



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

**Public hearing with the Police Commissioner  
on the CCC's report on an incident at the  
East Perth Watch House**

**Report No. 26  
February 2016**

Parliament of Western Australia

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

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## **Public hearing with the Police Commissioner on the CCC's report on an incident at the East Perth Watch House**

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Report No. 26

Presented by

**Hon Nick Goiran, MLC and Mr Peter Watson, MLA**

Laid on the Table of the Legislative Assembly and Legislative Council  
on 25 February 2016



## Chairman's Foreword

This report by the Joint Standing Committee follows the Corruption and Crime Commission's (CCC) *Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013*. The Report was tabled in Parliament on 20 August 2015, some thirty months after the incident was first reported to the Commission.

The CCC's report was in response to a complaint made by Ms Joanne Martin who had been arrested in Northbridge for disorderly behaviour and taken by WA Police (WAPOL) officers for processing to the East Perth Watch House. The subsequent inquiry into the actions of 12 WAPOL staff stationed at the Watch House who had some involvement in the incident resulted in the Commission making the following opinions:

- serious misconduct within the meaning of section 4(c) of the CCC Act against two WAPOL staff;
- reviewable police action within paragraph (b) of the definition of reviewable police action at section 3 of the CCC Act against two WAPOL staff; and
- serious misconduct, misconduct within the meaning of section 4(d) (iii) and (vi) of the CCC Act, and reviewable police action against one Police Auxiliary and Custody Officer.

In addition to the opinions above, the Commission made six recommendations to WAPOL about the future operation of their watch houses. These recommendations were related to areas of Supervision and Training, Policy and Procedures, Consistency of Supervision and Joint Training, Record Keeping and Decision-Making, Electronic Record Keeping and Avoiding Officers Seeing Naked Detainees of the Opposite Sex.

Although WAPOL accepted the report's recommendations, the Police Commissioner, Dr Karl O'Callaghan APM, said the officers who remained at WAPOL since the incident would not face criminal or disciplinary action because of the amount of time that had passed since the alleged assault.<sup>1</sup> Additionally, it was his view that Ms Martin escalated the use of force that was required in that incident, and as such that the process used by the police was lawful.<sup>2</sup>

This report by the Committee provides a timeline of the Commission's 30 month investigation into the incident. The Committee sought comment from CCC Commissioner, Hon John McKechnie QC, as to the reasons that may have contributed to the delay. Commissioner McKechnie advised that there were two substantial delays

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1 *Perth Now*, 'Corruption and Crime Commission reveals misconduct by police officers against woman at East Perth Watch House', 20 August 2015.

2 *Ibid*.

in the Commission's process of investigating and reporting this matter due to competing urgent matters<sup>3</sup>, for a period of 4 months (April to July 2014) and a further 12 months (from August 2014 to August 2015). He said that the delays were attributed:

*...in part due to the tardiness in the appointment of a substantive Commissioner from April 2014-April 2015 and the need for two Acting Commissioners to work on a rostered basis for that period whilst continuing to manage law private practices outside the Commission.*<sup>4</sup>

The difficulties faced by the two Acting Commissioners in undertaking their private full-time legal practices while also acting on a rotating basis as Commissioner every two weeks followed the resignation of then-Commissioner Mr Roger Macknay QC in April 2014. The Committee's Report No. 15, *Ensuring the Timely Appointment of a New Corruption and Crime Commissioner*, in August 2014 highlighted the implications of this arrangement and made four recommendations to address the situation. Regrettably, however, only one of these recommendations was accepted and acted on.

In this current report the Committee reiterates two of the same recommendations to amend the *Corruption, Crime and Misconduct Act 2003* to ensure the Corruption and Crime Commission is not in the future left similarly exposed to lengthy periods without a substantive Commissioner.

I would like to thank my fellow Committee Members for their input on this report; the Committee's Deputy Chairman, the Member for Albany, Mr Peter Watson MLA; the Member for Forrestfield, Mr Nathan Morton MLA, and the Member for the South West Region, Hon Adele Farina MLC. We were ably supported by the Committee's Secretariat, Dr David Worth and Ms Jovita Hogan.



**HON NICK GOIRAN, MLC**  
**CHAIRMAN**

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- 3 Two of these 'urgent matters' were the serious allegations of misconduct made against CCC staff in the Commission's Operational Support Unit and Electronic Collection Unit. These allegations were the subject of Joint Standing Committee reports tabled in the Parliament on 17 June 2015 and 26 November 2015.
- 4 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 9 December 2015, p4.

# Contents

Findings and Recommendations	i
1 Review of WAPOL response to CCC’s report into allegations of misconduct at the East Perth Watch House	1
<hr/>	
Introduction	1
Report recommendations for improvements to watch houses	3
Police Commissioner’s initial response to the Commission’s report	7
Public hearing with Police Commissioner	7
Answers to Questions on Notice from the Police Commissioner	11
Information provided by the CCC Commissioner	11
Timeline of the Commission’s investigation of the incident	12
The delay in completing the Commission’s investigation	14
Appendices	17
<hr/>	
1 Transcript of WAPOL public hearing- 25 November 2015	17
2 WAPOL answers to Questions on Notice	45
3 Response from CCC Commissioner	49
4 Committee’s functions and powers	53



# Findings and Recommendations

## **Finding 1**

**Page 9**

The Corruption and Crime Commission’s thorough investigation of the incident at the East Perth Watch House in April 2013 has resulted in changes to procedures in the new Perth Watch House that address the weaknesses highlighted by the Commission’s report.

## **Finding 2**

**Page 9**

The Corruption and Crime Commission’s recommendations flowing from its investigation of the incident at the East Perth Watch House in April 2013 have led to the State-wide introduction by WA Police of a new electronic record-based software.

## **Finding 3**

**Page 15**

There were two substantial delays amounting to 16 months during the Corruption and Crime Commission’s process of investigating and reporting the incident at the East Perth Watch House. These delays were due to competing urgent matters, in part due to the tardiness in the appointment of a substantive Commissioner until April 2015, and the need for two Acting Commissioners to work on a rostered basis whilst continuing to manage their private practices outside of the Commission.

## **Recommendation 1**

**Page 16**

The Attorney General prepare an amendment to the *Corruption, Crime and Misconduct Act 2003* to allow for the appointment of a Deputy Commissioner to assist the Corruption and Crime Commissioner in the day to day work of the Commission, and to ameliorate difficulties created by delays in the appointment of future Commissioners.

## **Recommendation 2**

**Page 16**

The Attorney General prepare an amendment to sections 9(3a)(a) and 9(3b) of the *Corruption, Crime and Misconduct Act 2003* to remove the role of a nominating committee and allow the Government to propose one name of a suitable Commissioner to the Joint Standing Committee for its consideration.



# Chapter 1

## Review of WAPOL response to CCC's report into allegations of misconduct at the East Perth Watch House

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*The Commission recognises the commitment by WA Police to continuously improve systems and processes, and the willingness to work, and fully cooperate, with the Commission in an effort to do so. Acting Commissioner Christopher Shanahan SC.*

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### Introduction

Late on the evening of 6 April 2013 Ms Joanne Martin was arrested with her boyfriend in Northbridge for disorderly behaviour and taken by WA Police (WAPOL) officers for processing to the East Perth Watch House<sup>5</sup>.<sup>6</sup> During the early hours of 7 April 2013 as Ms Martin was being processed she was forcibly strip-searched by up to seven WAPOL officers, both Police Auxiliary Officers and sworn Officers.<sup>7</sup> Ms Martin was then moved through the Watch House to a padded cell, covered by just a blanket.<sup>8</sup>

At some stage during the evening Ms Martin suffered physical injuries, including a broken finger, and was seen by a nurse at the Watch House.<sup>9</sup> Before leaving the Watch House Ms Martin raised her injuries with Sergeant Andrew Unsworth and said that she wished to make a complaint about her treatment.<sup>10</sup> Despite the Watch House's Standard Operating Procedures (SOP) requiring him to personally interview her, Sergeant Unsworth only provided Ms Martin with a pamphlet about the WAPOL complaint process.<sup>11</sup>

After her release from the Watch House on 7 April 2013 Ms Martin attended Rockingham General Hospital and was seen by Dr Shane Leavy, who told the

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5 This Watch House was then known as the East Perth Lockup and has since this incident it was replaced on 31 July 2013 by a custom-built new building in Northbridge.

6 Corruption and Crime Commission, *Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013*, 20 August 2015, p11. Available at: [www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf](http://www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf). Accessed on 19 January 2016.

7 Ibid, pp13-21.

8 Ibid, p22.

9 Ibid, p24.

10 Ibid, p25.

11 Ibid.

## Chapter 1

Corruption and Crime Commission (CCC) that she presented with an alleged assault.<sup>12</sup> A week later she had medical treatment on her finger at Royal Perth Hospital.<sup>13</sup>

On 11 April 2013 Ms Martin lodged a complaint with the WAPOL complaints section. The CCC became aware of Ms Martin's complaint on the same day, as WAPOL notifies it of all complaints made against its officers as they are lodged.<sup>14</sup> The CCC commenced a preliminary investigation into the incident on 15 April 2013 and the following day issued a section 42 notice under the *Corruption and Crime Commission Act 2003* (CCC Act)<sup>15</sup> for WAPOL to discontinue their own investigation.<sup>16</sup>

The Commission's final report into this matter was tabled in Parliament on 20 August 2015, nearly 30 months after the incident, by Acting Commissioner Christopher Shanahan SC. The *Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013* can be accessed at [www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf](http://www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf).

Based on their analysis of the actions of 12 WAPOL staff stationed at the Watch House who had some involvement in the incident, the Commission made the following opinions:

- serious misconduct within the meaning of section 4(c) of the CCC Act against two WAPOL staff;
- reviewable police action within paragraph (b) of the definition of reviewable police action at section 3 of the CCC Act against two WAPOL staff; and
- serious misconduct, misconduct within the meaning of section 4(d) (iii) and (vi) of the CCC Act, and reviewable police action against one Police Auxiliary and Custody Officer.<sup>17</sup>

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12 Ibid, p25.

13 Ibid, p26.

14 Assistant Commissioner Nicholas Anticich, Professional Standards, WA Police, *Transcript of Evidence*, 25 November 2015, p18.

15 The CCC Act was amended by the *Corruption and Crime Commission Amendment (Misconduct) Act 2014* when it came into force part-way through the CCC's investigation, on 9 December 2014. This Act also re-named the CCC Act as the *Corruption, Crime and Misconduct Act 2003* (CCM Act). The CCM Act provides that allegations of misconduct received or initiated by the CCC before 1 July 2015 must continue to be dealt with as if they were dealt with under the CCC Act.

16 Corruption and Crime Commission, *Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013*, 20 August 2015, p1. Available at: [www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf](http://www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%207%20April%202013.pdf). Accessed on 19 January 2016.

17 Ibid, pp33-35.

On 19 September 2014 the Commission wrote to the Police Commissioner providing its opinions against the WAPOL Police Auxiliary and Custody Officers and sworn officers. WAPOL responded to the Commission on 14 January 2015 that:

*...it is not the intention of WA Police to initiate any criminal proceedings against any employee involved in the strip search and management of Miss Joanne Therese Martin when she was processed in the East Perth Watch House on the night of 7 April 2013.*

*It is also the not the intention of WA Police to take managerial action against any employee involved in this matter with the exception of Sergeant Andrew Unsworth...*

*Sergeant Unsworth has received verbal guidance for failing to accommodate Miss Martin's desire to lodge a complaint which she disclosed to him whilst receiving bail information.<sup>18</sup>*

## **Report recommendations for improvements to watch houses**

In its report the Commission also made six recommendations to WAPOL about the future operation of their watch houses:

### ***Recommendation 1***

*The Commission considers that until it can be demonstrated that Police Auxiliary and Custody Officers have been trained to a level where they are fully conversant with and able to follow a statutory and regulatory framework concerning the custody of and treatment of detainees, and to effectively utilise conflict resolution methods, they be at all times under the direct supervision of a senior sworn police officer.*

### ***Recommendation 2***

*Although some changes have been made to the Perth Watch House Standard Operating Procedures since the new premises came into operation a thorough review of them is still required to ensure, in particular, that the statutory mandate in the CI Act [Criminal Investigation Act 2006] is followed, particularly where such requires an individual assessment of the circumstances before invasive action is taken against a detainee.*

### ***Recommendation 3***

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18 Ibid, p35.

