

Your Ref:

Our Ref: [REDACTED]

9 November 2023

Chair
Senator Paul Scarr
Senate Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

By email to: Sophie Dunstone: FirstNationswomenchildren.sen@aph.au

Inquiry into missing and murdered First Nations women and children

Thank you for your email dated 13 October 2023, regarding the *Hansard* transcript of the Senate Inquiry attended by the Commission in Perth on the 4 October 2023. I confirm the *Hansard* transcript is correct.

Please find enclosed the answers to the questions taken on notice during the Inquiry.

If you have any queries, please contact Executive Office, Executive Manager [REDACTED] on [REDACTED] or [REDACTED].


Yours sincerely

[REDACTED]

Emma Johnson
Chief Executive

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Question 1. Out of the 3,500 allegations received regarding WA Police, what percentage is referred to WA Police (Hansard page 3).

In the 2022-2023 financial year the Commission assessed 3,486 allegations relating to WA Police Force (WA Police). Of those, 1,332 allegations (or 38%) of all allegations assessed, were considered to meet the threshold of potential serious misconduct. Of those, 464 allegations (or 34.8%) of all allegations assessed as meeting the threshold for serious misconduct, were referred back to the WA Police for action.

Question 2. Of that percentage you referred back to WA Police what amounts/or percentages initially come from WA Police and other sources (Hansard page 4).

Of the 464 allegations referred back to WA Police for action, 53 (or 11.4%) were reported to the Commission by members of the public. The remaining 411 allegations (or 88.6%), resulted from notifications by WA Police to the Commission.

Question 3. Detail in relation to the WA Public Sector Commission Aboriginal and Torres Strait Islander cultural awareness training (Hansard page 5).

The Commission adopted the Public Sector Commission Aboriginal and Torres Strait Islander cultural awareness training from 6 July 2021. The course is a mandatory compliance training requirement for all staff and takes about 30 minutes to complete, including video, audio and written material. The training aims to enhance the awareness and understanding of those within the public sector, to work in culturally informed ways. It provides historical and contemporary information about Aboriginal and Torres Strait Islander culture over four main sections: family; education; country; and work. The training was developed by the Public Sector Commission and endorsed by the Aboriginal Advisory Council of Western Australia. All Commission staff are required to complete the course every three years and as of 9 October 2023 the Commission has a 97.7% completion rate.

Question 4. Corruption, Crime and Misconduct Act 2003 definition of serious misconduct (Hansard page 7).

The *Corruption, Crime and Misconduct Act 2003* defines serious misconduct as:

- (a) misconduct of a kind described in section 4(a), (b) or (c) by a public officer; or
- (b) police misconduct.

Police misconduct is defined as:

- (a) misconduct by:
 - (i) a member of the Police Force; or
 - (ii) an employee of the Police Department; or
 - (iii) a person seconded to perform functions and services for, or duties in the service of, the Police Department; or
- (b) reviewable police action.

By virtue of the above, all police misconduct is serious misconduct.

Question 5. Percentage of allegations relating to First Nations people and WA Police (Hansard page 7-8).

Upon receipt of an allegation and if the information is known and/or provided, the Commission will consider any factors which may suggest involvement by a vulnerable or at-risk person. This includes a person identifying as First Nations people, recorded as Aboriginal and Torres Strait Islander (TSI) or a child or Youth (under 18 years).

All considerations recorded for allegations assessed in the 2022-2023 financial year is provided below on *Table 1 Number of allegations for 2022-2023 financial year relating to First Nations people and WA Police*.

Please note, the list is indicative only and should not be relied upon as a complete and accurate reflection of the number of allegations involving First Nations people, due to the following factors:

- There is no requirement for a person to provide this information when making a report to the Commission. Only if a person voluntarily identifies as First Nations or this information is already known by the Commission, will this information be captured.
- Persons can remain anonymous. Identifying particulars are usually not provided in these instances.

Table 1 - Number of allegations for 2022-2023 Financial year relating to First Nations people and WA Police.

