



Joint Standing Committee on the Corruption and Crime Commission

**The timeliness of misconduct investigations
undertaken or overseen by the
Corruption and Crime Commission:**

Final Report

**Report No. 13
June 2014**

Parliament of Western Australia

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Joint Standing Committee on the Corruption and Crime Commission

**The timeliness of misconduct
investigations undertaken or
overseen by the Corruption and
Crime Commission:**

Final Report

Report No. 13

Presented by

Hon Nick Goiran, MLC and Mr Peter Watson, MLA

Laid on the Table of the Legislative Assembly and Legislative Council
on 19 June 2014

Chairman's Foreword

This report provides information from the Parliamentary Inspector of the Corruption and Crime Commission (PICCC) that finalises his inquiries into the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission (CCC). The initial reference on this matter was given to the Acting Parliamentary Inspector, Mr Craig Colvin SC, by the Joint Standing Committee (JSCCC) in the 38th Parliament on 28 November 2012.

This final report was required because the CCC advised the PICCC that a WA Police (WAPOL) internal investigation into a complaint of misconduct which was being overseen by the Commission during the PICCC's initial inquiry was inadvertently overlooked and, consequently, not reported to him. This was due to the complaint being incorrectly categorised in the CCC's case management system.

The PICCC concludes this report by saying that no further action is immediately required by him, as changes have been made to the CCC's processes. The Commission believes these changes will further improve its oversight of WAPOL and other public sector agencies' internal investigations, particularly those investigations which have existed for some time.

These new changes are in addition to others made by the CCC after the PICCC's initial report. That earlier report led to major changes being made to the CCC's procedures as well as the negotiation of a new memorandum of understanding between the CCC and WAPOL in relation to the management and oversight of misconduct investigations.

I would like to thank the Parliamentary Inspector of the Corruption and Crime Commission, Hon Michael Murray QC, for completing his inquiries into this important matter.

I would also like to acknowledge the work on this report by my Committee colleagues: the Deputy Chairman Mr Peter Watson MLA, the Member for Albany; Mr Nathan Morton MLA, the Member for Forrestfield; 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

Contents

Findings and Recommendations	i
1 Final report into CCC's timeliness	1
<hr/>	
Overview of Parliamentary Inspector's reports to Parliament	1
Appendices	3
<hr/>	
1 Parliamentary Inspector's Report	3
1. PURPOSE	3
2. THE IDENTIFICATION OF A FURTHER COMPLAINT	3
3. THE COMPLAINT	4
4. FURTHER INVESTIGATIONS INTO THE COMPLAINT	4
5. CONCLUSION	7
2 Committee's functions and powers	9

Findings and Recommendations

Finding 1

Page 2

The Parliamentary Inspector of the Corruption and Crime Commission has concluded his inquiries into the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission and his reports have resulted in improved processes within the Commission to improve its oversight of WA Police and other public sector agencies.

Chapter 1

Final report into CCC's timeliness

...changes have been made to the CCC's processes which the Commission believes will further improve its oversight of WAPOL and other public sector agencies' internal investigations, particularly those investigations which have existed for some time.

Parliamentary Inspector of the Corruption and Crime Commission

Overview of Parliamentary Inspector's reports to Parliament

This report provides information from the Parliamentary Inspector of the Corruption and Crime Commission (PICCC), Hon Michael Murray QC, that finalises his inquiries into the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission (CCC). The initial reference on this matter was given to the Acting Parliamentary Inspector, Mr Craig Colvin SC, by the Joint Standing Committee (JSCCCC) in the 38th Parliament on 28 November 2012.

Since the commencement of the 39th Parliament, this will be the fourth report tabled by the JSCCCC on this matter since the PICCC provided his initial report to the Committee on 31 May 2013:

Report 4- *The timeliness of misconduct investigations undertaken or overseen by the CCC: An interim report*, tabled in Parliament on 15 August 2013.

Report 5- *The timeliness of misconduct investigations undertaken or overseen by the CCC: Supplementary report*, tabled in Parliament on 19 September 2013.

Report 7- *The timeliness of misconduct investigations undertaken or overseen by the CCC: Additional information*, tabled in Parliament on 5 December 2013.

This final report was required because the CCC advised the PICCC that a WA Police (WAPOL) internal investigation into a complaint of misconduct, which was being overseen by the Commission during his initial inquiry, was inadvertently overlooked and, consequently, not reported to the PICCC. This was due to the complaint being incorrectly categorised in the CCC's case management system.

The complaint involved a 15 year old intoxicated boy who had been left in the back of a police van in Collie for approximately two-and-one-half hours on a cold winter's night until his parents arrived at the Police Station from Mandurah.

Chapter 1

The CCC said that when it discovered the error it reviewed WAPOL's internal investigation and subsequently disagreed with the outcome of WAPOL's internal investigation – which was that the complaint was not sustained – and the CCC recommended that disciplinary action be considered against the officers. The PICCC wrote to the CCC advising that he intended to monitor the matter until its resolution.

