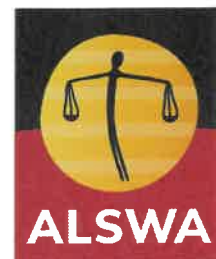


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Ms Colleen Egan MLA
Chair of the Joint Standing
Committee on the Corruption and Crime Commission

By Email: jsccl@parliament.wa.gov.au

Dear Ms Egan,

Review of the *Corruption, Crime and Misconduct Act 2003* (WA)

Thank you for the opportunity for the Aboriginal Legal Service of Western Australia ('ALSWA') to provide feedback to the Joint Standing Committee on the Corruption and Crime Commission in relation to the review of the operation of the *Corruption, Crime and Misconduct Act 2003* (WA).

Introduction

State government accountability is a primary area of legal practice at ALSWA, in particular accountability matters pertaining to police officers, prison officers, youth custodial officers and Public Transport Authority officers, all of whom fall under the jurisdiction of the Corruption and Crime Commission ('CCC'). As part of this work ALSWA assists clients in making complaints about public officers to the CCC.

ALSWA has previously provided submissions and given oral evidence to the Joint Standing Committee in relation to the 2020 Inquiry into the CCC's oversight of police misconduct investigations,¹ and the 2022 inquiry into what happens next beyond a finding of serious misconduct.² In those inquiries ALSWA highlighted its concerns in relation to the failures of the CCC to properly investigate incidents of excessive force and the limitations of the CCC's serious misconduct function.

Comments on suggested amendments

ALSWA considers that a review of the *Corruption, Crime and Misconduct Act 2003* (WA) (CCM Act') is long overdue and an important undertaking.

¹ ALSWA Submission to the Joint Standing Committee on the Corruption and Crime Commission: *Inquiry into the oversight of police misconduct investigations, particularly allegations of excessive use of force*

² ALSWA Submission to the Joint Standing Committee on the Corruption and Crime Commission: *What happens next? Beyond a finding of serious misconduct* [20220704+-+WHN+SUB+20+-+Aboriginal+Legal+Service+of+Western+Australia+Limited.pdf](https://www.als.org.au/20220704+-+WHN+SUB+20+-+Aboriginal+Legal+Service+of+Western+Australia+Limited.pdf)

The CCC is the only independent body with oversight of the public officers referred to above. However, in ALSWA's view CCC investigations do not incorporate the five features necessary for human rights compliant investigation of police misconduct (which applies equally to other public officers) as identified by the European Commissioner for Human Rights.³ The five principles are:⁴

1. Independence: there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;
2. Adequacy: the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;
3. Promptness: the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;
4. Public scrutiny: procedures and decision-making should be open and transparent in order to ensure accountability; and
5. Victim involvement: the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

Although not binding in Western Australia, ALSWA considers that these five principles should underpin the key functions of an independent, transparent and effective oversight body such as the CCC.

ALSWA therefore strongly supports amendments to the CCM Act which will ensure it complies with human rights standards. ALSWA agrees with the suggested amendments in your letter which relate to broadening the scope of the CCM Act and strengthening the powers of the CCC, especially proposed amendments 2, 4, 6, 10, 11, 12, 13, 15, 20, 24 and 25.

ALSWA also makes the following additional comments:

- (a) The distinction between the CCC's investigative, oversight and monitoring functions lacks clarity and requires amendment to ensure that the functions of the CCC are clearly defined and readily understandable by complainants and public agencies.
- (b) Some of the definitions in the CCM Act, including the definition of serious misconduct, are very complicated, cross-refer to multiple provisions and include definitions within definitions.⁵ Again, when considering broadening the scope of the CCC to include oversight over

3 Opinion of the Commissioner for Human Rights, 'Concerning Independent and effective determination of complaints against police', 12 March 2009.

4 Ibid, p.3.

⁵ See e.g. sections 18, section 4 and section 3 of the CCM Act, all of which have to be read together to understand the full scope of what will constitute 'serious misconduct' in relation to police conduct.

all misconduct,⁶ attention needs to be given to ensuring that the definition of misconduct is clear, unambiguous and readily understandable.

- (c) ALSWA is strongly of the view that the definition of misconduct should expressly include racist comments and behaviour.
- (d) ALSWA's experience has been that the CCC has adopted an unduly restrictive interpretation of what it considers to be 'serious misconduct,' which is not supported by the terms of the current CCM Act. ALSWA therefore considers it important to ensure that sufficient legislative guidance is provided to the CCC as to the kind of conduct that falls within its jurisdiction to ensure its functions are properly implemented in practice.
- (e) ALSWA also considers it important to consider ways in which CCC's findings and recommendations can be effectively enforced.⁷ ALSWA's experience is that agencies often ignore CCC recommendations and that the CCC lacks adequate enforcement powers to take further action. This is particularly the case with respect to WA Police which routinely ignores adverse CCC findings made against its police officers following interactions with Aboriginal people.
- (f) ALSWA agrees with the amendments proposed at 11 and 13, which will promote public scrutiny and victim involvement. ALSWA's clients often express distress and frustration at being unable to learn the outcomes of the complaints made against police and prison officers etc.
- (g) In the absence of a separate statutory entity to investigate complaints against WA Police, ALSWA strongly supports suggested amendments which focus on strengthening the CCC's oversight function with respect to police.
- (h) Consideration should also be given to strengthening the jurisdiction of the CCC to investigate and oversee the conduct of prison and youth custodial officers, as well as Public Transport Authority officers. Currently the jurisdiction of the CCC over these public officers is limited to incidents of serious misconduct. In addition, conduct which amounts to serious misconduct for these officers is not specifically defined in the CCM Act in the same way as it is for police officers. Similarly, the purposes of the Act do not reflect that one of its functions is to oversee the conduct of prison officers, youth custodial officers and Public Transport Authority officers.⁸ Given the lack of

⁶ As anticipated by suggested amendment 25.

⁷ For e.g. under section 43 of the CCM Act.

⁸ See e.g. section 7A of the CCM Act.

other independent bodies to review the conduct of these officers,⁹ and the frequency of their interactions with Aboriginal people, it is essential that any amendments ensure that the CCC has effective independent oversight of these officers.

ALSWA is happy to provide more detailed submissions if needed and would be grateful if you could keep it updated on the progress of the Committee's review.

Yours faithfully



PETER COLLINS
Director Legal Services

⁹ ACCESS and the Professional Standards Division of the Department of Justice both have jurisdiction in relation to prison complaints, but both of these bodies are part of the Department of Justice, and the WA Ombudsman only has the power to review administrative decisions in a prison context. The Public Sector Commission only has jurisdiction for minor misconduct matters. The main complaints mechanism for the Public Transport Authority is the PTA itself, and the WA Ombudsman similarly only had the power to review administrative decisions. The Public Sector Commission only has jurisdiction for minor misconduct matters.