## Chapter 1

*There is a strong need for there to be consistency between supervisors as to methods adopted and joint training of senior police officers stationed at the Watch House is required to achieve that.*

### **Recommendation 4**

*A failure to properly state and communicate decisions followed by an absence of, or insufficient recording of the same is very likely to result in both poor decision-making and an absence of accountability. An urgent review of the procedures in place in both those respects is, therefore, required.*

### **Recommendation 5**

*Record keeping at the Perth Watch House is still done largely through a paper based system and that is antiquated, inefficient and productive of poor quality records. Consideration should be given to the introduction of a comprehensive electronic form of record keeping.*

### **Recommendation 6**

*A mandatory regime which ensures that a detainee who has been deprived of his or her clothing is not able to be seen by officers of the opposite sex is required, such to include the replacement of the officer on the reserve desk where necessary.<sup>19</sup>*

WAPOL supported all six recommendations and its responses to each of them were included in the Commission's final report:

### **Recommendation 1: Supervision and Training**

*A number of changes to the operation of the Watch House have taken place since April 2013. Band 3 Police Auxiliary Officer (PAO) supervisors have been replaced, with eight new Police Sergeant positions being posted to the Watch House between December 2013 and February 2014. A dedicated training officer position was introduced in October 2013 and is responsible for ongoing training and development matters. This includes the introduction of a standardised one-day induction for new staff, and a process for probationary staff to complete a workbook which is signed off as competencies are achieved in the workplace. Process improvements include enhancements to the lockup admission form to better record assessments, and the installation of*

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<sup>19</sup> Ibid, pp38-39.

*signage in the search room to provide standard information for detainees and officers.*

***Recommendation 2: Policy and Procedures***

*It is understood that this recommendation means that procedures will be reviewed, with a priority to ensuring that a search will only take place following an individual assessment of the circumstances.*

*WA Police has revised processes in the Perth Watch House Standard Operating Procedures (SOP) and the corporate Lockup Procedures manual, so that there is discretion not to search detainees. In particular, this will avoid the need to strip search detainees who will proceed very quickly to bail and release. The admission process therefore contains an individual assessment of each case. The SOP [sic] are currently being further reviewed and this will be complete by the end of 2014.*

*However, the professional opinion of my senior managers is that the security of the Watch House will be degraded if detainees are admitted into custody without a thorough standard of searching.*

*The practical consequences of this would be items such as small folding knives, razor blades, cigarette lighters, syringes and drugs finding their way into the secure area of the watch house, and that detainees (including other detainees already in custody) and workers would come to harm as a result.*

*The WA Police position is that there will be an individual assessment of the need to carry out a strip search, but that if a search is required, it will be carried out to a single consistent standard. In particular, this will require the complete removal of clothing, as our experience is that this method is quickest and reduces the potential for items to be passed from the one half of the clothing to the other half (for example officers have observed detainees passing an item from underpants to a T-shirt during the course of a search).*

*It is submitted that this approach provides an appropriate balance between the duties on WA Police under section 262 "Criminal Code" and section 19-21 "Occupational Safety and Health Act 1984", and the requirements of the "Criminal Investigation Act 2006".*

*In particular, it is based on an individual assessment of the detainee and the experience of running a large custodial facility. Given the*

## Chapter 1

*observations of officers noted in the last paragraph and the particular nature and circumstances inherent in such dedicated custodial facilities, WA Police considers this to be reasonably necessary in accordance with section 72(3)(d) "Criminal Investigation Act 2006".*

### **Recommendation 3: Consistency of Supervision and Joint Training**

*This is consistent with the work that we are doing with a dedicated training officer.*

### **Recommendation 4: Record Keeping and Decision-Making**

*It is understood that this recommendation supports the clearer articulation of decisions, with accurate record-keeping. This has been addressed through changes to the admission process (in particular the enhancements to the admission form noted at Recommendation 1 above) and the Lockup Procedure manual, and will be considered further through the review of the Perth Watch House SOP (see response to Recommendation 2 above).*

### **Recommendation 5: Electronic Record Keeping**

*Electronic record keeping forms part of the WA Police Custodial Management application project. The introduction of the new application state-wide is due in May 2015.*

### **Recommendation 6: Avoiding Officers Seeing Naked Detainees of the Opposite Sex**

*WA Police has introduced procedures to avoid officers viewing detainees of the opposite sex who are naked. This includes the replacement of officers and also includes monitoring of CCTV screens.*

*The infrastructure of the new Perth Watch House is better configured to the discreet movement of detainees. In addition to blankets, tabard-style smocks have been introduced which can be fastened at the sides and placed over a naked detainee. However, it must be appreciated that some detainees undress despite being given their clothing and replacement items.*

*These actions will be balanced with principles of duty of care and occupational safety and health.<sup>20</sup>*

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20 Ibid pp40-42.

The CCC concluded its report by saying that:

*While the Commission recognises action taken by WA Police to address the misconduct risks identified by the circumstances revealed in this report and the recommendations made in this report, it is the intention of the Commission to monitor the action taken by WA Police to address the issues and implement the recommendations. This monitoring will occur within the context of an ongoing relationship between the Commission and WA Police. Monitoring the implementation of recommendations is a normal part of the Commission's work subsequent to an investigation.<sup>21</sup>*

### **Police Commissioner's initial response to the Commission's report**

In response to the publication of the CCC's report, the Police Commissioner, Dr Karl O'Callaghan APM, said the officers who remained at WAPOL since the incident would not face criminal or disciplinary action because of the amount of time that had passed since the alleged assault, and that:

*We believe that Ms Martin escalated the use of force that was required in that incident, which is one reason why we believe that the process used by the police was lawful.<sup>22</sup>*

WA Police Union President, Mr George Tilbury, said he fully supported the Commissioner's reaction to the CCC report:

*Police watch houses are dynamic and volatile environments, and the WAPU will always support our members taking the necessary precautions, to ensure their safety as well as that of persons in custody. We will continue to work with WA Police and our Perth Watch House branch to ensure the safety of our members is paramount.<sup>23</sup>*

### **Public hearing with Police Commissioner**

A public hearing was held by the Joint Standing Committee on 25 November 2015 with the Police Commissioner, Assistant Commissioner Nicholas Anticich and Inspector Larry Parker, the Officer in Charge of the Perth Watch House, to ascertain WAPOL's progress

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21 Ibid, p43.

22 *Perth Now*, 'Corruption and Crime Commission reveals misconduct by police officers against woman at East Perth Watch House', 20 August 2015. Available at: [www.perthnow.com.au/news/western-australia/corruption-and-crime-commission-reveals-misconduct-by-police-officers-against-woman-at-east-perth-watch-house/news-story/83c004e93db4d76f04ac2f5dbacc38e1](http://www.perthnow.com.au/news/western-australia/corruption-and-crime-commission-reveals-misconduct-by-police-officers-against-woman-at-east-perth-watch-house/news-story/83c004e93db4d76f04ac2f5dbacc38e1). Accessed on 20 January 2016.

23 Ibid.

## Chapter 1

in implementing the recommendations arising from the CCC's report. A copy of the hearing's transcript is attached in Appendix 1.

The evidence from the Police Commissioner and his senior staff confirmed that the following improvements had been made to the Perth Watch House since the incident in 2013 and the subsequent CCC investigation:

- the East Perth Lock Up was closed and its functions have now been transferred to a new purpose-built building in Northbridge;
- the supervisory level band three Police Auxiliary Officers have been replaced by sworn Police Sergeants in every team at the Perth Watch House to supervise their operations;
- eight new Police Sergeant positions were posted to the Watch House between December 2013 and February 2014;
- a new position of Custody Training Development Officer was introduced in October 2013 and this role focuses on the Watch House and custodial activities carried out by the Police Auxiliary Officers;
- the Lockup admission form has been revised and now records information such as who authorised decisions (such as to undertake a strip-search) and the grounds for these decisions;
- new signage has been placed in the Watch House search rooms which notifies both staff and detainees of their statutory rights during the procedures being conducted;
- a two-week induction course for all new Police Auxiliary Officers is now conducted at the Perth Watch House, replacing the previous one-day course; and
- a review of the Perth Watch House SOP was completed in December 2014 and more than 40 changes to it have been implemented.

The Police Commissioner told the Committee that, while the CCC's report and recommendations focused on the Perth Watch House, not all of its recommendations could be introduced to the many other remote and regional watch houses throughout the State as, for example, "[y]ou simply are not going to be able to get a supervisor into

the Halls Creek watch house at three o'clock in the morning when a junior officer is on."<sup>24</sup>

### Finding 1

The Corruption and Crime Commission's thorough investigation of the incident at the East Perth Watch House in April 2013 has resulted in changes to procedures in the new Perth Watch House that address the weaknesses highlighted by the Commission's report.

The Committee was told at the hearing that the most significant change made as a result of the CCC's investigation of this incident was the State-wide introduction on 2 September 2015 of a new electronic record-based software called the Custodial Management Application. This Application now requires the collection of more details than the previous largely paper-based record keeping system. It also requires certain entries to be made, and details to be entered, before it will allow staff to move further through it, or complete, the custodial process. Inspector Parker said that the new system had been well-received by WAPOL officers and was "accepted generally across the board as being far more efficient than our previous systems."<sup>25</sup>

### Finding 2

The Corruption and Crime Commission's recommendations flowing from its investigation of the incident at the East Perth Watch House in April 2013 have led to the State-wide introduction by WA Police of a new electronic record-based software.

### Strip-searching of Ms Martin

The CCC's report outlines the various sections of the *Criminal Investigation Act 2006* (CI Act) which concern the way in which a search by Police of a person is to be approached and carried out. The report claims that the damage to Ms Martin's hand occurred while she resisted a strip-search by various Watch House staff. It found that WAPOL staff made no attempt to consider or apply the applicable Watch House SOP for strip-searches. It quoted evidence from one PAO that no consent for the search was sought from Ms Martin and that officers "hardly ever" sought consent, as it gave detainees the idea that they could refuse.<sup>26</sup> Similarly, it found that some WAPOL staff

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24 Dr Karl O'Callaghan APM, Commissioner, WA Police, *Transcript of Evidence*, 25 November 2015, p3.

25 Inspector Larry Parker, Custodial Services Division, WA Police, *Transcript of Evidence*, 25 November 2015, p7.

26 Corruption and Crime Commission, *Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013*, 20 August 2015, p15. Available at: [www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%2007%20April%202013.pdf](http://www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%2007%20April%202013.pdf). Accessed on 19 January 2016.

## Chapter 1

were unaware of requirements in the Police Manual on how strip-searches should be conducted.<sup>27</sup>

While the CCC found that in 2013 the East Perth Watch House, contrary to the CI Act, had adopted “a rigid rule that all detainees had to be strip searched”,<sup>28</sup> Inspector Parker gave evidence that procedural changes subsequent to the incident with Ms Martin meant that:

*People are not strip-searched unless there are grounds to actually do that. Those grounds are noted on the entry sheet and decisions are made by a supervisor, not by any of the general police auxiliary officers.*<sup>29</sup>

In response to the CCC’s report recommendations, WAPOL stated that a tender process had commenced to purchase body scanning equipment that would eliminate the requirement to conduct strip-searches in the Perth Watch House.<sup>30</sup> During the public hearing the Police Commissioner told the Committee that the procurement process had concluded and had identified a preferred supplier for the scanners. He said, however, that “[t]he only hold-up at the moment is that the scanners require licensing by the Federal Government and we are in that process at the moment, of getting permission to do that.”<sup>31</sup>

The scanners are similar to those used at airports and the Police Commissioner estimated that they would be in use at the Perth Watch House from about March-April 2016. After analysing the experience at the Perth Watch House, it was likely that the scanners would then be placed “into the major [population] centres, particularly the district offices in regional Western Australia where most of the throughput is— places like Broome, Karratha, Albany and Bunbury.”<sup>32</sup>

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27 Ibid, p16.

28 Ibid, p29.

29 Inspector Larry Parker, Custodial Services Division, WA Police, *Transcript of Evidence*, 25 November 2015, p5.

30 Corruption and Crime Commission, *Report on the Investigation of an Incident at the East Perth Watch House on 7 April 2013*, 20 August 2015, p43. Available at: [www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%2007%20April%202013.pdf](http://www.ccc.wa.gov.au/sites/default/files/East%20Perth%20Watch%20House%20Incident%20on%2007%20April%202013.pdf). Accessed on 19 January 2016.

31 Dr Karl O’Callaghan APM, Commissioner, WA Police, *Transcript of Evidence*, 25 November 2015, p8.

32 Ibid, p9.

## **Answers to Questions on Notice from the Police Commissioner**

Following the hearing, the Committee wrote to the Police Commissioner on 2 December 2015 requesting information in relation to:

1. whether the CCC had requested in the three month period (from when the CCC served a section 42 notice on WA Police on 16 April 2013 and when they interviewed Ms Martin) that WA Police provide copies of documents in relation to watch house records in terms of reasons for the decisions made by WAPOL staff during the incident involving Ms Martin;
2. details on any internal disciplinary action taken in regard to the actions of Ms Sarah Whiting whose actions, in the opinion of the CCC, constituted reviewable police action; and
3. details on any internal disciplinary action taken in regard to the actions of Sergeant Andrew Unsworth whose actions, in the opinion of the CCC, constituted reviewable police action.

The Police Commissioner provided a response to these questions on 10 December 2015. A copy of the response is included in Appendix 2.

