaints from the Commission have not been received in this regard;
- e) remote electronic access has been granted to the Commission to the Police case/complaint management system in 2007 so that the Commission could immediately apprise itself of all aspects of its investigations. The system is updated daily. Despite this access, the Commission insists on manual-type reporting mechanisms and seeks updates either by telephone, or by the production of hardcopy materials. Discussions with the Commission are progressing to significantly increase the Commission's use of the system which will result in process effectiveness and efficiency gains; and
- f) the Police are frustrated at times with the speed and efficiency of the Commission's own processes within the misconduct investigation framework, which in turn affects the timely manner in which the Police deals managerially with their own officers.

5. THE COMMISSION'S RESPONSE TO MY DRAFT REPORT

The Commission responded to my draft Report on 22 May 2013. It did not make representations in respect of it, but the Commissioner informed me that:

1. the first task of the Commission's audit plan for the 2013-2014 financial year is to review the efficiency of its complaints handling to determine if it complies with its own policies and procedures, and with the Act, and to determine the efficiency and effectiveness of the Commission's assessment, monitoring, review and prioritisation of complaints.

This task will also include an assessment of how the Commission monitors allegations referred back to agencies for internal investigation;

2. the Commission's procedures have been altered so that a letter which outlines the progress of an investigation is sent to a complainant every fortnight for all active matters under assessment, and every month for matters under review; and
3. the complaint concerning the use by the Police of a taser which is mentioned on page 6, paragraph (a) of the Report is now being considered by the Commission's Tasking and Coordination Group of its Investigations Division.

6. CONCLUSION

The timely, transparent and efficient investigation and oversight of complaints of misconduct must be fundamental elements of the legislative framework in this State. If they are not, or if problems with the framework are not swiftly identified and corrected, then its integrity is weakened and the public's confidence in it lost.

Intrinsic to maintaining the integrity of the Commission's oversight function within the framework is the authorities' responsiveness to requests for information from the Commission, and the effectiveness of the Commission's enforcement of those requests. The integrity of the framework is degraded if a perception is formed that the Commission tolerates substandard internal misconduct investigations by authorities, or their untimely production of information to it.

The Inquiry conducted in response to the Committee's reference and my coincidental assessment of complaints made to my office demonstrate problems during the relevant period in the procedures used by the Commission to monitor and review misconduct investigations in some public sector authorities. The Inquiry also revealed a Police perception of difficulties they have with the Commission's own procedures.

Throughout the Inquiry the Commissioner forthrightly acknowledged the existence of some problems, his view of why they arose, and the actions he has taken, and proposes to take in the future, to address them. The very nature of these problems, of the oversight and review work performed by the Commission, and of the actions taken by the Commissioner in response means that it will take time for me to fully evaluate the

effectiveness and appropriateness of the Commission's new procedures. I therefore intend to closely monitor the process of their adoption.

If the desired improvements do not become evident, I intend to reassess those procedures. In this respect I will be requesting the Commissioner to provide me with his personal assessment of the effect of those procedures.

As a consequence of the Inquiry a broader concern I have is with the overall effectiveness and efficiency of the State's present legislative misconduct framework. As pointed out by the Commissioner, the Commission manages a substantial and growing number of complaints of misconduct. These complaints are usually either received by the Commission directly, or are mandatorily reported to it by authorities. The Commission's Annual Reports show that such complaints, in almost every case, are returned to the authorities for investigation.

A particular authority's subsequent internal investigation might then be reviewed by the Commission as part of its random audit of authorities, or it might be reviewed in special instances where the necessity arises. But once an investigation is referred to an authority, the complainant must deal with the investigators within that authority, rather than an officer of the Commission. This can be the case even when the complainant complains directly to the Commission in the first instance and asks the Commission to investigate the complaint, or when the complainant expressly opposes the complaint being investigated by the authority.

Such a situation, on occasion, causes confusion and frustration in a complainant. It also excites a view that this framework is circuitous and costly to the State.

I intend to discuss these issues with the Commissioner in due course after I have had more time to examine the efficiency of the operation of the present, but modified, framework.

However, as to the issues with which this Inquiry is concerned, the procedural changes the Commissioner has unilaterally made in response to the problems highlighted by the Inquiry, and an acceptance by him of my recommendations made as a result of the assessment of the two complaints to my office, should produce a positive impact on the problems which formed the basis of the Committee's reference.

One final issue which has arisen during the s200 representation process is the remote electronic access granted by the Police to the Commission in 2007 to its complaint/investigation management system. Due to the date by which this Report was required to be made, and the time when this aspect of the process was first mentioned, there has been insufficient time for me to examine this issue.

There is an obvious degree of frustration within the Police that the access granted to the Commission was intended to address the communication problems experienced between the two agencies, but it does not appear to be achieving this objective. The Police say that the Commission continues to seek updates by telephone, or by way of hard-copy documentation, and that this practice causes unnecessary delay.

The opportunity for me to raise this issue with the Commission has not presented itself. However, the Commissioner in recent correspondence to me involving those complaints referred to in Part 3 of this Report has said that some Commission officers, in recent months, have started interrogating the Police databases as part of their misconduct oversight function.

This issue should be examined, in my view. I would therefore be grateful, if the Committee agrees, if you would indicate whether you would prefer that this be done as part of this Reference, or if you would be content for me to proceed with it. I would, of course, if the latter was the option you chose, provide you with the result of my enquiries.

HON MICHAEL MURRAY QC, PARLIAMENTARY INSPECTOR

Appendix Two

Committee's functions and powers

On 21 May 2013 the Legislative Assembly received and read a message from the Legislative Council concurring 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.