



CORRUPTION AND CRIME COMMISSION

REPORT ON THE RESPONSE OF WA POLICE TO A PARTICULAR INCIDENT OF DOMESTIC VIOLENCE ON 19-20 MARCH 2013

21 APRIL 2016

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CORRUPTION AND CRIME COMMISSION

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Dear Mr Pratt
Dear Ms Robinson

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption, Crime and Misconduct Act 2003* (CCM Act), the Commission hereby transmits to you a copy of its *Report on the Response of WA Police to a Particular Incident of Domestic Violence on 19-20 March 2013*.

The Commission notes that under section 93(3) of the CCM Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Yours sincerely

A handwritten signature in blue ink that reads "John McKechnie".

John McKechnie, QC
COMMISSIONER

21 April 2016

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INTRODUCTION

- [1] Domestic violence (a euphemism for serious criminal activity) is a major community concern.¹
- [2] On the evening of 19 March 2013 Mervyn Kenneth Bell seriously assaulted his partner Tamica Mullaley leaving her naked and injured in a street in Broome. Bell then abducted her baby Charlie.
- [3] WA Police became involved responding to a call from a witness to the assault. The responses are the subject of this report.
- [4] Whether a more rapid response may have saved Charlie is impossible to know but it is important to recognise that Bell alone was responsible for Charlie's fate.
- [5] The purpose of this report is to raise awareness within WA Police when dealing with domestic violence in the future. WA Police have good policies for domestic violence.² But a policy is only good when followed.
- [6] When officers become distracted from focussing on the crime perpetrated on a victim by the victim's behaviour and do not follow procedures, the possibilities of another serious incident increase.
- [7] In late 2015, the Commission reviewed the WA Police internal investigation into the response by Broome Police to reports that Bell had abducted Charlie. The Commission had access to the IAU investigation including statements and documents. The Commission also had access to other material.
- [8] The review focussed on the way WA Police officers on night shift in Broome on 19-20 March 2013 handled both their initial interactions with Ms Mullaley, her father, Mr Edward Mullaley, and subsequent interactions over the course of the night and day which followed. Before finalising this report, the Commission gave persons who might be adversely affected the opportunity to make submissions. A number have done so. Where the Commission accepts the submission the draft report has been changed.
- [9] Critically, there were a number of points where vital information was not sought, obtained, recorded or passed on by police officers both in Broome and at the Police Operations Centre (POC) in Perth. Decisions regarding

¹ According to the Ombudsman's investigation into violence restraining orders, Aboriginal and Torres Strait Islander people make up 3.1% of the State's population but comprise 33% of victims of family and domestic violence. Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities*, 19 November 2015, p17.

² COPS Manual.

action to be taken were made without regard to key pieces of information which meant that the search for Charlie did not begin in earnest until several hours after his disappearance was reported. Some officers have referred to the aggression and behaviour of the Mullaleys as significant factors in preventing police from responding sooner to the abduction of Charlie. There is justification for this view but assumptions were made about the cause of aggression and other behaviour instead of a dispassionate analysis of the whole scene which began with violence to Tamica Mullaley.

- [10] The purpose of this report is not to assign blame but to help other officers in their responses to similar situations in future.
- [11] Failures by individual officers on the night do not justify an opinion of serious misconduct. Collectively though they contributed to a delayed and ineffective response.
- [12] An incident that began as a serious assault on Ms Mullaley by her de facto partner, Bell, ultimately became a search for a missing child that ended with tragic consequences.