## **Information provided by the CCC Commissioner**

On the 2 December 2015 the Committee provided the CCC Commissioner, Hon John McKechnie QC, with a draft transcript of the WAPOL public hearing and invited him to comment on the Police Commissioner's views on the use of section 42 notices by the CCC and the length of time it took for the Commission to investigate the incident at the East Perth Watch House.

The CCC Commissioner replied to the Committee on 9 December 2015 saying that "[t]he Commission has nearly finalised a new policy on section 42 notices which should enable agencies to deal with matters more promptly than in the past."<sup>33</sup> In addition, he provided an extract from a MOU signed between the CCC and WAPOL in 8 July 2015 that deals with the future use of section 42 notices by both agencies.

Commissioner McKechnie also provided information about the timeline into the Commission's investigations into the incident at the East Perth Watch House. His letter is included in Appendix 3.

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33 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 9 December 2015.

## Chapter 1

### Timeline of the Commission's investigation of the incident

After receiving the additional information provided by the CCC and Police Commissioners, and using information provided in the CCC's report, the Committee has developed a timeline of the Commission's investigation of the incident. This timeline is based on the Commission's report, correspondence from the CCC and Police Commissioners (available in Appendix 2 and 3), and the transcript of the Committee's hearing with WAPOL (available in Appendix 1).

**Table 1- Timeline of the CCC's investigation into the incident at the East Perth Watch House on 7 April 2013**

<b>DATE</b>	<b>ACTION</b>	<b>SOURCE</b>
<b>6 April 2013</b>	Late in the evening Ms Martin was arrested with her boyfriend in Northbridge for disorderly behaviour and taken to the East Perth Lockup.	CCC Report, p10.
<b>7 April 2013</b>	In the early hours Ms Martin was processed at the East Perth Lockup and suffered physical injuries after resisting a strip-search by WAPOL staff.	CCC Report, p11.
<b>7 April 2013</b>	Ms Martin attends at Rockingham General Hospital for treatment.	CCC Report, pp25-26.
<b>11 April 2013</b>	Ms Martin lodged a complaint with WAPOL's complaints section.	Police Commissioner's letter.
<b>14 April 2013</b>	Ms Martin had an operation on her finger at Royal Perth Hospital.	CCC Report, p26.
<b>15 April 2013</b>	The CCC commenced a preliminary investigation into the incident	CCC Commissioner's letter.
<b>16 April 2013</b>	The CCC issued a section 42 notice under the <i>Corruption and Crime Commission Act 2003</i> for WAPOL to discontinue their own investigation.	CCC & Police Commissioner's letters.
<b>18 April 2013</b>	WAPOL provided the CCC with Watch House CCTV footage and related custody records.	Police Commissioner's letter.
<b>10 May 2013</b>	CCC Commissioner Roger Macknay QC authorised an investigation under section 33(1)(a) of the CCC Act.	CCC Commissioner's letter.
<b>27 May 2013</b>	CCC investigator requested the WAPOL staff rosters for 6-7 March 2013 [in error].	Police Commissioner's letter.
<b>29 May 2013</b>	Staff rosters for 6-7 March 2013 provided by WAPOL.	Police Commissioner's letter.
<b>14 June 2013</b>	CCC investigator requests WAPOL staff rosters for 6-7 April 2013. The rosters are provided by WAPOL on the same day.	Police Commissioner's letter.
<b>9 - 22 July 2013</b>	The CCC held five informal interviews with WAPOL officers.	WAPOL transcript.
<b>16 July 2013</b>	CCC investigator enquired about the previous East Perth Watch House SOP (Standard Operating Procedures) and requested a copy of the new Perth Watch House SOP. This material was provided by WAPOL on the same day.	Police Commissioner's letter.
<b>3 - 11 September 2013</b>	The CCC held private hearings on the matter, presided over by Commissioner Macknay QC.	CCC Commissioner's letter.

<b>7 April 2014</b>	Commissioner Macknay QC completed his report, with the aim of tabling it in Parliament before 30 June 2014. He resigned from the CCC on 14 April 2014.	CCC Commissioner's letter.
<b>14 April 2014</b>	Acting Commissioner Shanahan SC assumed responsibility for finalising the report, having been appointed on 7 April 2014.	CCC Commissioner's letter.
<b>3 June 2014</b>	CCC draft report on the investigation completed.	CCC Commissioner's letter.
<b>25 June 2014</b>	Acting Commissioner Shanahan SC gave approval to commence the section 86 process (to give those adversely mentioned in the report time to respond).	CCC Commissioner's letter.
<b>31 July 2014</b>	Relevant excerpts from the report (dated 3 June 2014) were provided to the Police Commissioner, 12 WA Police Officers and 3 non-public officers by the CCC. They were invited to make a submission and respond to the report by 22 August 2014.	CCC Commissioner's letter. CCC Report, p39.
<b>5 August 2014</b>	Acting Senior Sergeant Wilson emails the Commission concerned about the continuation of the section 42 notice.	CCC Commissioner's letter.
<b>6 August 2014</b>	WAPOL Assistant Commissioner Staltari requested by letter that that the CCC's section 42 notice be revoked.	CCC Commissioner's letter.
<b>12 August 2014</b>	CCC revoked the section 42 notice served on WAPOL in April 2013.	CCC Commissioner's letter.
<b>25 August 2014</b>	WAPOL Acting Assistant Commissioner Panaia responded to the CCC's draft report on behalf of WAPOL. Representations were also received from four WAPOL Officers and one non-public officer.	CCC Report, p39.
<b>19 September 2014</b>	CCC released information from its investigation to WAPOL to allow them to undertake their own investigation into the incident.	CCC Commissioner's letter.
<b>14 January 2015</b>	Superintendent Leembruggen, WAPOL Ethical Standards Division, wrote to the CCC that WAPOL did not intend to initiate any criminal action against staff involved in the incident.	CCC Commissioner's letter.
<b>31 March 2015</b>	Acting Commissioner Shanahan SC wrote to Acting Assistant Commissioner Panaia inviting WAPOL to review the contents of its letter of 25 August 2014.	CCC Commissioner's letter.
<b>13 April 2015</b>	Assistant Commissioner Bell responded to the CCC on behalf of WAPOL providing an update to its letter of 25 August 2014, and an update to its response to the CCC's recommendations 1, 2 and 5.	CCC Commissioner's letter. CCC Report, p39.
<b>28 April 2015</b>	Hon John McKechnie QC commenced as CCC Commissioner.	CCC Commissioner's letter.
<b>20 August 2015</b>	CCC tabled its final report on the incident in Parliament.	CCC Report, pi.

## The delay in completing the Commission's investigation

Commissioner McKechnie QC advised the Committee that there were two substantial delays in the Commission's process of investigating and reporting this matter due to competing urgent matters, for a period of 4 months (April to July 2014) and a further 12 months (from August 2014 to August 2015). He says that this was:

*...in part due to the tardiness in the appointment of a substantive Commissioner from April 2014-April 2015 and the need for two Acting Commissioners to work on a rostered basis for that period whilst continuing to manage law private practices outside the Commission.*<sup>34</sup>

Two of these 'urgent matters' were the serious allegations of misconduct made against CCC staff in the Commission's Operational Support Unit and Electronic Collection Unit. These allegations were the subject of the Joint Standing Committee reports No. 17, *Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*<sup>35</sup>, tabled on 17 June 2015; and No. 25, *Parliamentary Inspector's Report on Allegations of Misconduct Made Against Officers in the Corruption and Crime Commission's Electronic Collection Unit*<sup>36</sup>, tabled on 26 November 2015.

The CCC publicly announced on 4 November 2013 the intention of Commissioner Macknay QC to retire from his position.<sup>37</sup> He subsequently resigned from the Commission on 14 April 2014. When Mr Macknay was appointed in November 2011, the CCC had been without a Commissioner for nearly 12 months following the departure of Hon Len Roberts-Smith RFD QC. The Hon John McKechnie QC commenced as Commissioner on 28 April 2015, more than 17 months after Mr Macknay's announcement of his intention to resign.<sup>38</sup>

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34 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, Letter, 9 December 2015, p4.

35 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report on Misconduct and Related Issues in the Corruption and Crime Commission*, 17 June 2015. Available at:

[www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/FE9089F3B8F3E67A48257E67001CC065/\\$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/FE9089F3B8F3E67A48257E67001CC065/$file/JSCCCC%20Report%2019-%20CCC%20misconduct%20allegations-%20June%202015.pdf). Accessed on 21 January 2016.

36 Joint Standing Committee on the Corruption and Crime Commission, *Parliamentary Inspector's Report on Allegations of Misconduct Made Against Officers in the Corruption and Crime Commission's Electronic Collection Unit*, 26 November 2015. Available at:

[www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/DA6B49D29A80D96448257F0800181767/\\$file/Report%2025-%20CCC%20ECU%20staff%20misconduct-Nov2015%20Cropped.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/DA6B49D29A80D96448257F0800181767/$file/Report%2025-%20CCC%20ECU%20staff%20misconduct-Nov2015%20Cropped.pdf). Accessed on 21 January 2016.

37 Corruption and Crime Commission, *CCC Commissioner to Step Down*, 4 November 2013. Available at: [www.ccc.wa.gov.au/sites/default/files/CCC%20Commissioner%20to%20step%20down.pdf](http://www.ccc.wa.gov.au/sites/default/files/CCC%20Commissioner%20to%20step%20down.pdf). Accessed on 21 January 2016.

38 Corruption and Crime Commission, *The Commissioner*, 2015. Available at: [www.ccc.wa.gov.au/about-us?qt-about\\_us=2](http://www.ccc.wa.gov.au/about-us?qt-about_us=2). Accessed on 21 January 2016.

### Finding 3

There were two substantial delays amounting to 16 months during the Corruption and Crime Commission's process of investigating and reporting the incident at the East Perth Watch House. These delays were due to competing urgent matters, in part due to the tardiness in the appointment of a substantive Commissioner until April 2015, and the need for two Acting Commissioners to work on a rostered basis whilst continuing to manage their private practices outside of the Commission.

The Joint Standing Committee recognised in its Report No. 15, *Ensuring the Timely Appointment of a New Corruption and Crime Commissioner*<sup>39</sup>, tabled on 14 August 2014, the potential for serious disruptions to the work of the Commission given the time it was taking the Government to appoint a new Commissioner after the resignation of Mr Macknay QC. The Committee heard evidence when preparing its report of the difficulties faced by the two Acting Commissioners in undertaking their private full-time legal practices while also acting on a rotating basis as CCC Commissioner every two weeks.

In its report, the Committee found that:

Finding 1- The current situation, where the Corruption and Crime Commission is led by two part-time Acting Commissioners alternating on a fortnightly basis, coupled with the imminent departure of the long-standing Executive Director, hinders the Commission's effectiveness in carrying out its functions and is of concern to the Committee.

Finding 2- The current remuneration for the position of Commissioner is significantly below what will attract a suitable candidate for the position.

Finding 3- While few Commissioners of integrity agencies in Australia serve out their five-year terms, the current length of appointment in Western Australia is suitable.

The Committee recommended to the Attorney General that he:

1. consider broadening section 10(1) of the *Corruption and Crime Commission Act 2003* to put beyond doubt the appropriateness of considering senior lawyers for appointment to the position of CCC Commissioner.
2. introduce an urgent Bill to repeal schedule 2, section 3(5) and schedule 3, section 3(4) of the *Corruption and Crime Commission Act 2003* to allow the CCC Commissioner and the Parliamentary Inspector of the Corruption and Crime

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39 Joint Standing Committee on the Corruption and Crime Commission, *Ensuring the Timely Appointment of a new Corruption and Crime Commissioner*, 14 August 2014. Available at: [www.parliament.wa.gov.au/Parliament/commit.nsf/\(Report+Lookup+by+Com+ID\)/CF778B277093246548257D33001C098B/\\$file/Report%2015%20CCC%20Commissioner-%20August%202014.pdf](http://www.parliament.wa.gov.au/Parliament/commit.nsf/(Report+Lookup+by+Com+ID)/CF778B277093246548257D33001C098B/$file/Report%2015%20CCC%20Commissioner-%20August%202014.pdf). Accessed on 21 January 2016.

## Chapter 1

Commission to retain any judicial pension applicable while additionally being remunerated at the rate of a Supreme Court judge.

3. prepare an amendment to the *Corruption and Crime Commission Act 2003* to allow for the appointment of a Deputy Commissioner to assist the Commissioner in the day to day work of the Commission and to ameliorate difficulties created by delays in the appointment of future Commissioners.
4. prepare an amendment to sections 9(3a)(a) and 9(3b) of the *Corruption and Crime Commission Act 2003* to remove the role of a nominating committee and allow the Government to propose one name of a suitable Commissioner to the Joint Standing Committee for its consideration.

Only the second of these recommendations has been accepted and acted on.

In its Report No. 15, the Joint Standing Committee noted that none of the previous CCC Commissioners had completed their five-year terms. It believes that two of the recommendations from Report No. 15 are still deserving of re-consideration by the Attorney General.