Row Labels	Count of Unique Record Number (URN)
Aboriginal/TSI	297
Child or Youth (under 18 years)	266
Culturally/Linguistically Diverse	53
Domestic Violence (Police Officer Subject Officer)	23
Elder (60 years or older)	27
Homeless or Otherwise Vulnerable	32
LGBTIQA	9
Low Risk	503
Mental or Physical Impairment	142
Not Applicable	4358
Pregnant or Medical Condition	4
Prisoner or Detainee	179
Grand Total	5893

Question 6. Breakdown of allegation type from WA Police (and First Nations people) (Hansard page 8).

Table 2 provides a breakdown of the 1,332 allegations received in the 2022-23 financial year relating to WA Police and assessed by the Commission to meet the threshold of potential serious misconduct.

Table 2 - Allegation categories for 2022-2023 Financial year allegations relating to WA Police.

Allegation Category	Allegation Number	Percentage
Breach of Procedure or Policy	586	44%
Policy	484	36%
Procedure	98	7%
Refusing a Managerial Directive	4	0%
Neglect of Duty	227	17%
Unprofessional Conduct	177	13%
Demeanour / Attitude (Public)	73	5%
Other	50	4%
Intimidation / Harassment (Public)	18	1%
Intimidation / Harassment (Colleague)	13	1%
Bullying (Colleague)	9	1%
Sexual Harassment (Colleague)	9	1%
Sexual Harassment (Public)	5	0%
Assault	81	6%
Excessive Use of Force	56	4%
Domestic Violence	11	1%
Physical	10	1%
Sexual / Indecent	4	0%
Computer - Unlawful Use (s. 440A, Serious Misconduct)	50	4%
Unlawful Disclosure	40	3%
Other	36	3%
Criminal Conduct	33	2%
Other	30	2%
Damage	1	0%
Trespass	1	0%
Stealing	1	0%
Benefit / Detriment - 4(b)	29	2%
Duties Related	17	1%
Other	6	0%
Timesheet Related	4	0%
Recruitment Related	2	0%
Unlawful Arrest / Search	23	2%
Fraud / Falsification	22	2%
Falsification / Omission	13	1%
Fraud	9	1%
Drugs (Illicit)	10	1%
Use	9	1%
Dealing / Trafficking	1	0%

Allegation Category	Allegation Number	Percentage
Corrupt Conduct - 4(a)	8	1%
Corruptly Acts	7	1%
Corruptly Fails to Act	1	0%
Improper Association - Undeclared	6	0%
Secondary Employment - Unauthorised	3	0%
Computer - Inappropriate Use (WAPF Use Only)	1	0%
Grand Total	1332	100%

Question 7. An instance of non-public report, review relating to WA Police (Hansard page 8)

The Commissioner can decide to publicly report on review outcomes if the content and/or concerns identified are considered to be of public interest or there are wider lessons to be shared across the government sector. The decision to report publicly ultimately rests with the Commissioner and is made on a case-by-case basis.

Irrespective of whether a report is provided to the head of an authority or in parliament, procedural fairness must be applied in all instances to provide the authority with an opportunity to reply to any commentary which may be considered adversarial.

The Commission is unable to share any review reports relating to WA Police that were not made public, as the above-mentioned factors (i.e. public interest and procedural fairness) have not been considered.

Question 8. How many former police officers work at the Commission (Hansard page 11).

The Commission employs 23 former WA police officers.

Question 9. Details around initial triage process, whether or not a matter is referred back to WA Police, or Commission conducts its own investigation (Hansard page 12).

The Commission receives notifications and reports of alleged serious misconduct from members of the public, notifying authorities, and the Public Sector Commission.¹

An assessment is conducted to form an opinion as to whether serious misconduct has or may have occurred and is based on information available to the Commission at the time of the assessment.² If an assessment determines there is sufficient information to form a reasonable suspicion that serious misconduct may have occurred, the Commission can decide to investigate (either independently or cooperatively), refer the allegation to an appropriate authority for action or take no action.³

The Commission operates in a high-volume environment, with limited resources. The Commission is not resourced sufficiently to investigate every allegation of serious misconduct and must prioritise its resources accordingly.