CHAPTER ONE

NIGHT SHIFT, 19-20 MARCH 2013

1.1 Ms Mullaley is assaulted by Bell

- [13] In the evening of 19 March 2013 Ms Mullaley left Charlie at the home of Ms B.³ She and Bell had been socialising there before Ms Mullaley went to another friend's home. She was a short distance from Ms B's home when she was assaulted on the street by Bell.
- [14] About 10.20 pm Ms A partially observed the assault outside her home and went to help the victim.
- [15] While she was doing so Bell returned to the area driving a Toyota 4WD. The manner of his driving scared both women. Ms Mullaley ran and hid in Ms A's carport, whilst Ms A ran back inside. Ms A heard Bell shouting at Ms Mullaley to get inside the vehicle. Ms A went outside and shouted at him to leave.
- [16] Ms A telephoned Broome Police and reported the incident. A Computer Aided Dispatch (CAD) task was created.⁴ The content of the CAD task read: "Caller states there is a silver 4WD doing burnout driving out of control at intersection. Believes a female who is naked was forced out of the car."⁵
- [17] Broome Police made a radio base broadcast reporting there was a "big fight" on the corner of Guy and Dora Street and a report of a vehicle doing burnouts that may or may not be related to the fight. Constable Julia Huxley and Senior Constable Paul Moore, who were on patrol, responded.
- [18] On arrival at the scene, Moore and Huxley approached Ms A while Ms Mullaley remained at the rear of the carport with Ms A's neighbour, Ms D. Ms A told the officers what she had seen and recommended the female officer approach and speak to Ms Mullaley because she was naked and wrapped in a sheet. A short time later Mr Mullaley arrived.
- [19] While the specific detail of information provided to the police by Ms A about what she believed had happened to Ms Mullaley was not established with any certainty, Moore said he assumed when Mr Mullaley arrived he may have been the perpetrator of an assault on Ms Mullaley. He was therefore aware Ms Mullaley had been assaulted. Moore made the following entry in his police notebook: "Edward approaches me and

³ There is no public interest in naming witnesses to the assault or other actions.

⁴ CAD is the WA Police communication system which manages police resources to respond to community calls and sends information to police cars and stations across the state.

⁵ CAD Incident Recall LWP130319162515.

states: I WANT YOU TO ARREST - says a name - FOR BEATING UP MY DAUGHTER. HE'S OUTSIDE YOUR POLICE STATION."⁶

- [20] Moore did not, however, inform other officers that Ms Mullaley had been assaulted or make any further inquiries in relation to the assault. He assumed the other officers would have known.
- [21] Huxley said Ms A told them she found a naked female and believed she'd been assaulted by a male who then left in a white ute. Huxley said when she first saw Ms Mullaley she could see she had been assaulted and had blood around her eye.
- [22] Huxley said Ms Mullaley swore at her and Moore as soon as they started to talk to her. She said the officers tried to calm both the Mullaleys down but they were not listening. She said Mr Mullaley tried to take Ms Mullaley towards his vehicle. The officers stopped them so they could find out what had happened to Ms Mullaley. Huxley said at this time Ms Mullaley swore directly at Moore then spat at him. This is when officers became distracted. As comments to IAU and responses to the Commission outline, some officers assumed Ms Mullaley's hostile and aggressive behaviour was due to substance abuse. It does not appear at any point an officer stopped to consider whether the cause of her behaviour might be the result of an attack that left her naked and injured.
- [23] From the time of Moore's attempt to arrest Ms Mullaley because she spat at him, the situation escalated to a physical confrontation between the two police officers and the Mullaleys.
- [24] Due to a failure in local police radio communications, the officers asked Ms A to call 000. This call was made at 10.37 pm. Ms A said there was a woman who had been assaulted, a family member was there, allegedly her father, they were both arguing with the police, obstructing the police from going about their business and it was "getting violent".⁷
- [25] First Class Constable Eoin Carberry and Senior Constable David Pearson attended and took Ms Mullaley to the hospital for a mental health assessment and medical assistance. Mr Mullaley followed in his vehicle.
- [26] Huxley and Moore made arrangements for Ms D and Ms A to attend Broome Police Station and provide statements regarding the offences alleged to have been committed by Ms Mullaley (Assault Police) and Mr Mullaley (Obstruct Police). The two officers did not have any further contact with the Mullaleys during the remainder of their shift.
- [27] In interview, Moore said he didn't consider the matter to be a DVI⁸ because he was never in possession of any information to suggest that was the

⁶ Constable Moore Notebook 47810, pp38-39.

⁷ Audio recording A to 000, 22:37hrs 19 March 2013.

⁸ Domestic Violence Incident.

case. Huxley said she didn't know if Ms Mullaley was the victim of a DVI. However, the statement by Ms A would have indicated a DVI and questioning of Mr Mullaley may have assisted police in understanding why Ms Mullaley was naked and injured. The fact that she was in that condition suggested she was the victim of a serious assault.

[28] Ms A's first statement included information regarding the confrontation she heard between Bell and Ms Mullaley. She saw Bell punching in a downwards direction and heard him say, "You're a slut and I bet you've slept with everybody."⁹ She heard Ms Mullaley screaming, "Stop it. Get off me."¹⁰ Ms A describes seeing the 4WD before Ms Mullaley ran and hid in her driveway. She said she saw the vehicle accelerate and drive towards her driveway before the driver got out and she heard him yell "something like get in the car now."¹¹ Ms A said once the police arrived, "I explained what happened."¹²

[29] The Emergency Department notes relating to Ms Mullaley's initial assessment at 11.00 pm on 19 March 2013 included a reference to the "Presenting Complaint" as "assaulted by partner".