The PICCC concludes this final report to the Committee by saying that no further action is immediately necessary by him, as changes have been made to the CCC's processes. The Commission believes these changes will further improve its oversight of WAPOL and other public sector agencies' internal investigations, particularly those investigations which have existed for some time.

These new changes are in addition to others made by the CCC after the PICCC's initial report. That earlier report led to major changes being made to the CCC's procedures as well as the negotiation of a new memorandum of understanding between the CCC and WAPOL in relation to the management and oversight of misconduct investigations.

These changes in procedures since the PICCC began his inquiry 18 months ago include:

- new CCC targets concerning misconduct investigations being conducted by authorities and being monitored by the Commission, so that 80% are completed within 9 months, and 99% are completed within 12 months;
- a fortnightly reporting process within the CCC as to each investigation's status;
- a new process for raising concerns with an authority's CEO over inappropriate delays to an agency's internal inquiry; and
- agreement from Police Commissioner O'Callaghan to the CCC's extended access to WAPOL's IPro database to oversight WAPOL's investigations of its officers.¹

Finding 1

The Parliamentary Inspector of the Corruption and Crime Commission has concluded his inquiries into the timeliness of misconduct investigations undertaken or overseen by the Corruption and Crime Commission and his reports have resulted in improved processes within the Commission to improve its oversight of WA Police and other public sector agencies.

1 Mr Roger Macknay QC, Commissioner, Corruption and Crime Commission, Letter, 9 May 2013.

Appendix One

Parliamentary Inspector's Report

SECOND 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

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

8 April 2014

1. PURPOSE

The purpose of this Report is to further inform the Joint Standing Committee of the Corruption and Crime Commission (Committee) of the outcome of my investigation conducted pursuant to the Committee's reference to Acting Parliamentary Inspector Craig Colvin SC on 30 November 2012 made under s 195(2)(d) of the Corruption and Crime Commission Act 2003 (WA) (Act), and in furtherance to my Report tabled with the Committee on 31 May 2013.

2. THE IDENTIFICATION OF A FURTHER COMPLAINT

On 3 October 2013, the Corruption and Crime Commission (Commission) explained that a Police internal investigation into a complaint of misconduct which was being overseen by the Commission during my initial Inquiry pursuant to the Committee's reference was inadvertently overlooked and, consequently, not reported to me. This was because the complaint had been incorrectly categorised in the Commission's case management system.

The Commission explained that it referred the complaint to the Police for internal investigation in August 2011. However, the matter was incorrectly categorised as 'outcome only' on its case management system. The Commission discovered its error in September 2013, and at that time the investigation file was with the Internal Affairs Unit of the Police awaiting the writing of an investigation report.

The Commission said that upon this discovery it reviewed the Police internal investigation with urgency. The Commission subsequently disagreed with the outcome of the Police investigation – which was that the complaint was not sustained – and recommended that disciplinary action be considered against the officers.

On 7 November 2013, I wrote to the Commission and said that I intended to monitor the matter until its resolution.

3. THE COMPLAINT

The complaint involved a 15 year old intoxicated boy who was left in the back of a Police van by Collie Police for approximately two-and-one-half hours on a cold winter's night. He remained detained in this state until his parents arrived at the Police Station from Mandurah.

The Commission said in a letter to me that the boy had been vomiting, was wet with urine and that upon arrival at Collie Hospital his body temperature was 35.5 degrees. The Commission said that hypothermia sets in at 35 degrees, and described the detaining officers' explanation for keeping the boy where they did: that it was warmer in the police van than in the cells of the Police Station, and that it was best for the boy to be kept upright in the event that he vomited.

The Commission's view that there was a significant risk of the development of hypothermia sufficiently severe as to be capable of causing harm to the child was supported by the opinion provided by Dr David Mountain, Associate Professor in Emergency Medicine at the University of Western Australia, to which I will later refer in more detail.

The Commission noted that the boy had not been conducting himself in a disorderly fashion, and that s 11 of the Protective Custody Act 2000 (WA) and s 41 of the Children and Community Services Act 2004 (WA) place a high duty of care upon those who apprehend a child purely for his or her own welfare.