### **Recommendation 1**

The Attorney General prepare an amendment to the *Corruption, Crime and Misconduct Act 2003* to allow for the appointment of a Deputy Commissioner to assist the Corruption and Crime Commissioner in the day to day work of the Commission, and to ameliorate difficulties created by delays in the appointment of future Commissioners.

### **Recommendation 2**

The Attorney General prepare an amendment to sections 9(3a)(a) and 9(3b) of the *Corruption, Crime and Misconduct Act 2003* to remove the role of a nominating committee and allow the Government to propose one name of a suitable Commissioner to the Joint Standing Committee for its consideration.

# Appendix One

## Transcript of WAPOL public hearing- 25 November 2015

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**The CHAIRMAN:** Commissioner, I have a series of questions that I would like to ask in relation to this report by the CCC, dated 20 August 2015. Are there any opening remarks that you wish to make?

**Dr O'Callaghan:** No, we do not have any opening remarks.

**The CHAIRMAN:** Commissioner, by way of explanation, it is not ordinarily the custom of the committee to necessarily even review the reports by the Corruption and Crime Commission. It tables its reports directly in the Parliament. It does not need to, although it can, table via the committee and the Commission tables reports semi-regularly throughout the course of any given year.

What I guess has been the genesis to the Committee's interest in this matter is that we are always cognisant that if the Commission is going to invest time in investigating matters and making recommendations, ideally it would be good to see that the recommendations are considered and, where appropriate, implemented. There seemed to be some media reporting after this report came out that gave the impression that the response from WA Police was somewhat underwhelming to this particular report. So the Committee is interested to go through the report and the various instances and have a better appreciation for what, if anything, is being done in respect of this matter.

I do note at the outset that obviously there are some structural changes even just in terms of the geography of the Watch House and the like, so some of the stuff is old, but nevertheless things like escorting naked people through the premises presumably is not supported and one would hope is not regular practice. I think there are some things that are worth discussing to get on the record exactly what your position is on these things.

**Dr O'Callaghan:** I think some of the things you mentioned are worth clarifying. Inspector Larry Parker is the officer in charge of the Watch House, as well as other duties. From the outset, there are six recommendations in this report that appear at pages 38 and 39. I think we have accepted all of those recommendations so we certainly have not pushed back on the recommendations. I am not quite sure why the Committee got the impression that we were not going to do anything at all. The six recommendations that are listed at 38 and 39 are actually, I think, in train or have been attended to already. Inspector Parker might be able to elaborate a bit more on that.

**The CHAIRMAN:** If you like, why do not we, for efficiency purposes, go through each of the recommendations?

**Dr O'Callaghan:** Sure.

**The CHAIRMAN:** Then we can perhaps get an update as to what has been happening.

I will start with page 38, recommendation 1. It says there that the Commission considers that until it can be demonstrated that Police Auxiliary and Custody Officers [PAO] have been trained to a level where they are fully conversant with and able to follow a statutory and regulatory framework concerning the custody of and treatment of detainees and to effectively utilise conflict resolution methods, they be at all times under the strict supervision of a senior sworn Police Officer. Perhaps we can get an update as to what the current status is on that.

**Dr O'Callaghan:** With recommendations specific to the operation of the Perth watch house, I will defer to Inspector Parker because he is the subject matter expert there and he will be able to talk you through those.

**Mr Parker:** There have been several changes in line with that recommendation; I will go through them in dot point sequence if that suits.

**The CHAIRMAN:** Yes.

**Mr Parker:** Band three auxiliary officers, which were the supervisory level of Police Auxiliary Officers, have been replaced by police sergeant positions. Every team at Perth Watch House has two sworn Police Sergeants as supervisors who overlook the operations of every watch house team. We have introduced a dedicated Custody Training Development Officer. That was introduced in October 2013. He is specific for custodial duties and training and all his efforts revolve around the Watch House and custodial activities carried out by the Police Auxiliary Officers. We have introduced a new two-week induction course conducted at Perth Watch House for all new Police Auxiliary Officers when they start. It was previously one day. It is now a lot more comprehensive than the previous course that was run.

**Hon ADELE FARINA:** How long is it?

**Mr Parker:** Two weeks. We have a PAO probationary period of a minimum of six months and that requires a series of competencies to be completed, which is done in a probationary booklet by each of the officers before they finalise their probationary period. The probationary officers are subject to a three-month documented review by their individual supervisors, which is overseen by the OIC of the watch house and also by the auxiliary training officer who reviews all their activities and their progression as they move through their probationary period. The lockup admission form, which was

probably rather basic, I guess, before 2013, is now much more comprehensive than it was in that era in that decisions that are made are recorded— who authorised those decisions and the grounds for all particular decisions. We have also introduced signage in the search rooms which notifies both staff and detainees of their statutory rights in the procedures being conducted.

**Mr P.B. WATSON:** Commissioner, are you concerned that under your watch this has got to the stage where there had to be an incident there which was looked at by the CCC and now all these changes are coming in? Is it not a worry that this could have been something serious happening before this luckily— not luckily, but something happened that brought it to your attention when maybe it should have been picked up long before?

**Dr O’Callaghan:** I think you have to put that in the context of the hundreds, if not thousands, of admissions to the watch house that are well handled and successfully handled. If I go back to 2005— this occurred in 2013— we raised the issue of the Perth watch house as it was then being totally unacceptable for detainment of prisoners. Processes were difficult. The actual layout of the watch house was difficult. It took quite a few years to get a replacement Watch House for a lot of reasons. It is a complicated thing and it was nearly eight or nine years before we got a replacement watch house, having raised those issues back then. There have been several issues in watch houses over that period of time.

I note today that we are talking about the Perth Watch House. I think we have to put this in the context of the fact that there are dozens of watch houses throughout the State, many of them in regional Western Australia and, of course, some of these recommendations cannot apply to the more remote watch houses. You simply are not going to be able to get a supervisor into the Halls Creek Watch House at three o’clock in the morning when a junior officer is on. There will be some logistical challenges from a geographic perspective. There is always the capacity when you have junior officers working in those conditions, no matter how well they are trained, for things to go wrong or be reviewed by the Corruption and Crime Commission.

It is not the first time we have seen inquiries into what goes on in watch houses. They are very volatile places and things do go wrong and we are very happy to have people oversight those and make the changes when they come along. It is an iterative process; things are highlighted as they go wrong and the thing is fixed on the way.

I might point out—we will get a chance to talk about this later— the whole issue of strip-searching we hope to eliminate with the implementation of scanners in the [Perth] Watch House very shortly. This whole discussion probably will not apply in the future, at least in the major watch houses; it may apply in some of the smaller watch houses.

**The CHAIRMAN:** I want to get to the body scanners in a minute, Commissioner, and, members, I want to go through each of the recommendations one by one and then we will have more general questions. If there is a supplementary question in—

**Mr P.B. WATSON:** Commissioner, you said it has been going on for eight years. You have not got the proper lock-up and the proper facilities, but surely the chain of command in these watch houses would have been of concern when you look at some of the things that were said by junior officers. We have been told by supervisors and sergeants that everyone gets strip-searched. Obviously, there was not a chain of command in these watch houses, which to me is a real concern.

**Dr O'Callaghan:** It is a risk-based decision and it is allowed by law; maybe I can get Inspector Larry Parker to explain that to you. The individual officers in watch houses have to make decisions about whether they are going to move to a strip-search and that is based on a risk assessment. It is not an assessment that I can make or instruct because I am not there on the night and circumstances are different. We can talk about the various sections of the CI Act [*Criminal Investigation Act 2006*] that allow us to do that and perhaps that might be useful to explore in the context of your question.

**The CHAIRMAN:** Yes, I think the best thing for us, Commissioner, is to move to recommendation 2, which actually addresses this particular issue on the procedures and the CI Act. Recommendation 2 says—

*Although some changes have been made to the Perth Watch House Standard Operating Procedures since the new premises came into operation a thorough review of them is still required to ensure, in particular, that the statutory mandate in the CI Act is followed, particularly where such requires an individual assessment of the circumstances before invasive action is taken against a detainee.*

I note at page 40 of the report that there was a copy of the response from WA Police from the then acting assistant commissioner and it indicated that the SOP— the standard operating procedures—are currently being reviewed and that this will be complete by the end of 2014. I then note at page 43 that a subsequent response from your office says that a review of the SOP has now been completed and changes implemented. What is perhaps useful is if either yourself or Mr Parker just indicate when that review was completed and what changes have been implemented.

**Dr O'Callaghan:** I think there have been about 40-odd changes from memory. We have a document here that we can share with you that itemises those changes, but I think Inspector Parker could talk to them broadly.

**The CHAIRMAN:** Just before you do that, is there any problem with that document being made public?

**Dr O'Callaghan:** No, they are Standard Operating Procedures.

**The CHAIRMAN:** If you can just elaborate, it will be helpful.

**Mr Parker:** The Standard Operating Procedures are constantly under review. With any sort of serious incident at the [Perth] Watch House we always look at what occurred and what we can do to prevent that from happening again. We usually make the changes in blocks. Like I said, it is a constant ongoing process. The document I have with me today is a cover sheet of the operating procedures but it goes through all the changes that have been introduced since—we actually did a major review, which we changed the order of into a more sequential document, updated from the older ones, and that was in December 2014. All of these changes that I have here today are in the pretext of the standard operating procedures, which lists all of the changes that we have gone through. It covers a whole variety of topics within the watch house and the procedures we use in the watch house.

**The CHAIRMAN:** The original response from WA Police was that a review would be done by the end of 2014. I take it that was done in December 2014?

**Mr Parker:** If it is what is applicable to regional WA, it would be the lockup procedures, which is actually in a Police manual. These Standard Operating Procedures are particular for the watch house. Each custody facility has its own Standard Operating Procedures particular to its circumstance.

**The CHAIRMAN:** What I want to be clear on is that the Standard Operating Procedures— we said that there was going to be a review and that it would be completed by the end of 2014. Was that done?

**Mr Parker:** Yes.

**The CHAIRMAN:** And that is now the document that you are proposing to table?

**Mr Parker:** It is not the whole operating procedures document because that is quite thick. It just lists the index of changes that we have made since that time.

**Hon ADELE FARINA:** And it relates just to the Perth Watch House?

**Mr Parker:** Yes, it does.

**Mr P.B. WATSON:** Can I just ask a question, Commissioner? You say that each individual watch house is different. Obviously, being from the regions, I am concerned about what happens in the regions, which you say at three o'clock in the morning does not have a senior officer. Is there a standard thing for all regional areas for the smaller ones or do you say Albany is a regional office so it has a bit more than, say Wagin, where someone is locked up there overnight?

**Dr O’Callaghan:** There are standard procedures for looking after people who are detained in custody, which are applicable to all police stations in regional Western Australia and indeed in Western Australia. The issue will be that different watch houses have different types of construction, some of them are newer. For argument’s sake, Albany is a fairly new construction so it has all the modern facilities that modern watch houses have, but some of our police stations are much older and so the risk there is slightly elevated and some of the local procedures in handling prisoners may be slightly different.

**The CHAIRMAN:** I guess I would be keen to know— I think you said there are some 40 changes to the procedures. We do not need to go through all 40 of them; that is not really the point of today’s hearing. The purpose of today’s hearing is to make sure that a thorough investigation by the CCC has resulted in meaningful changes. I think you referred to it as incremental improvements.

**Dr O’Callaghan:** Yes, iterative.

**The CHAIRMAN:** Yes, I think that is what we want to be seeing. Of the 40-odd changes that have been made, can we have one example of a change that has been provided in those procedures that would mitigate the circumstances that have been seen in this matter?

**Mr Parker:** Probably the most significant change since my time there was initially in the procedures. When a detainee was brought into the watch house the option was there not to strip-search, but generally because of the security of a watch house they were strip-searched. So the emphasis was on why it would be an exception not to strip-search. I would suggest that that is where the logic or belief of the staff that everyone was strip-searched came from. Since then we have actually introduced changes whereby it is the other way around. People are not strip-searched unless there are grounds to actually do that. Those grounds are noted on the entry sheet and decisions are made by a supervisor, not by any of the general police auxiliary officers.

**The CHAIRMAN:** So the default position has changed. Previously you would go in there and it was going to happen. Now a proactive decision has to be made that there will be a strip-search and that is a different policy.

**Mr Parker:** That is correct.

**The CHAIRMAN:** I was at an anti-corruption conference last week and mention was made there by one of the Corruption and Crime Commission officers, who I assume had participated in the drafting of this report— they also referred to the incident, I think, which is quite well known where there was a sit-in in the office of Hon Julie Bishop and people had been asked to move on. They did not, so they were taken in, and you might remember there was some controversy about a grandmother who had been strip-

searched and so forth. The response I think at the time by the Commission was that in the end they decided not to go any further with that complaint because it was lawful for that to be done. If I understand it correctly from the presentation, the response from WA Police was that, “We do not know what people have on them and if we are going to hold them in a cell together, we have to be mindful about, if you like, the duty of care towards the other”—I will use this phrase for lack of a better word—“inmates.”