[30] The notes continue:

Pt requested to have breath test conducted and documented as she denies being drunk and reinstates she has been a victim of violence by her partner States her partner became jealous and ripped off her clothing before beating her with his fists pushing her to the ground and kicking her in the ribs/chest/back. Pt apprehensive about outcomes of this evening related to police attendance and expressing a desire to "explain her story to them and apologise for some of her behaviour". Pt encouraged to make a statement re her partner and a letter of apology to police.¹³

[31] Despite being present at the hospital, the police officers seemed unaware that Ms Mullaley had been assaulted. Her condition should have excited suspicion.

[32] WA Health has a policy for domestic violence:

The role of the health professionals with clients experiencing FDV [family domestic violence] is to:

...

⁹ Ms A Statement signed 20 March 2013, p11.

¹⁰ *Ibid*, p10.

¹¹ *Ibid*, p42.

¹² *Ibid*, pp66-67.

¹³ Emergency Department Notes, Tamica Mullaley 23:00hrs 19 March 2013.

- *In consultation with line manager/social work/specialist FDV agency, notify the WA Police service when it is suspected or there is concern that a crime has been committed (as per the Restraining Orders Act 1997) and/or when extreme and immediate risk to the client (or children) has been identified.*¹⁴

The policy is supported by a Memorandum of Understanding between WA Health and WA Police among others.

- [33] It is unknown why the Emergency Department did not tell police what Ms Mullaley had recounted.
- [34] Shift supervisor Acting Sergeant Darren Connor¹⁵ said that there was telephone contact between Broome Police and the hospital but information regarding Ms Mullaley's injuries was not sought at any point.

1.1.1 Observations

- [35] Sometime before 10.37 pm WA Police were in possession of information that Ms Mullaley had been assaulted and was left naked.
- [36] Why this information was not provided by the initial attending officers to all officers dealing with Ms Mullaley is unknown. It is possible that officers became distracted by Ms Mullaley's disorderly and obstructive behaviour and did not stop to examine why she came to be naked and injured.
- [37] It is reasonable to conclude that when Ms Mullaley was taken to the hospital by Carberry and Pearson, they were not aware who had assaulted Ms Mullaley. No evidence was located to suggest Moore or Huxley informed the officers of any information known to them regarding the circumstances of Ms Mullaley's condition.
- [38] In interview Carberry said that sometime after the events he "put two and two together"¹⁶ regarding the information about a naked female and the vehicle driving erratically. He said he wasn't sure if Ms Mullaley had been assaulted but it sounded "like a domestic".¹⁷
- [39] Pearson said while he was at the hospital, he linked the assault to a DVI when Mr Mullaley told them Bell was Ms Mullaley's partner. He said Ms Mullaley did not say, at the scene, she had been assaulted and Mr Mullaley only said she was sick and needed to go to the hospital. He spoke to Ms Mullaley at the hospital, once she was settled, and again he said she did not tell him she had been assaulted. He told her if something had happened she could report it later on.

¹⁴ Department of Health, *Family and Domestic Violence Policy*, February 2014.

¹⁵ Now Sergeant.

¹⁶ Constable Eoin Carberry IAU Interview 14 October 2014, audio.

¹⁷ *Ibid.*

- [40] Shift supervisor Connor did not commence actions as required by WA Police policy in relation to a DVI.
- [41] Connor said he understood an Information Report was created in relation to the initial incident. He said this report would not have provided clarity to whether the matter was a DVI due to the police being unable to get an account from Ms Mullaley. He said that there was no doubt any DVI would be followed up at a later date. He said DVIs in Broome would be referred to the DVI Unit. He explained that at the time of the events he did not establish it was a DVI incident and cannot recall when he found out, but suggests it was during the shift or soon after.
- [42] Consequently, little effort was made to locate Bell and charge him with assaulting Ms Mullaley. Connor totally disagrees with this comment and asserts effort was made based on what limited information was being provided to police. However, the Commission does not change its opinion that little effort was initially made.
- [43] While there was no misconduct by Moore and Huxley, they failed to deal with Ms Mullaley as the victim of an assault. She was unco-operative and aggressive which contributed to the failure. They failed to establish who assaulted her. Their failures later impacted on the actions of police who attended subsequently. Those officers did not have an opportunity to hear witness accounts or attempt to or speak to Ms Mullaley and instead dealt with the Mullaleys only in terms of their behaviour towards police.
- [44] This failure had an ongoing effect on the police reaction to Mr Mullaley's later concerns about Bell taking Charlie.