4. FURTHER INVESTIGATIONS INTO THE COMPLAINT

On 18 December 2013, I requested an update of the Commission's further investigations into the complaint. On 9 January 2014, the Commission replied by providing me with a copy of a letter from the Police Internal Affairs Unit dated 6 November 2013. The letter explained:

1. the delay in the Police internal investigation was unacceptable, that an Acting Inspector had been held to account for that delay, and that the risk of such a delay recurring has been significantly reduced by improved processes within the Unit, and in the communication of the Commission's priorities to it;
2. the Police officers involved said that they did not place the boy in the cells of the Police Station because the cells were exceptionally cold. Work is now being undertaken on the cells in this regard as part of a Custodial Facilities Upgrade Program;

3. the level of managerial intervention against the Police officers involved would not change, despite one of them indicating during the investigation that he would likely do the same thing again. The officer was counselled by a senior officer, and accepted that he could have done things better;
4. the head of Collie Hospital nursing said that upon attendance the boy's condition was not serious, and that he was simply intoxicated;
5. the outcome of the complaint was changed from 'not sustained' to 'sustained' because the boy should have been given a blanket while he was in the back of the police van, and that greater consideration should have been given to placing him in the Police Station in an appropriately supervised environment during his detention, and
6. the boy's mother was to receive a written apology for the delay in the Police investigation.

The Commission said in its letter to me that it intended to make further enquiries with the head of the Collie Hospital nursing into the boy's condition when he attended the hospital.

On 25 February 2014, I wrote to the Commission and requested an update on its further investigations, and on 21 March 2014 the Commission replied, saying that it had concluded its consideration of the matter. As a consequence of its initial error in categorising the complaint, the Commission implemented new processes to ensure that the risk of similar delays occurring again is minimised.

The Commission said one procedural change is that each month the Commission sends a list of all Police matters being monitored to the Police Internal Affairs Unit and the Police Complaints Section seeking information on their status. Cases outstanding for nine months or more are escalated to the Commission Executive, whereupon decisions are made about the appropriate action to be taken.

Another procedural change is that the Commissioner of Police may escalate matters to him directly should the Commission experience significant delays in receiving a response from either the Internal Affairs Unit, or the Police Complaints Section.

The Commission said that each month the Assistant Director responsible for Police complaints meets with the Superintendent of the Internal Affairs Unit to discuss cases of interest, including those matters which have been outstanding for some time.

In relation to the level of managerial intervention by senior Police concerning the two officers involved in the detention of the boy, the Commission said that it raised its concerns over its adequacy, and that the Police subsequently served those officers with

letters of corrective advice and changed the outcome of the internal investigation from 'not sustained' to 'sustained'. The Commission accepted the adequacy of the Police finalisation of the matter.

The Commission attached a copy of a letter from Dr David Mountain MBBS FCAEM, Associate Professor in Emergency Medicine, dated 20 March 2014 in which he, after being invited to do so by the Commission, commented on the health issues involved in the boy's detention. The principal observations made by Dr Mountain were:

- the boy's temperature of 35.5C and other observations made of his cognisance upon arrival at Collie Hospital were not consistent with hypothermia;
- the boy would have been at risk of developing mild hypothermia (32-35C) had he been left for another hour in the detention conditions; however, had he been left for another hour it was unlikely that this would have led to a risk of direct death from hypothermia (which requires a temperature of 32C or below);
- had the boy been left for a few more hours, he may well have become very cold. Dr Mountain and other doctors have seen deaths and severe outcomes in drunk teenagers after 5-8 hours who have been left outside on cold nights. If the boy had been left for 3-4 hours, he could have developed significant hypothermia (29-32C), and his level of intoxication would have placed him at a much higher risk of poor control of his airway in such a state; and
- it was unreasonable for the Police to place, and keep, the boy in the situation they did.

On 1 April 2014, I wrote to the Commission and asked for a description of the processes it employs to ensure the timely internal investigations by other agencies, if such processes are different to those employed concerning the Police. On 5 May the Commission confirmed that the procedural changes described above in this Part are applied by the Commission to all agencies in the public sector of Western Australia.

It said that each month the Assistant Director Corruption Prevention sends a schedule of outstanding matters to the Department of Health, the Department of Education and the Department of Corrective Services. The schedules seek information on the status of cases which have been with the Departments for more than five months.

The Assistant Director also meets with officers from these agencies to discuss cases of interest which merit intensive oversight from the outset, including, but not restricted to, those matters which have been outstanding for some time.

All cases over nine months old are escalated to the Commission Executive each month and decisions made about the action that should be taken. The Commissioner writes to the head of an agency if a matter is outstanding for more than 12 months.

5. CONCLUSION

The Commission's initial incorrect categorisation of this complaint is regrettable, as the circumstances of the boy's detention are disturbing. The Commission's error made the consequent delay in fully assessing the Police internal investigation inevitable. This matter demonstrates that human error can undermine the workings of what would otherwise be considered adequate processes within the Commission.

Nevertheless, changes have been made to those processes which the Commission believes will further improve its oversight of Police and other public sector agencies' internal investigations, particularly those investigations which have existed for some time. I have no reason to question the basis for the Commission's belief in this regard, however I will maintain a close observation of how the Commission's procedures function in the coming months.

Having regard to the Commission's response to its error, its objection to the Police assessment of the complaint, and the consequent change in the outcome of the Police internal investigation, I do not consider that any further action is immediately necessary by me.

HON MICHAEL MURRAY AM 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.