I take it then that this type of new procedure would avoid that circumstance in the sense of it being an automatic strip-search. An active decision would have to be made to say, “Look, these guys have been sitting in an office peacefully for a period of time. They have been asked to move on but they have not done it; that is not on. But the likelihood of them suddenly concealing some contraband and wanting to injure each other is so remote a possibility, it is not necessary to do a strip-search.”

**Mr Parker:** In that particular instance, the Sergeant on duty at that time had a lot of previous experience overseas with demonstrators being detained in police custody. In his experience he had actually had a lot of problems when people had taken tubes of super glue and glued their hands together through bars in an effort to obviously disrupt things to further their cause. It was his belief that those people may go to that extent. Also, because of the number of them, they had to share cells; they did not have individual cells. They were kept together as a group and because of that reason he authorised a strip-search.

**The CHAIRMAN:** So I am clear then: even though there has been this change in policy and procedure, had that situation happened today, let us say, the outcome could well be the same?

**Mr Parker:** It is a risk assessment done by the senior supervisor at the watch house at the time. I think it probably does lean to the experience those officers have had in their careers. I would say that if a different supervisor had been on shift in that circumstance, he may have taken a different view of the situation.

**The CHAIRMAN:** Yes, okay. Does anyone want to take that any further?

**Hon ADELE FARINA:** It does raise the question about what has actually then changed in the standard operating procedures, because if it is a judgement call—a discretion— if it was a discretion previously, it remains a discretion now.

**Dr O’Callaghan:** Are you able to articulate what the decision-making process might be now compared to what it was before?

**Mr Parker:** It is risk, and it is risk about the good governance and the security of the watch house and the safety of all those people within it.

**Hon ADELE FARINA:** So, for example, if you need to put two detainees together into a cell because of a lack of cells, would that automatically lead to a strip-search being required of the two detainees because of concerns that one might harm the other?

**Mr Parker:** No, I would not say automatically, but the reality is that the majority of the time that would occur, yes.

**The CHAIRMAN:** Perhaps it lends itself to the point about body scanners, which we will discuss in a moment, which might alleviate all of this in the first place. If members are happy, I might move on then.

I am just going to note recommendation 3, without necessarily asking for a comment, because I think the comments already made in the report are sufficient.

Recommendation 3 states—

There is a strong need for there to be consistency between supervisors as to methods adopted and joint training of senior police officers stationed at the Watch House is required to achieve that.

The response from WA Police is that this is consistent with the work they are doing with a dedicated training officer. I do not have any particular comment to make or questions to ask on recommendation 3, unless you do?

**Dr O’Callaghan:** No.

**The CHAIRMAN:** Recommendation 4, however, says—

*A failure to properly state and communicate decisions followed by an absence of, or insufficient recording of the same is very likely to result in both poor decision-making and an absence of accountability. An urgent review of the procedures in place in both those respects is, therefore, required.*

The response from your office, found at page 41 of the report, says that this will be considered further through the review of the Perth watch house standard operating procedures. We know that there was a review done, but was this particular issue of record keeping and decision-making addressed?

**Dr O’Callaghan:** Yes, it was, and I will get Larry to explain that.

**Mr Parker:** Probably the most significant change WA Police has introduced is a new computer application called Custodial Management Application, which is an electronic record-based application, and it is far more detailed than the previous custody computer record database we had. That was introduced late this year—

**Dr O'Callaghan:** It was introduced on 2 September 2015.

**Mr Parker:** Prior to that it was largely paper-based record keeping and that paper base obviously relied on the proficiency of the person who was filling out that paperwork, and sometimes it was lacking and other times it was more detailed. With the custody application now up and running, it actually requires entries to be made and details to be entered before it will allow the system to move on.

**The CHAIRMAN:** The system has been in place now for two, coming on three, months. What is the initial feedback on the system? Typically, any IT system that is introduced starts with some teething problems.

**Mr Parker:** It is very positive, actually. It is accepted generally across the board as being far more efficient than our previous systems.

**The CHAIRMAN:** Okay, so it has been well received by the officers?

**Mr Parker:** It has, yes.

**Mr P.B. WATSON:** Is that system used in all watch houses or just the major ones?

**Mr Parker:** Across the State.

**Hon ADELE FARINA:** Does it actually provide options as answers and the police officers just need to click on the option?

**Mr Parker:** It does. There are a lot of dropdown boxes. There are areas for free texting— entry for unusual circumstances— but all the general incidents that occur or procedures that have to happen are entered there.

**Mr P.B. WATSON:** Is it the same for male and female?

**Mr Parker:** It is, it is for each detainee. Obviously, what they are and what their circumstances are is entered in there, but yes, it is across the board.

**The CHAIRMAN:** Anything further on that, members? That probably addresses recommendation 5 at the same time, so we will pass over that, which specifically dealt with electronic record keeping. If we can then move to recommendation 6 —

A mandatory regime which ensures that a detainee who has been deprived of his or her clothing is not able to be seen by officers of the opposite sex is required, such to include the replacement of the officer on the reserve desk where necessary.

Can we just get an update on that?

**Mr Parker:** There have always been procedures in place to maintain the detainees' decency throughout the watch house. There are occasions when people will disrobe themselves, and we have no control over that, but when they do, they are covered by a blanket straightaway. There are procedures in place. If someone is naked, they are definitely covered up by a blanket before any movements, and even so, the movements will be planned. If they are going to move from one side to the other and are going to go past CCTV that is monitored by a male person or there are male officers in their presence, they will remove those male officers and replace them with female officers, even if it is temporary, for five minutes, to do that to conduct that movement.

We have also introduced a heavy Kevlar tab vest that we can put over people. It is also resistant to tearing and removal too, so we also have that option as well, which we do use on occasion.

**The CHAIRMAN:** Of course that did not happen in this matter.

**Mr Parker:** In this particular matter, Ms Martin was covered in a blanket when she was moved across the admissions area. That was in the old Watch House too, so the new Watch House is obviously much better configured to maintain the dignity of detainees.

**The CHAIRMAN:** But there is at least a concession that what happened in this matter should not have happened?

**Mr Parker:** Well, as I said, she was covered in a blanket. There was nothing visual at all. She had a blanket completely wrapped around her and she was surrounded by female police officers—PAOs, sorry— as she moved through the Watch House, the old East Perth Watch House.

**Mr P.B. WATSON:** She was dragged across, was she not?

**The CHAIRMAN:** No, she was walked across.

**Mr Parker:** No, she walked across.

**Mr Antich:** And the report states, Mr Chairman, that there were male officers who were removed prior to that movement, and what happened, unfortunately, was another male officer walked in, bearing in mind that she was covered at all times during the movement.

**The CHAIRMAN:** Right, we will get to that in a moment because I would like to go through what the status is with regard to the respective officers mentioned in the report. Before we do, perhaps we can deal with the issue of the body scanners, Police Commissioner, because at page 43 of the report your office says—

*I can confirm that research into the use of various body scanning technologies at the Perth Watch House has been conducted and the tender process has now commenced. As we have commenced the tender process you will appreciate that, for probity reasons, I cannot make any further comment at this time.*

If I am not mistaken, that was a letter from Assistant Commissioner Duane Bell from April 2014. What is the current status on that?

**Dr O'Callaghan:** We have been through a procurement process and identified a preferred supplier for the scanners. The only hold-up at the moment is that the scanners require licensing by the Federal Government and we are in that process at the moment, getting permission to do that. I do not necessarily see that as a major block, but we have to go through that process, then it is just a matter of acquiring them, installing them, training and starting to use them.

**The CHAIRMAN:** What is the target date for this to be implemented?

**Dr O'Callaghan:** I think March–April [2016]. It will just depend on when we get approval from the federal government. We have not been through this process before, but early next year, hopefully.

**The CHAIRMAN:** So you need Minister Harvey to speak to Minister Keenan, or something like that?

**Dr O'Callaghan:** Who knows what happens inside the Federal Government.

**The CHAIRMAN:** Any questions relating to scanners?

**Hon ADELE FARINA:** Yes, what do they actually scan for? What can they detect?

**Mr Parker:** We are actually introducing two systems. We are going for a very sensitive metal detector, which we will use in the first part of the process. The actual body scanner that we are acquiring is called a millimetre wave scanner. It is the same as the one you go through at the [Perth] international airport. It can be set to different sensitivities, and basically it will pick up things that are hidden under clothing on a person's body.

**Hon ADELE FARINA:** Can I just clarify one other matter? If a person has a pacemaker, they will not actually be able to go through that machine, so will you have procedures in place for people with pacemakers or other medical conditions that would prevent them going through the scanners?

**Mr Parker:** The technical information we have is that it is quite safe for people with those medical conditions to go through that scanner, but we do intend that it will be

voluntary. Obviously, people will not have to go through that, but then if the risk assessment is such that we would normally strip-search, that would be the alternative.

**Mr P.B. WATSON:** Is there a thought of putting them into regional areas, Commissioner?

**Dr O'Callaghan:** Ultimately yes, when we see how they operate at the Perth Watch House. All of those things are, of course, based on being able to train people to use them and the throughput in a particular Watch House. But I think our aim would be to get them into the major centres, particularly the district offices in regional Western Australia where most of the throughput is— places like Broome, Karratha, Albany and Bunbury.

**The CHAIRMAN:** I would like to move to the opinions of misconduct that are found in the report, starting at page 33. I will start with Ms Fiona McPherson, who is mentioned in the report at page 34— Unlawful assault occasioning bodily harm is an offence under section 317 of The Criminal Code and carries a maximum penalty of five years imprisonment.

In the opinion of the Commission, therefore, Ms McPherson's participation in the strip-search of Ms Martin amounted to serious misconduct within the meaning of section 4(c) of the CCC Act.

Can you advise the Committee what the outcome has been of that finding of serious misconduct?

**Dr O'Callaghan:** I will ask Mr Anticich to talk to the sanctions against the officers concerned.

**Mr Anticich:** In essence, just going through the correspondence that occurred before my time, we expressed the view by report or response saying that we did not share that view. We certainly did not share that particular opinion and we raised a number of issues around the contention that the assault occurred, when and how it did. We were at odds with the Commission in terms of their opinion.

**The CHAIRMAN:** Yes, so McPherson— if I remember correctly— in the report, is that the one who tried to remove the ring?

**Dr O'Callaghan:** Yes, it is. That particular issue happened in an area where there was no CCTV. It happened in a situation where there were other officers involved. I think we have to go back to this issue that these are just opinions expressed by the Commission. We are of the opinion that after two and a half years of an investigation to return it to us and say they have an opinion of serious misconduct and now go and investigate it, and investigate something which we had no vision over, no ability to bring it to a

conclusion, so we disagreed with the Commission on that and decided not to proceed with that.

That is not much different to, I guess, the expression of serious misconduct against the Lord Mayor, really. It is the same process; it is just an opinion by the Commission.

**Hon ADELE FARINA:** What was the cause of the delay in providing the report? Was this one of the incidents where police officers declined to participate in answering questions?

**Dr O'Callaghan:** The cause of delay for what report?

**Hon ADELE FARINA:** You said it took two and a half years for the CCC to complete the investigation and to report. That is a considerable amount of time and I think the concerns you raise are justified. However, if the cause of that delay is because police officers refused to participate with the CCC in answering questions and investigating the matter, then that raises a different set of concerns.

**Dr O'Callaghan:** The officers were compelled; they did not refuse. They cannot refuse without committing an offence, so they were compelled to comply with the CCC. If we go back in history, and this is something —

**Hon ADELE FARINA:** But initially the CCC just call the officers in to talk to them—

**Dr O'Callaghan:** That is right.

**Hon ADELE FARINA:** — and we understand that the Police Union actually issued an instruction to police officers not to participate in those voluntary hearings.

**Dr O'Callaghan:** That is right and this is actually an issue that has been raised at this Committee before, as you know. Without actually being compelled to give evidence, officers were not necessarily prepared to cooperate with the Corruption and Crime Commission at that stage, and we have been trying to work through a way of solving that particular problem.

Look, part of the problem here goes back to the same issue that we discussed at, I think, a previous Committee about the incident at the Broome Watch House. If the CCC issues a section 42 notice on what is an investigation into a simple technical assault, it takes it out of our hands and we cannot do anything, we cannot intervene, and in this instance— it is the same for the Broome matter— it takes a very long time for it to be resolved and sent back to us, after which time a whole series of things could have occurred. People could have retired, resigned, moved on or been charged with internal offences.

It has been one of the things that I have raised with the current Commissioner and I think we will find that the CCC will be more discerning about when they issue 42 notices in the future and, in fact, will want to work more cooperatively with Police, because if we had internal investigators with the Corruption and Crime Commission at that initial interview, the internal investigators could have compelled the officers to respond very early. It is this process of issuing 42 notices which has caught us several times in these circumstances where the CCC take it all away, it takes two or three years to come back to us, and then a lot of the material they provide us with is irrelevant.