1.2 Charlie is taken by Bell

- [45] Once Ms Mullaley was admitted to hospital, Mr Mullaley returned to the home of Ms B and Ms C where he understood Charlie still was. He was told that Bell had taken Charlie and his whereabouts were unknown.
- [46] Bell had collected Charlie from the home. Ms B said she was contacted by Bell using Ms Mullaley's mobile telephone. He told her he was going to take the baby to Mr Mullaley.
- [47] Mr Mullaley said he returned to the hospital, told the officers that Bell had beaten up Ms Mullaley, taken the baby and they needed to look for him.
- [48] Carberry recorded the following in his police notebook:

At 00:05hrs (20/3/13) Ted returned to hospital to tell police his daughter's partner (Ex?) had picked up her son & driven off with him - Ted stated he was going to kill his grandson - partner not believed to be the child's father. S/C Pearson advised Broome Police Station of what Ted disclosed.¹⁸

¹⁸ Constable Carberry Notebook 47802, pp45-46.

[49] This is the first time Carberry became aware that Charlie had been taken and there was concern for his safety.

[50] Pearson said he discussed the issue with Mr Mullaley then communicated his concerns to Connor. Carberry confirms this and says that Pearson relayed the same information to Broome police station. He could not recall Connor's response and did not make a police notebook entry to assist his recall.

[51] Connor said he could not recall what information was relayed to him from the hospital regarding the welfare of Charlie or what had happened to Ms Mullaley.

[52] Mr Mullaley said the police responded by asking how many patrol vehicles he thought were available in Broome? He said the police informed him that they were looking after Ms Mullaley because she was under arrest and their second patrol vehicle was at the office, a reference to Moore and Huxley who were then processing the charging of the Mullaleys by way of taking witness statements and other tasks. Mr Mullaley said as a result he rang 000 and started to drive around town.

1.2.1 Observations

[53] Sometime before 12.05 am Broome Police were in possession of information that Ms Mullaley's partner had collected Charlie and had threatened to kill him. Broome Police failed to obtain any further information about the circumstances of Bell taking Charlie from the home occupied by Ms B and Ms C. Neither Ms B nor Ms C were contacted by police in the early hours of 20 March 2013 in relation to Bell taking Charlie and his possible whereabouts. They were not contacted until about 10.00 am the next morning.

[54] Why Ms B and Ms C were not contacted and interviewed before 10.00 am is unknown.

1.3 Mr Mullaley reports Charlie is missing

[55] Connor said Mr Mullaley came to the front counter of the Broome Police Station a short time after midnight and requested a welfare check of his grandson. Mr Mullaley said the child was with his daughter's de facto partner who had taken his vehicle. Connor said despite his experience of indigenous children being handed to carers other than their parents, a CAD task was generated to action patrols in Broome to try and locate addresses where Bell and the child might be. However, the CAD task was not generated until 1.20 am.

[56] Connor said when he spoke to Mr Mullaley at the front counter he smelt of alcohol and "who knows what else".¹⁹ Connor said Mr Mullaley was known to him. He said Mr Mullaley routinely misled police (in relation to unrelated

¹⁹ IAU interview Connor, 23 October 2014, audio.

matters) and was hostile towards police. He said he told Mr Mullaley a patrol car would commence looking for his Landcruiser even though Mr Mullaley could not tell him where to look. Connor said that he did not remember Mr Mullaley saying Bell had assaulted Ms Mullaley.