When deciding whether further action is required, the Commission may have regard to the seriousness of the conduct, whether or not the allegation is frivolous, vexatious or not made in good faith, whether the conduct is or has already been subject of appropriate investigatory action or otherwise (such as by an appropriate authority - e.g. WA Police) and whether or not further action

¹ Corruption, Crime and Misconduct Act 2003 (CCM Act), s 24(1)

² Ibid, s 22(2)

³ Ibid s 33(1)

for the purpose of this act is justified or in the public interest. Additional factors such as operational resources must also be considered.⁴

Multiple phases of escalation and decision making are built into the assessment process to limit any unilateral decision making. The ability to make assessment decisions is delegated by the Commissioner to key senior management positions.

Upon receipt of an allegation, a senior manager will review and categorise the allegation to identify any high-risk factors, strategic considerations and the level of assessment required, including conducting of further enquiries.

While most of the assessments are prepared by an assessor, each assessment is presented to a senior manager for approval. No assessor can approve an assessment decision.

Seriousness thresholds prescribe descriptors, such as racial prejudice, to guide the escalation of an assessment to the Operations Committee. The Operations Committee is comprised of the Senior Executive and its decision making, recommendation and guidance (including consideration of Commission resources) are defined in the Operations Committee Charter.

Matters escalated to the Operations Committee are conducted by senior assessors through a 'further assessment' process. For matters allocated to further assessment, the Operations Committee is the sole decision maker for any recommendation to conduct a Commission Investigation or refer an allegation to an authority subject to Commission review.

Not all matters that reach the seriousness threshold will proceed to the Operations Committee. At the conclusion of a further assessment, if presentation of the matter at Operations Committee is no longer considered necessary and the recommendation is not for an investigation or review, the Director Assessment and Strategy Development has delegated authority to approve the decision.

When the Commission refers an allegation to an appropriate authority, the Commission's role is to oversee the appropriateness of the action taken.⁵ Appropriate authorities, including WA Police, are primarily responsible for taking action into, and managing, serious misconduct.

When the Commission refers an allegation to an appropriate authority for action and outcome, the authority is required to prepare and provide the Commission with a detailed report of the action taken in response to the allegation(s) of serious misconduct.⁶ The Commission can also decide to review the action taken by an authority into an allegation referred.⁷

Over the past five years, the Commission has continuously improved its processes for the monitoring and review of action taken by authorities. More consistent and rigorous consideration of the action taken by an authority now occurs, including the identification, recording, and providing of feedback to an authority.

Upon receipt of an agency outcome report for an allegation referred for outcome only, if significant concerns are identified in the action taken, the Commission can change its decision to either review or conduct its own investigation.

A review is not an investigation. A review examines the way an appropriate authority has dealt with an allegation of serious misconduct. The review considers the actions taken and whether the

⁴ Ibid s 18(3)

⁵ Ibid s 18(2)(d)

⁶ Ibid s 33(1)(c) and 40

⁷ Ibid s 41

conclusions reached by the appropriate authority, including any disciplinary action (where applicable), were open to be made on the available evidence. The review also considers the wider implications of the serious misconduct risk(s) and how the appropriate authority has responded to mitigate these risks.

A review culminates in a Commission report that is provided to the principal officer of the appropriate authority. Where appropriate, a copy of the report is also provided to the Public Sector Commission to inform their prevention and education function.⁸

The report outlines the Commission's opinion as to whether the actions taken by the appropriate authority were adequate and the conclusions reached were open to be made. The report is a mechanism for the Commission to provide feedback to the appropriate authority about the effectiveness of the investigation and any advice that may improve the authority's practices for dealing with serious misconduct.⁹

Question 10. Percentage of those then reach the second more in depth assessment (based on question above) (Hansard page 12).

During the 2022-2023 financial year, 171 further assessments were conducted. Each further assessment may consider more than one allegation.

Question 11. Any statistics you can provide that give us a feel for how the CCC operates today in practice (Hansard page 12).

Please refer to Question 9 which provides an overview of the assessment and oversight continuous improvement process.

⁸ Ibid s 45A

⁹ Ibid s 21AB