**Mr Anticich:** Perhaps a time line, Mr Chair, might explain and address some of the issues that you have raised. The incident occurred on 7 April 2013. The complaint was lodged by the subject person on the eleventh. On 16 April 2013, the CCC served a section 42 notice effectively saying police are to desist and not to take the matter any further. Almost three months after that complaint or that order is given, they interview Ms Martin, so she is not interviewed for some three and a half months after this particular incident, according to our records, as to what has actually occurred in person.

Between 9 July and 22 July, there are in fact five informal interviews, so the issue you raise, Ms Farina, was in fact that people who were not the subject officers actually did voluntarily get interviewed by the CCC. Between 3 September and 11 September, they commenced the hearings, so that is five months after the initial complaint had been received. That includes nine staff, five PAOs and so forth. The report was then released on 20 August 2015, so that is two years and four months after the complaint.

**Hon ADELE FARINA:** In that time line, no request for documents has been outlined and I would imagine that the CCC would have needed to request copies of documents in relation to watch house records in terms of reasons for decisions made. I would be interested to know whether that request was made during that three-month intervening period before interviews were able to commence and that caused the delay in those interviews to be commenced or whether the request for those documents was made in that other period of break and that is what actually caused the delay, because I think that is important for us to be aware of.

**Mr Anticich:** I do not know about that but I can take that on notice.

**The CHAIRMAN:** Let us take that on notice but I think, Commissioner, at the end of the day, we are not going to sweat the small stuff here about the initial three months. Presumably your point is that once the examinations have taken place in September 2013, the fact that it takes almost exactly two years to then produce the report is spectacularly unhelpful for you.

**Dr O’Callaghan:** Well, it is just nonsense. I have raised this issue before. The CCC have the power to take the inquiry over and charge the officer. If they believe there is sufficient evidence, they could have done so, but after two years, what they do is send the file back to us and say, “Look, we have found serious misconduct; now you start your own inquiries into it”, because that is what we would have to do— initiate our own criminal inquiry into a matter that is probably unresolvable at that stage because we have lost a lot of investigative advantage, and we do not have any direct evidence anyway.

**The CHAIRMAN:** I think it is partly explainable by the fact that— I would like to think that particularly under the current Commissioner that this episode would not happen again in terms of the delay in the tabling of a report. We need to bear in mind that there was no substantive Commissioner for a period of time.

**Dr O’Callaghan:** Sure.

**The CHAIRMAN:** We had this very unsatisfactory situation of two weeks on, two weeks off between the two Acting Commissioners who— I make no criticism of those two individuals because they are both busy, legal practitioners in their own right— inherited the situation after the retirement of [Commissioner] Macknay. There was a very tortoise-like appointment towards the new Commissioner. There are a number of external factors that have resulted in the situation we have, but I think the main point you are making is that if they are going to make findings of this nature, it needs to come to you quickly.

**Dr O’Callaghan:** I have had a lot of talks with the current Commissioner and I do not think we will see a replication of this problem. It is a very encouraging relationship. I think we will see less use of 42 notices, more cooperative investigations and a much more timely response. I have no problems with the way things are now at this point in time.

**The CHAIRMAN:** Let us say that this report had come out speedily within six months. How do you address the internal conflict in your organisation of making a decision whether or not to proceed with a criminal investigation? It is one of your officers that the Corruption and Crime Commission is saying has committed serious misconduct and assault when they tried to remove the ring forcibly in circumstances they should not have. How do you address that?

**Dr O’Callaghan:** If it was more proximate to the event, we could have conducted a criminal inquiry into it. You could have gathered information, interviewed people and seen whether there was— I mean, this does not mean to say that there would be sufficient evidence to proceed with assault occasioning bodily harm, but you could if it

was more proximate to the event, or you could do it in parallel to your criminal inquiry early.

That is one of the issues that I have raised with the current Commissioner; if it is likely that there is criminality, we need to commence an investigation there and then or very shortly after the complaint has been made, not two and a half years later. He understands that. As I said before, I do not think we will be in this situation in the future.

**The CHAIRMAN:** Is it [WAPOL] Professional Standards that does that investigation?

**Dr O'Callaghan:** It could be, but it could also be detectives depending on what type of inquiry it is and where it is, but probably if it was referred back from the CCC, we would have Professional Standards do the inquiry.

**The CHAIRMAN:** But not somebody who works closely with officers in the Watch House?

**Dr O'Callaghan:** No, no.

**Mr P.B. WATSON:** Commissioner, are you concerned, the CCC is our overriding body for corruption and it made a charge against Ms McPherson. The police, for the reasons you have given today— the public think that the police investigating themselves say no, there is no case and move on. Do you think this brings a lack of confidence in the investigative powers when one of your own officers is being found against by the CCC?

Do you think that the way it has been handled—people say that the police are looking after their own? Do you think your message about the circumstances surrounding it should have got out better so people were not given that perception?

**Dr O'Callaghan:** I think there was quite a long media conference where a lot of that was explained. The challenge for us is how that gets interpreted in the media and gets out from there. I agree with you; it is a system failure, it is not a particular problem with police. Remember that this was an independent inquiry done by the Corruption and Crime Commission, not by the Police at all. It could have resolved it and it could have charged the officer. It chose not to and then I am left holding the baby, trying to explain it to the world. That is the problem—it is a system failure, not a Police failure.

**Mr Anticich:** Perhaps if I could just say, for clarity, that opinions of misconduct are of a completely different level to a criminal charge and they are opinions, very much that, about misconduct. They should not go to criminality and they should not go to disciplinary matters; it is actually precluded within the Act.

**Dr O’Callaghan:** I think the term “found against” is actually incorrect in this matter. This is simply an opinion expressed by the Commission and all it does is force us to have a look at it, but it is just an opinion; it is not proof, it is not evidence—

**Mr P.B. WATSON:** So you are saying that the CCC is a toothless tiger because it provides opinions? When do you pay attention to the CCC— when it makes opinions or when it makes charges?

**Dr O’Callaghan:** They make recommendations. In this case I think there were six recommendations and they were all followed, implemented and agreed to. When it comes to matters of misconduct and serious misconduct, they can simply only express under their Act opinions. So if they themselves do not move to initiate a charge based on their own opinions, which it could, what it means to us— there is case law around this— is that the whole inquiry process into the criminal matter has to start again; it has to be recalibrated and start off again.

I think I have raised some frustrations about this before, including over the Mallard matter some years ago where I said that if the Corruption and Crime Commission believed this has occurred, it has the power to charge the officers concerned. If it sends it back to us, we have a three or four-year inquiry in front of us.

**The CHAIRMAN:** Is it important, Commissioner, that in this instance the Commission elected not to make a recommendation that charges be brought against this individual because they could have done that too?

**Mr Anticich:** I do not think they can.

**The CHAIRMAN:** No?

**Mr Anticich:** It is precluded in the Act.

**The CHAIRMAN:** So it could not ask WA Police to investigate the matter?

**Mr Anticich:** They could ask us to investigate the matter, but I do not know under what provision of the Act. As I said, they can make assessments, provide opinions, but beyond that we have our own right in terms of deciding what we want to do. They expressed a view based on their, let us call it an investigation and set of facts. If we start to pull the thing apart, the only evidence we have as to how that injury was sustained is based on the evidence of Ms Martin. We would say that there is other evidence that indicates that that could have occurred elsewhere.

**The CHAIRMAN:** That is my point. When the Commission expresses an opinion, it is doing so on the balance of probabilities. It has considered all these things; you can see that in the report. It says it favours somebody’s evidence over another, so they express

an opinion to say that in their view, McPherson committed serious misconduct. But as you know, that is not sufficient to sustain a criminal charge.

**Mr Antich:** If we take the injury to the finger as the central point from which all this pivots, we know that Ms Martin was engaged in a significant altercation prior to her being arrested. We know that at the conclusion of this event she was fingerprinted and that there was no claim made that the finger was injured. We know that she stood at the lockup sergeant attempting to make a complaint, but did not raise the issue regarding the finger. There is all this other circumstantial evidence that would indicate that it does not support the opinion expressed in the report by the Commission. We need to weigh all that up; we cannot simply rely on a document that says something.

**The CHAIRMAN:** Even if someone wants to argue that it did support, presumably whatever support it was, there would be sufficient doubt to justify not proceeding with charges.

**Mr Antich:** As the Commissioner said though, I think if it had been timely, we would have been in a position to actually have gone and done the investigation. Just to put this into some context in terms of what happened to these people, I can tell you that two of the PAOs who were interviewed or put through the interrogation with the CCC resigned within six weeks of this event citing the experience that they had gone through and thought what is this all about, this is not what I signed up for.

Another was due for promotion within three weeks and that was held up for almost a year or more—beg your pardon, two years—and another who had applied to join WA Police went through a similar exercise. These people’s lives were put on hold and effectively impacted quite negatively because it took so long to get to a conclusion.

**The CHAIRMAN:** On that point, those two individuals you referred to— Amy Sumner and Joanne Lynch—are no longer employed. Are they the two that you refer to who resigned?

**Mr Antich:** Correct.

**The CHAIRMAN:** They were either Police Auxiliary or custody officers at the time. In the case of Sumner, the Commission said that the conduct towards Ms Martin when she was in the padded cell was both unreasonable and oppressive and did amount to reviewable police action. Sumner, I think— correct me if I am wrong— is the one who said, “We’ll give her her clothes back if she keeps quiet” and when she did not, “We’ll just leave her in there”. Is that right?

**Mr Antich:** I cannot recall the exact detail on that.

**The CHAIRMAN:** Paragraph 238 on page 34 states —

*Ms Sumner's subsequent conduct in informing Ms Martin that her clothes would only be returned to her in the padded cell if she became quiet and then stating "leave her there" did amount to a breach of the trust placed in her as a police auxiliary officer ...*

This is a classic example, Commissioner, where I can understand your complaint around the CCC taking a long period of time and I can also understand that, at the end of the day, they are only opinions and you have to make your own judgement call on that, but I would like to think that no-one is going to defend the conduct of Sumner in saying to the person in a padded cell, "I will only give you your clothes back if you stay quiet." I do not think there is a defence of that. It should not have happened.

**Dr O'Callaghan:** No, I agree with that. I do not think we have actually tried to defend that.

**The CHAIRMAN:** So it was reviewable police action—

**Dr O'Callaghan:** Yes.

**The CHAIRMAN:** — but no action could be taken against the officer because she left the employment of—

**Dr O'Callaghan:** That is right. So reviewable police action would come under our disciplinary regulations, but once someone is no longer an employee, you cannot enact the disciplinary regulations against them.

**The CHAIRMAN:** Okay. I just do not want to give the impression here that Sumner has left the employment of WA Police because of the actions of the CCC. At the end of the day, she is the author of her own misfortune. It is an unfortunate episode and she has decided to resign.

**Dr O'Callaghan:** Yes, I think maybe Mr Anticich was actually referring to her comments to the Police, but you are right, if she had remained in the Police, although the report clearly says that her conduct did not necessarily provide reasonable grounds for termination of employment, something needed to be done about it. So there would have been some internal action, which would also have had a training component attached to it.

**The CHAIRMAN:** There is sympathy on my part. I can understand that this is something you probably deal with in a sort of human resources scenario and say, "Look, that was not on; this cannot be supported." No doubt you would have had to deal with such instances previously. It is regrettable that a person then chooses to no longer be employed. I imagine it is no mean feat to get sufficient recruits in the first place.

Nevertheless, I just do not want to give the impression that somehow her decision to resign was the fault of the CCC.

Lynch is another one who is no longer employed. The CCC says at paragraph 246—

*The force used by Ms Lynch in her attempt to remove Ms Martin's ring resulted in a serious fracture of the finger and was plainly excessive ... Lynch's conduct in this regard constituted serious misconduct ...*

I guess then your comments will be the same as what was around McPherson?

**Mr Anticich:** That is right. I think Ms Martin claims that that is when the injury occurred. The officer I think responded by saying that she attempted to wiggle the ring off. Again, other than the medical examination at the end of this, there is no other corroborative evidence to indicate that during the period in the lockup she indicated that there was an injury to the finger.

**The CHAIRMAN:** What is interesting is that I take it then that this individual obviously has resigned well before this report has come out. They have not resigned because the Commission said, "You've committed serious misconduct"; they have resigned partly because they have had to go through this private examination business.

**Mr Anticich:** Correct. Three days after appearing at the CCC examination she cited the experience and said that she could not bear it and she resigned.

**The CHAIRMAN:** Are you in a position to offer a comment on the reasonableness of that?

**Dr O'Callaghan:** Of her resigning?

**The CHAIRMAN:** For those reasons. People can resign; it is up to them what they want to do.

**Dr O'Callaghan:** That is right. I suppose that an officer going through a Corruption and Crime Commission hearing would find it stressful and they might make decisions for all sorts of reasons. The issue for her would be that she did not enjoy the experience. She probably felt that she was hard-done by. From my perspective, it is a necessary process. Officers joining the police force are required to account for what they do at work. It is quite likely that in your career you are either going to have to give evidence to internal investigations or the Corruption and Crime Commission. That is just part of it.