- [57] Connor could not recall any detail regarding Mr Mullaley's specific concerns for the welfare of Charlie. In a report 6 months later dated 27 September 2013 Connor wrote:

*'I spoke with MULLALEY who appeared to be heavily affected by liquor, drugs or a substance as he was displaying erratic and aggressive behaviour. I struggled to calm MULLALEY in effort to obtain specific detail from him as to what he required from Police. MULLALY continued to yell abuse and was very irrational. I managed to ascertain that he wanted Police to patrol the streets of Broome to look for his vehicle which he indicated was in possession of a male person I now know to be Mervyn BELL. I was aware that BELL is the de-facto partner of Temika MULLALEY. Edward MULLALEY continued to yell abuse and refused to provide any details of his vehicle, ie vehicle make, model or registration number. I asked MULLALY if he had a contact phone number for BELL, however, MULLALEY refused to provide any known contact details for BELL, simply yelling: "He will be driving around Broome." MULLALEY gave the impression that he was more concerned about the location of his motor vehicle than any direct concern for his grandchild.'*²⁰

- [58] Although Connor asserted that Mr Mullaley was heavily affected by substances, there is no other evidence of this. This opinion may have clouded his judgement when responding to Ms Mullaley's concerns.
- [59] Connor's written account is not in accord with the information Mr Mullaley earlier provided to Carberry and a short time later in a call to emergency services 000.
- [60] At 12.09 am Mr Mullaley telephoned 000. He informed the operator, Senior Constable Barbara Donarski, that he had previously attended Broome Police Station and reported the matter. He explained he was driving around Broome looking for his daughter's partner who had taken her baby. He stated, "It's my nine month old grandson and he has threatened to kill him."²¹
- [61] He told Donarski that his daughter "got beat up"²² and the police charged her with assaulting "them". He explained he was told there were only two patrol cars in Broome and one was busy at the hospital with his daughter.

²⁰ Memorandum 'Report a/c Charles DERSCHOW-MULLALEY' to Inspector Foley from Sergeant Connor, signed 27 September 2013.

²¹ Telephone call E Mullaley to 000, 00:09hrs 20 March 2013.

²² *Ibid.*

He told her he had been to the police station and had spoken to the Sergeant but was not being taken seriously.

[62] He added, "I want someone to take me serious that this guy is going to kill my grandson." Donarski explained that she could not direct his call to the Broome Police however she could "put a job on". She said she would contact the Sergeant (in Broome). Mr Mullaley responded, "Will you tell him how important it is? Please."²³ She stated that she would. She did not question Mr Mullaley as to the identity of his daughter's partner.

[63] Donarski telephoned Broome Police Station. The call was answered by Constable Joel Wright who was the CAD console operator for the shift. Wright had earlier been at Ms A's house and also attended the hospital. Donarski informed him of the call from Mr Mullaley to 000. She said Mr Mullaley was "extremely concerned for his grandson." She did not inform him of the threats that had been made to kill the child or that Mr Mullaley told her his daughter was beaten by her partner. She told Wright that Mr Mullaley asked if the call was being recorded and he wanted the police response escalated.²⁴

[64] Wright informed her he was aware of Mr Mullaley because he'd "basically obstructed the police all night." Donarski provided contact information for Mr Mullaley and suggested they call him and say, "... look I had a call from 000 in Perth and we're aware of the circumstances and if you wish to make a complaint this is the procedure to follow." Wright responded that he would talk to his shift supervisor then added: "... but I don't know that we will contact him because he's had about two hours with us already tonight."²⁵

1.3.1 Observations

[65] Sometime before 12.09 am Broome Police failed to obtain critical information from Mr Mullaley regarding the assault on Ms Mullaley by her partner.

[66] At 12.09 am WA Police were in possession of further information that Ms Mullaley's partner had collected Charlie and had threatened to kill him.

[67] The 000 operator, Donarski, failed to obtain critical information from Mr Mullaley, that Ms Mullaley's partner was Bell or question him as to any vehicle Bell may have been using.

[68] Donarski failed to communicate critical information obtained from Mr Mullaley, that Ms Mullaley's partner had taken Charlie and had threatened to kill him.

²³ *Ibid.*

²⁴ Telephone call 000 (Donarski) to Broome Police Station (Wright), 00:13hrs 20 March 2013.

²⁵ *Ibid.*

- [69] No entry was made on CAD regarding the information from Donarski. Wright said he did not recall being contacted in relation to Mr Mullaley making a call to 000.
- [70] Connor said he did not recall being made aware of any contact regarding a telephone call from Mr Mullaley to 000.
- [71] Connor did not seem to appreciate the sincerity of Mr Mullaley's concerns nor the fact that the male who had taken Charlie had earlier assaulted Ms Mullaley. He did not contact the hospital regarding Ms Mullaley's injuries or seek any other information that may have assisted his appreciation of the events.
- [72] Connor said he could not recall receiving information from the officers at the hospital regarding Mr Mullaley's concerns that Bell may harm Charlie. He also could not recall when the officers at the hospital left to attend to other tasks.

1.4 Search for Charlie begins

- [73] At 12.55 am Ms Mullaley was bailed by Pearson and remained at the hospital for ongoing care. Pearson said a decision was made to bail Ms Mullaley by Connor and him once hospital staff informed him Ms Mullaley would need to stay overnight.
- [74] Carberry and Pearson both said they left the hospital a short time after Ms Mullaley was bailed and went to speak to Mr Mullaley at his home before conducting patrols of Broome in an effort to locate Bell and Charlie, whilst also completing other CAD tasks.
- [75] Carberry said they were aware Mr Mullaley attended the Police Station on more than one occasion and they also spoke to him at his home on a number of occasions, in anticipation of him providing further information to assist their search.
- [76] A CAD task was created at 1.20 am. The content of the CAD task read: "LOTBKF²⁶ for 1AFU696 - beige coloured Landcruiser wagon. Vehicle involved in possible DV incident on 19/03/2013...Please check on the welfare of any children on board."²⁷
- [77] Unfortunately the identified registration plate for Mr Mullaley's vehicle taken by Bell was not correct.
- [78] Connor said although the CAD task was not commenced until 1.20 am, action was being taken, including research of the WA Police database IMS prior to this time.

²⁶ Look Out To Be Kept For.

²⁷ CAD Incident Recall LWP130320162749, 01:24hrs 20 March 2013.

- [79] WA Police records indicate Connor first accessed records relating to Ms Mullaley at 12.34 am, Mr Mullaley at 1.17 am and finally Bell at 1.46 am.
- [80] IMS records relating to Bell included a history of violent offences. In interview Connor said he was confident he "looked up"²⁸ Bell. However, he did not make any record in relation to Bell's history.
- [81] At 2.14 am, a CAD entry was made relating to a call from the Department of Child Protection and Family Support to Broome Police Station.
- Wanita from Crisis Care (DCP)...has contacted police after being contacted by Edward Mullaley. Due to an alleged DV incident, DCP request a welfare check of Charles Mullaley 18/6/12. Possibly at above address (17 Hamersley Street). They believe the child may be with Mervyn Bell (04/6/87) (Defacto of Tamika Mullaley). The grandfather (Edward Mullaley) is claiming to be the legal carer for the child while Tamika is in hospital. Crisis Care request to be updated if child is located. Nil court orders in place, however Bell is believed to only be a step father to the child.*²⁹
- [82] The CAD task type was amended from "LOTBKF" to "welfare check".
- [83] The IAU investigation found Wright did not create an IMS Missing Person Incident Report or complete a first response assessment form. This amounted to a breach of WA Police Policy CR-10.00 Missing and At Risk Persons. Wright believed that creating the "welfare check" CAD task essentially did the same as a Missing Person report. Wright had not been given the information Donarski obtained about Bell's threat to kill Charlie.
- [84] From 3.03 am to 3.33 am Mr Mullaley attended the Broome Police Station and spoke to Wright.
- [85] Wright said he spoke to Mr Mullaley at the front counter and said Mr Mullaley had difficulty identifying the vehicle being driven by Bell as he had multiple vehicles registered to him, due to his business and they were all Toyota Landcruisers. He said Mr Mullaley was "ranting" and wanted police to do more but was unable to provide specific information to assist.³⁰
- [86] Wright said Mr Mullaley told him "Bell is going to hurt the baby"³¹ and conveyed that he had a bad feeling but could not provide a reason. Wright said Mr Mullaley wanted checks to be conducted on the telephone used by Bell in order to locate him.

²⁸ IAU Interview Connor audio 23 October 2014.

²⁹ CAD Incident Recall LWP130320162749, 02:14hrs 20 March 2013.

³⁰ Constable Wright IAU Interview 14 October 2014, audio.