**The CHAIRMAN:** Yes, or give evidence in court and be cross-examined.

**Dr O'Callaghan:** Absolutely.

**The CHAIRMAN:** If you cannot maintain the heat of a private examination with the CCC, then maybe it is not the right employment?

**Dr O'Callaghan:** It is always difficult to make comments about people's state of mind, but officers who join the police force have to have a level of resilience to be able to go through these processes.

**The CHAIRMAN:** Okay, I think that is fair enough. Do members have anything further on that?

**Hon ADELE FARINA:** Can I just raise the issue of keeping people naked in padded cells. Is that a usual practice?

**Mr Parker:** That is usually done for people who are attempting self-harm. Often people in that frame of mind will remove clothing, whether it be underwear, shirts, whatever, and tie it around their necks. The only response or action we can take for their safety is to remove their clothing.

Because their clothing is removed we actually put them in a padded cell because it is private and it is a concealed area. They are kept in there for the minimum time, usually until they calm down, and then they are given clothing back or one of those Kevlar smocks I mentioned before, before they are taken back to the cell.

**Hon ADELE FARINA:** What is the temperature in the padded cell?

**Mr Parker:** The temperature is controlled throughout the Perth Watch House in any regard. It is a comfortable temperature; the temperature of this room here now.

**Hon ADELE FARINA:** I have concerns about that because I do not think you need to remove every item of clothing, even if someone is at risk of self-harming, because you have them detained in cells and you do not remove every bit of clothing from them. I find that practice very concerning and I assume that the blanket was removed from the detainee as well when she was put in the padded cell?

**Mr Parker:** In that time, because the blankets we had were not what they call suicide-proof— they were tearable; people could tear them up if they had the strength. In regards to removing clothing, it does occur that people will try to get their underwear and twist it around their neck and try to choke themselves out.

**Hon ADELE FARINA:** Can I just say that it concerns me that in 2013 we actually had an incident where a person was strip-searched and then made to walk through the detention centre with just a blanket on them. We do not know the size of the blanket. We do not know if the blanket covered her fully. She was handcuffed at the time so it is quite possible that at any point in time the blanket could have opened.

I find that concerning. I find the fact that putting people in padded cells, completely naked, is also very concerning when other measures should have been taken. After all, in this day and age, that sort of behaviour is just unacceptable and the treatment of detainees is unacceptable.

**Dr O’Callaghan:** I think we can, firstly, help the Committee understand exactly what circumstance Ms Martin was in by providing you with the vision, if you want to see it, so you know exactly how she was moved through the Watch House and what level of coverage she had on her body. It may be of interest to you.

**The CHAIRMAN:** Is that any different to what has already been provided by the Commission?

**Dr O’Callaghan:** I am not sure, from memory; I cannot remember what is on there. I think the issue for us is that if someone dies in a watch house through twisting their underpants around their necks or anything like that, we are the ones who are going to the Coroner’s Court and we are the ones having to defend our actions, and then there is a series of recommendations, so these things are not straightforward and watch houses are not straightforward places.

I have talked more generally about strip-searching and taking clothes off people. In the end, we have to make a decision based on what the risk is to that individual. There is no doubt that sometimes we get it wrong—there is no doubt about that— but most of the time we are getting it right, and I still say to these officers that we do not want to be dealing with the death of someone or the serious injury of someone in a watch house which was completely avoidable because we were concerned about taking an item of clothing away.

**Hon ADELE FARINA:** Maybe there needs to be closer supervision of that person?

**Dr O’Callaghan:** I think in some respects some of this problem will go away with the scanners, but there will always be issues with mental health. You are probably aware that we are now employing mental health-trained people in the watch house as well to deal with those sorts of circumstances. As I said at the beginning, these are incremental changes that will make things better for detainees.

**The CHAIRMAN:** I think it is fair to say, Commissioner, that had there been a body scanner in this incident, we would not even be having this discussion because the strip-search would never have taken place, she would not have arced up, and you would not have had to worry about the padded cell and self-harm and the rest of it. It has just escalated out of all proportion in the end because of the initial decision.

I guess the confidence that we need to take as a Committee out of today is that as a result of the Commission’s inquiry and investigation, recommendations have been

made and changes have been made from your perspective, including structural changes in terms of the building, so a different location.

You mentioned the use of the smocks and you are now going to implement the body scanner. I think all those things can provide us with comfort. The only one that probably still hangs loose, and maybe there is nothing you can really do about that, is the point that has been made by my colleague about the decision around self-harm.

From your reading of this incident, do you think it is reasonable for the officers on-site on that night to conclude that Martin might have been wanting to self-harm?

**Dr O'Callaghan:** My understanding is that the officers concluded that they needed to search her to make sure she did not have anything on her that could harm her or anybody else in the Watch House. I think the next part of that, and we have already discussed it, is where there was some refusal to give her clothing back; that was the wrong decision.

**The CHAIRMAN:** I do not think that we can pursue that any further. There is a concession that that should not have happened; it happened, and we have to move on.

**Mr P.B. WATSON:** With the padded cell, do you monitor the person in there?

**Mr Parker:** Constantly.

**Mr P.B. WATSON:** Do you have a camera or do you just check the cell?

**Mr Parker:** We actually have a camera in the cell and there is a monitor above the door in the cell and there is an auxiliary officer stationed outside the entire time if someone is in those cells.

**Dr O'Callaghan:** But I do not think that was the case at the old Watch House.

**Mr Parker:** They still had monitors. Yes, they still do that.

**Dr O'Callaghan:** At the old Watch House?

**Mr Parker:** Yes.

**The CHAIRMAN:** There are two other officers, Commissioner, that we need to deal with. One is Sarah Whiting. The Commission says at paragraph 241 on page 34 that her use of force was therefore unlawful and in the opinion of the Commission constituted serious misconduct.

It goes on to say that the individual also used what they refer to as the six hammer blows and that that amounted to misconduct; that the non-returning of the clothing amounted to a further breach of trust and misconduct; the decision to go in the

padded cell arose from a desire to punish rather than a concern for health and amounted to misconduct; and that Whiting was not authorised to direct that Martin be placed in the padded cell and in the opinion of the commission that action also constituted reviewable police action.

That is quite a list for that individual. What, if anything, happened with Whiting? Is she still employed by WA Police?

**Mr Anticich:** My advice, Mr Chair, is that she was due for a promotion but, of course, because of this inquiry that kicked in, in fact that was delayed for quite some period of time. I do not actually know what her current status is; I believe she is still within our employ. Some of the response of the material we got back, the position that the Commission put forward was based I think on a view that they had.

Again, if we were to take it into an investigative-type of approach, the corroboration to support some of that stuff is very much opinion-based, based on their assessment of the material. We most probably look at it and ask holistically what other material supports that particular proposition. Certainly here my advice is that although the actions may be questionable, they were certainly lawful under [section] 135 [of the CI Act], so there is the issue of what is unlawful and perhaps what is not.

We are not so certain that there is evidence that would support the proposition put forward by the Commission.

**The CHAIRMAN:** All right. Let us take them one at a time. First of all, the Commission refers to unlawful use of force in conducting the strip-search. The position of WA Police is that that is not sustainable?

**Mr Anticich:** If we go back, the way this is built is that Mr Shanahan takes it through to the point that the alleged injury to the finger occurs, which is an assault occasioning actual bodily harm, and then retrofits that everything prior to that then becomes unlawful because it was unjustified in terms of the use of force.

**The CHAIRMAN:** But does he also say it was because there were too many people involved?

**Mr Anticich:** There is some mention of the people that were involved and there are some provisions under the act that say that there should only be the reasonable amount of people in terms of observing. My understanding is that the seven officers involved were principally engaged in subduing or trying to deal with the resistance that they were dealing with. I think he has put a completely different context on the law.

I think the law quite properly says you cannot have a bunch of people standing around watching what is going on, but this kept escalating because of Ms Martin's resistance to

the point that these officers were actively engaged in trying to deal with that resistance. It is not like they came in there to have a look; it was actually trying to deal with the issue.

**The CHAIRMAN:** All right. Let us deal with the item that has been conceded, which is the non-return of the clothing. The Commission says that amounted to a further breach of trust and to misconduct. We said earlier in the hearing that that should not have happened.

**Dr O'Callaghan:** Yes.

**The CHAIRMAN:** What, if anything, happens to Whiting as a result of that?

**Dr O'Callaghan:** I think she was held over for considerable time for an increment which has had quite a significant financial impact on her. There was a direct punishment involved. There was probably training, but I do not have the details here. I am happy to provide that as supplementary, so any work that is being done with her in terms of training afterwards.

**The CHAIRMAN:** I think so, Commissioner, because as I say I do not have a problem with you taking a contrary view to the Commission— it is your responsibility to work on these things— but I would not be enthusiastic if at least on some of the points where there is concession to say that that should not have happened, there has been no consequence.

**Dr O'Callaghan:** I have no problem with that. I do make the point again that it is like dealing with children who transgress at home; you cannot do it after six months, two years or three years. You have to do it immediately, particularly if it is a breach of discipline regulations; you cannot be affording to wait for the Corruption and Crime Commission to turn up two and a half years later with a series of recommendations. We need to do these things within days or weeks so people can be trained, punished if that is what needs to happen, and get on with their careers.

**The CHAIRMAN:** Does this stay on their record from your internal perspective indefinitely?

**Dr O'Callaghan:** There will be records because this is all part of our IAPro system, and also our HR system.

**The CHAIRMAN:** So whether you agree or disagree with the finding of the CCC, it will stay on that officer's record for the extent of their employment?

**Dr O'Callaghan:** Our Internal Affairs IAPro system will list all the allegations that have been made against officers and whether they are sustained or not sustained. All that material over their whole career is kept—

**The CHAIRMAN:** Sustained by the CCC?

**Dr O’Callaghan:** Sustained by the CCC or sustained by us—either/or.

**The CHAIRMAN:** What about somebody where the CCC says there has been serious misconduct and that is recorded in the system. What if WA Police do not agree with that? Does it stay on the system?

**Dr O’Callaghan:** It stays on the system but—

**The CHAIRMAN:** Is there a comment to say that WA Police disagrees?

**Dr O’Callaghan:** We have a notation as to what outcome happened in terms of the Police outcome.

**The CHAIRMAN:** Okay.

**Mr P.B. WATSON:** Did the Police have an initial inquiry into the incident?

**Mr Antich:** We received a complaint on the eleventh. The event occurred on 7 April 2013. On 11 April the complaint was lodged with the Police Complaints [Section] and the Commission obviously picks up, because we notify it of all complaints as they come in.

**The CHAIRMAN:** Five days.

**Mr Antich:** It said, “Stop, we are going to take over this matter.”

**The CHAIRMAN:** If the CCC tells WA Police to stop, it will stop?

**Mr Antich:** Yes.

**Mr N.W. MORTON:** Was it agreed that you would provide what, if any, actions were taken against Ms Whiting?

**Hon ADELE FARINA:** Yes.

**Mr N.W. MORTON:** Yes, it was agreed.

**The CHAIRMAN:** The last one I want to deal with is Andrew Unsworth, who is a Police Officer. I think this is the interview— he did not take on her complaint at the time. She wanted to complain on the night or the morning— whenever it was— and I think he was busy and just was not able to do it. The Commission says at paragraph 248 on page 35 that his conduct was in the Commission’s view unreasonable and constituted reviewable police action. Was anything done as a result of that?

**Mr Anticich:** Yes, correct. We dealt with that. We said that that was inappropriate and he has been dealt with managerially. I do not have the details of what was done but under our model it would have been things taken to address why that occurred and to make sure it did not happen again. He was dealt with on that matter.

**The CHAIRMAN:** Rightly or wrongly, it is on his record permanently.

**Dr O'Callaghan:** Yes, and we can provide the outcome by way of supplementary if you are interested.

**The CHAIRMAN:** Okay, both of those supplementary. Commissioner, is there anything further you want to discuss on this matter or do you wish to make any concluding remarks?

**Dr O'Callaghan:** No, I do not think so. As I said earlier, a lot of the issues that occurred here probably would be much less likely to occur in the future because of a raft of changes. Among the most significant is the implementation of the scanners. I think also the view of the now current Commissioner of the Corruption and Crime Commission, who will approach this differently, and we will not have this long time lag and [section] 42 notices getting in the way of dealing as quickly as possible with the issue as it comes up.

**The CHAIRMAN:** If there is nothing further, I will proceed to close the hearing. Commissioner, thank you for your evidence before the Committee today. A transcript of this hearing will be forwarded to you for correction of minor errors. Any such corrections must be made and the transcript returned with seven days from the date of the letter attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct.

New material cannot be added via these corrections and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence.

Thanks very much.