³¹ *Ibid.*

- [87] Mr Mullaley said he went to the police station about three o'clock. He said he showed the officer a text message and the officer said "I don't read anything into that".³² Wright recalls advising Mr Mullaley that it didn't appear to be a threat against the child but was directed at Mr Mullaley.
- [88] The text message referred to by Mr Mullaley was a text sent to him from Bell at 2.48 am. Relevantly it read, "talk to us I'm putn welfare on da both of use can't Evan look after ur owne gran child ... ?????????????? Wat now popo cumn for use..... Haha".³³ The message was photographed by day shift police sometime after 9.00 am on 20 March 2013.
- [89] Wright said he was shown a text message on Mr Mullaley's telephone that included a reference to "popo" which he knew to be a slang term for police. He said he explained to Mr Mullaley that he needed more information to give to an Inspector who could authorise triangulation or decide to recall staff. He said Mr Mullaley knew the baby was with Bell who was known to regularly care for the baby. Wright says Mr Mullaley refused to provide Bell's telephone number saying police would call him and make the situation worse.
- [90] As a result of his conversation with Mr Mullaley, at 3.33 am the CAD task was updated by Wright. It read, "Confirmed that the VOI is actually BM23756 - Silver Landcruiser (80 Series)."³⁴
- [91] At 4.15 am the CAD task was updated regarding a telephone call from Mr Mullaley:
- TPC received from Edward Mullaley stating that Mervyn Bell has contacted him and they have had a long and heartfelt conversation. Mullaley states that he no longer has any welfare concerns for the child. He states that Bell loves the child and is caring for him well. Bell explained the evening's events to Mullaley, who now believes that it is good for the child to be with Bell. Bell has arranged to meet Mullaley and transfer custody of the child during the morning (daylight). DCP advised of development. They have requested that any further updates be provided to the Broome DCP office.*³⁵
- [92] Wright said Connor was present at the time he received the telephone call from Mr Mullaley. Connor confirmed he was present and he discussed the call with Wright and could also see what he entered onto the screen (CAD). He said while talking to Mr Mullaley, Wright was purposely paraphrasing what was being said by Mr Mullaley and he understood that Mr Mullaley was satisfied the child was now okay. He said Mr Mullaley was informed that despite suggesting no further police attendance was

³² IAU Interview E Mullaley 1 October 2014, audio.

³³ Text message received by E Mullaley, 02:48hrs 20 March 2013.

³⁴ CAD Incident Recall LWP130320162749, 03:33hrs 20 March 2013.

³⁵ *Ibid.*

required, police would need to stay involved until the child was sighted. He said he believed Mr Mullaley was satisfied with the explanation provided to him by Wright. Connor added that Mr Mullaley knew Bell better than the police did and he had no reason to challenge his account.

[93] Mr Mullaley said he could not recall the conversation with Bell that formed the basis of the 4.15 am CAD entry. He said he was not satisfied that Charlie was safe at any stage.

[94] At 4.16 am the CAD task was updated: "Job re-scheduled for dayshift to contact Mullaley and arrange to sight the child prior to closing." The task was set to 8.00 am.³⁶

1.4.1 Observations

[95] Broome Police failed to obtain critical information from Mr Mullaley regarding the circumstances of Bell taking Charlie.

[96] The IAU report summarises Wright's account of the interaction: "Wright stated he spoke to E Mullaley for approximately 30 minutes and found it challenging to gain information due to E Mullaley's aggressive and agitated demeanour."³⁷

[97] Whilst the CCTV footage of Broome Police Station does not include audio it clearly shows that Mr Mullaley appeared animated at times and calm at other times. It also shows Wright shaking hands with Mr Mullaley who then waved at Wright in a friendly manner as he walked away. There is no indication to suggest he would not have sat and provided detailed information for a police statement if asked. Wright strongly contests that a detailed statement could have been taken from Mr Mullaley and says that Mr Mullaley would not provide any further information despite Wright probing for half an hour. The Commission is unable to determine the position in the absence of an audio recording other than observe that Mr Mullaley demonstrated repeatedly during the evening his concern that Bell had taken Charlie in circumstances where officers either did know or should have been told that Bell had violently attacked Charlie's mother shortly before he took him and that he had a history of violent offending.

[98] Connor failed to add critical information contained in IMS records relating to Bell's criminal history to the CAD task where it could have been seen by other WA Police officers.

[99] Wright failed to communicate critical information within the CAD task, specifically that Mr Mullaley believed Bell was going to hurt Charlie.

[100] Broome Police should have followed WA Police policy relating to a Missing Person. A Missing Person is defined as:

³⁶ *Ibid.*

³⁷ IAU Investigation Final Report Folio No. 2014-0157.

Any person who is reported missing to Police whose whereabouts are unknown and there is:

- *A genuine and serious concern for their welfare and safety, or*
- *Suspicion of criminality surrounding their disappearance*

...