# Appendix Two

## WAPOL answers to Questions on Notice



WESTERN AUSTRALIA POLICE

**OFFICE OF COMMISSIONER OF POLICE**

POLICE HEADQUARTERS  
6TH FLOOR

2 ADELAIDE TERRACE, EAST PERTH  
WESTERN AUSTRALIA 6004  
TELEPHONE : (08) 9222 1978  
FACSIMILE : (08) 9222 1717

Your Ref:  
Our Ref: COP1309101  
Inquiries:

Hon Nick Goiran, MLC  
Chairman  
Joint Standing Committee on the Corruption and Crime Commission  
11 Harvest Terrace  
WEST PERTH WA 6005

Dear Mr Goiran *Nick*

**REPORT ON THE INVESTIGATION OF AN INCIDENT AT THE EAST PERTH WATCH HOUSE ON 7 APRIL 2013**

Further to the public hearing on this matter with the Joint Standing Committee on the Corruption and Crime Commission (JSCCCC) on 25 November 2015, several questions were asked by the JSCCCC for clarification.

The JSCCCC has sought information from WA Police to furnish relevant information and materials requested by the Corruption & Crime Commission (the Commission), investigating an incident at the East Perth Watch House (EPWH) on 7 April 2013, concerning Ms Joanne Therese Martin (Martin). Martin was detained and subject to a strip search at the EPWH after being arrested in Northbridge.

On 11 April 2013, Martin lodged a complaint at Police Complaints alleging mistreatment during her detention, including a broken finger on her left hand that she alleged occurred during her detention.

On 16 April 2013 the Commission executed a Section 42 Notice pursuant to the (then) *Corruption and Crime Commission Act 2003*, assuming control of the investigation into Ms Martin's complaint and directing WA Police not to investigate the matter. The Section 42 Notice was revoked on 12 August 2014, sixteen months later, which presented concern for WA Police, who were not given the opportunity to conduct an independent investigation into the matter, nor take the required risk mitigation, behavioural modification or other managerial/disciplinary actions emanating from such investigation.

The Commission was provided EPWH CCTV footage and related custody records relating to the event on 18 April 2013.

Mission Statement: "To enhance the quality of life and wellbeing of all people in Western Australia by contributing to making our State a safe and secure place."

On May 27 2013, the Commission investigator, Mr Andrew Tunstall (Tunstall) requested EPWH rosters for 6-7 March 2013, which were provided by Inspector Parker (Parker), the Assistant Divisional Officer in charge of the EPWH on 29 May 2013.

The mistaken request for March rosters rather than April 2013 was further recorded in email correspondence dated 14 June 2013 from Parker to Tunstall and following a telephone call from Tunstall to Parker, Parker immediately emailed the April rosters.

On 16 July 2013 at 11:04 am, the Commission investigator Ms Shannon Roberts (Roberts), emailed Parker directly advising she was in possession of the EPWH Standard Operating Procedure (SOP) version 9.5 and enquired if this version SOP was active as at the incident date in April 2013. Roberts also requested a copy of the current SOPs in effect for the newly commissioned Perth Watch House (PWH).

At 12:33 pm the same day, Parker emailed Roberts advising the SOPs he possessed were in effect on 6 April 2013 and he attached a copy of the new PWH SOPs as requested.

The available evidence demonstrates a willingness by WA Police to swiftly respond to requests from the Commission for evidence or any other materials that may have been of assistance to the investigation.

Our records indicate that having assumed carriage of the investigation on 11 April 2013, by 1 May 2013, the Commission was in possession of crucial CCTV footage and documentation pertaining to Martin's detention.

When additional documentation was requested on 16 July 2013, the material was collated and emailed ninety minutes later.

There is no evidence to indicate WA Police have been anything other than accommodating and prompt when attending to requests from the Commission for information or evidentiary materials.

Police Auxiliary Officer Sarah Whiting 99980 was not subject to any internal disciplinary action.

Sergeant Unsworth (Unsworth) received verbal guidance from Parker on 17 December 2014 for failing to process Martin's desire to lodge a complaint about her treatment immediately after she had been released to bail.

In mitigation, the investigation concluded that Unsworth was managing a very busy Watch House on a Saturday night and chose not to absent himself from his duties of maintaining a safe and efficient functioning Watch House environment, and processing people who were arriving, remaining or leaving the Watch House. Alternatively however, Unsworth could have explored options of arranging for Martin to present herself at the front counter of the adjoining Central Police Station where a shift Sergeant could have taken her complaint in a much calmer environment, but he failed to suggest this option.

I trust this information is of assistance to you and provides the necessary clarification regarding the response by WA Police to these matters.

Yours sincerely



KARL J O'CALLAGHAN APM  
COMMISSIONER OF POLICE

10 December 2015



# Appendix Three

## Response from CCC Commissioner



Your Ref:  
Our Ref: JMcK:MP

9 December 2015

Hon. Nick Goiran, MLC  
Chairman  
Joint Standing Committee on the  
Corruption and Crime Commission  
Level 1, 11 Harvest Terrace  
WEST PERTH WA 6005

Dear Mr Goiran

### REQUEST FOR INFORMATION ON COMMISSION REPORT

Thank you for your letter of 2 December 2015.

The Commission has nearly finalised a new policy on section 42 notices which should enable agencies to deal with matters more promptly than in the past. There is a place for a section 42 notice, but not in every case and not necessarily for the time it takes to complete an investigation.

I will send both the Parliamentary Inspector and you a copy of the policy on section 42 notices when it is finalised. In the interim I attach an extract from the MOU between the Commission and WA Police signed 8 July 2015.

On the question of prosecution I would prefer not to respond at this time. As you are aware the Commission's authority to prosecute is before the Court of Appeal and is due for hearing on 17 December 2015. No doubt the Court will reserve its decision.

After that decision, whatever it may be, I think a round table discussion with the Committee and the Parliamentary Inspector about the proper role of the CCC in recommending prosecution would be helpful.

The third matter you raise is the seemingly long time taken by the Commission to complete its investigation report on this matter.

I attach a timeline of Operation Tallangatta.

The timeline also details the use of the section 42 notice and its subsequent revocation. Although there are explanations for the delay, I do not seek to justify the length of time it took to conclude Operation Tallangatta. I am the cause of part of the delay. When I read the report, I reached the view that in part it proceeded on a wrong view of the law. As a result the report was reconsidered by Acting Commissioner Shanahan and altered appropriately.

Yours sincerely

John McKechnie, QC  
COMMISSIONER

Attachments

CORRUPTION AND CRIME COMMISSION

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VI-15

## **EXTRACT FROM MOU BETWEEN THE COMMISSION AND WA POLICE**

The MOU between the Commission and WA Police signed on 8 July 2015 contains a section on "Cooperation Regarding Investigations", that is, section 12, as outlined below.

### **12 Cooperation Regarding Investigations**

- 12.1 *From time to time the Commission will issue a written notice to WA Police, pursuant to section 42 of the CCM Act ("section 42 direction") directing it not to commence, or continue, an investigation into a misconduct matter.*
- 12.2 *The scope of a section 42 direction is limited to misconduct investigations and to the matters set out in the notice.*
- 12.3 *A section 42 direction does not affect the ability of WA Police to discharge its statutory and common law functions in that it does not prohibit WA Police from conducting criminal investigations, mitigating risks of misconduct and corruption or taking any measures necessary to ensure the safety of members of the public. Where WA Police has concerns that the section 42 direction may impede its ability to do so the Commissioner of Police will communicate those concerns to the Commission and the Parties will discuss and endeavour to resolve the concerns.<sup>1</sup>*
- 12.4 *If the SOCG considers it desirable that protocols be developed with respect to investigations conducted cooperatively pursuant to section 33(1)(b) of the CCM Act, these may be detailed in an Annexure to this MOU.*

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<sup>1</sup> The Commission may, on a case-by-case basis, issue section 42 notices with a "sunset clause", that is, a date by which the notice ceases to remain in force, unless revoked earlier.

#### TIMELINE: OPERATION TALLANGATTA REPORT

The letter from the JSC Chairman dated 2 December 2015 in relation to the Operation Tallangatta report requests information about the:

- time taken between the incident in April 2013 and the publication of the final report by the Commission in August 2015;
- the use of a section 42 notice; and
- the decision by the Commission not to lay charges against WA Police officers about whom it gave opinions of serious misconduct, such as Ms McPerson and Ms Whiting.

In order to assist in the preparation of a response to the letter from the JSC Chairman the following information is provided for your consideration.

1. Incident occurred on 7 April 2013 at the East Perth Watch House.
2. A preliminary investigation by the Commission was commenced on 15 April 2013.
3. On 16 April 2013 WA Police were directed not to commence an investigation by notice pursuant to section 42 of the CCC Act.
4. The Commission investigation (33(1)(a)) commenced on 10 May 2013.
5. Private examinations were conducted by the Commission during the period 3-11 September 2013 (over which Commissioner Macknay, QC, presided).
6. Commissioner Macknay resigned on Monday 14 April 2014 with immediate effect. The week prior to that (Monday 7 April 2014) Commissioner Macknay finalised the Operation Tallangatta Report and indicated that from his perspective "the report required no further work nor input from himself".
7. The understanding was that that version of the report should proceed to the section 86 stage as soon as possible, with a view to tabling the report in the Parliament during the 2013-2014 Financial Year (that is by the end of June 2014).
8. Unfortunately due to the need to finalise a number of significant matters, the section 86 process did not occur (or commence) prior to Commissioner Macknay's departure.
9. Acting Commissioner Shanahan, SC, assumed responsibility for finalising the Operation Tallangatta Report upon the resignation of Commissioner Macknay on 14 April 2014 (having been appointed as an Acting Commissioner on 7 April 2014), along with a substantial number of similar reports.
10. On 25 June 2014 Acting Commissioner Shanahan gave approval to commence the section 86 process (based on the 7 April 2014 version of the Operation Tallangatta Report, incorporating editorial amendments made on 3 June 2014).
11. On 31 July 2014 relevant excerpts from the Operation Tallangatta Report (dated 3 June 2014) were provided to COP, 12 WA Police Officers and 3 non-public officers inviting submission of representations, with a due date of 22 August 2014. Representations were received from WA Police on 28 August 2014 (dated 25 August 2014). Representations were also received from four WA Police officers and one non-public officer.

12. On 5 August 2014 the Commission received an email from Acting Senior Sergeant Wilson expressing concern about the continuation of the section 42 notice.
13. On 6 August 2014 a letter of complaint was received from Assistant Commissioner Professional Standards, D Staltari, APM, which taken, inter alia, with the Wilson complaint, appeared to rest on a contention that the section 42 notice should have been revoked. Assistant Commissioner Staltari also stated in his letter that "... the position WA Police will take on matters investigated by the Corruption and Crime Commission ... where criminal conduct has been identified, [is that it] remains the responsibility of the Commission to prosecute. Any attempt by the Commission to abrogate responsibility in this regard will be argued".
14. On 12 August 2014 Acting Commissioner Shanahan responded and stated "there is nothing to prevent WA Police raising the revocation of a section 42 notice with the Commission at any time. I am unaware of any request by WA Police that the Commission revoke the section 42 notice in this matter until the Wilson email on 5 August 2015 ( ... some 16 months after the ... [7 April 2013 incident])". Accordingly the section 42 notice was revoked.
15. In his letter of 12 August 2014 Acting Commissioner Shanahan also stated that "[i]t should not be assumed that the final recommendations by the Commission [in a report to the Parliament] will include a recommendation that consideration be given to the prosecution of any of the persons the subject of a Commission's investigation ... [and] it would be premature ... to form a view regarding the likelihood of prosecutorial or disciplinary action".
16. On 19 September 2014 the Commission provided WA Police with "copies of all material relating to the CCC investigation and which formed the basis of opinions of misconduct, including material covering the incidents in the Perth Watch House ... for the purpose of WA Police conducting an investigation into the 7 April 2013 incident".
17. On 14 January 2015 WA Police advised that "it is not the intention of WA Police to initiate any criminal proceedings against any employees ... [or] to take managerial actions against any employee ... [and that] Sergeant Unsworth had received verbal guidance ... [and] WA Police intend to take no further action in relation to this matter and, therefore, consider the matter finalised".
18. On 31 March 2015 the Commission invited WA Police to make further comments about the 3 June 2014 Operation Tallangatta Report (initially having been provided to the Commission on 28 August 2014), given the time that elapsed. WA Police provided further comments on 13 April 2015. Both the 28 August 2014 and 13 April 2015 comments were included in the Operation Tallangatta Report tabled in the Parliament on 20 August 2015.
19. Due to competing urgent matters work on (and, therefore, tabling of) the Operation Tallangatta Report was, in effect, delayed for a period of 4 months (April to July 2014) and a further 12 months (from August 2014 to August 2015). This is in part due to the tardiness in the appointment of a substantive Commissioner from April 2014-April 2015 and the need for two Acting Commissioners to work on a rostered basis for that period whilst continuing to manage law private practices outside the Commission.

## Appendix Four

### Committee's functions and powers

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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*.<sup>40</sup>

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

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<sup>40</sup> On 1 July 2015 the CCC Act was amended and renamed the *Corruption, Crime and Misconduct Act 2003*. The Legislative Assembly's Standing Orders are yet to be amended to reflect this change.