Submitting/Attending officer:

is responsible for:

- *Submitting a code 349 CAD task in all instances, and an IMS Report ...*
- *Obtaining sufficient detailed information to assist in determining the appropriate level of police response*
- *Briefing the relevant [supervisor] ... immediately to assist in determining the level of risk and to obtain assistance with the investigation or search.³⁸*

[101] Connor said he did not believe a formal Missing Person report was required as the matter could be handled on CAD. He said the initial LOTBKF broadcast on the radio could only be heard in cars in Broome. He explained it was common in an indigenous community for children to be looked after by multiple family members and he did not consider the child to be missing. He said in his experience the child would be found in Broome and that is the reason he told Mr Mullaley he would have a car conduct patrols. He said Mr Mullaley could not tell him where to look for Bell and he was not aware that Bell had assaulted Ms Mullaley, nor the extent of her injuries.

[102] Regarding the possibility of Bell taking the child out of Broome, Connor said he could not recall any information from Ms Mullaley to that effect. He said he did not consider telephone triangulation as that would not have narrowed the parameters in Broome. He agreed that the circumstances of a child being at risk may provide the POC with the necessary cause to action a triangulation but confirmed he did not request their assistance.

[103] The IAU investigation found no indication that any officer subsequently attempted to establish Bell's contact information, to contact him and validate what he said to Mr Mullaley or initiate any further action.

³⁸ CR - 10.00 Missing and At Risk Persons, WA Police Corporate Knowledge Database.

CHAPTER TWO DAY SHIFT, 20 MARCH 2013

2.1 The search is escalated

- [104] At 5.45 am the vehicle being driven by Bell left Pardoo Roadhouse without paying for fuel.
- [105] At 6.40 am staff from the Pardoo Roadhouse contacted Karratha Police but provided an incorrect vehicle registration (BM7236 instead of BM23756). Karratha Police conducted a search on the incorrect details and issued a LOTBKF in the Pilbara at 6.55 am. Despite Pardoo being close to the Kimberley/Pilbara border, this LOTBKF was not sent to the Kimberley.
- [106] At 6.00 am day shift supervisor Sergeant William Withers commenced his shift at Broome station.
- [107] Connor said he briefed Withers on the events overnight.
- [108] Withers could not recall receiving a briefing. Withers' source of information obtained by the night shift staff was the text of the outstanding CAD task which was missing critical information.
- [109] Withers was not informed of information known to Connor regarding Bell's history of violent offences. He was not aware Mr Mullaley had reported his concerns to officers at the hospital, as recorded in Carberry's note book. He was not aware Mr Mullaley had telephoned 000 at 12.09 am. He was not aware Bell had assaulted Ms Mullaley before taking Charlie.
- [110] At about 9.00 am Mr Mullaley re-attended the police station because Bell had not returned Charlie as previously arranged.
- [111] A Risk Assessment was actioned to identify the required police response.
- [112] Constable Kyle Leonard commenced a Missing Person inquiry and an Incident Report was created. The text of the Incident Report included a reference to Ms Mullaley being hospitalised "re injuries and mental health assessment". The summary included a reference to patrols being conducted in Broome and the failure by Bell to return the baby he took on the premise he was taking him to Ms Mullaley at the hospital.³⁹
- [113] Leonard placed IMS alerts on Bell and the vehicle he was driving.
- [114] The CAD indicates sometime before 9.20 am Withers tasked Leonard to telephone roadhouses north and south of Broome. At 10.13 am a call was made from Broome Police Station to Roebuck Plains Roadhouse. Between 12.21 pm and 1.02 pm calls were made to Sandfire Roadhouse, Pardoo Roadhouse, Fortescue Roadhouse, Nanutarra Roadhouse, Auski

³⁹ IR 200313 0910 14696 09:10hrs 20/03/2013 Reporting officer: PD14696 LEONARD, Kyle.

Tourist Village and Capricorn Roadhouse. Withers said he also tasked Leonard to telephone police stations north and south of Broome.⁴⁰ Call charge records for Broome Police Station do not indicate any systematic undertaking of this task. Constable Leonard said he telephoned Mullewa Police Station about 12.15 pm.

- [115] About 10.00 am officers attended the home of Ms B and Ms C. The CAD task was updated at 10:52 am to include "Child taken from [Ms C]".
- [116] At 10.58 am Withers telephoned the POC in relation to authorisation for triangulation. The call was answered by Inspector Trevor Davis. Withers informed Davis an eight month old child had been taken by its mother's current partner. He said Broome Police were treating the matter as a Missing Person, however, it may be "scaled up to possible child abduction scenario".⁴¹ Davis queried whether there were any concerns that Bell may not look after the child and Withers responded by explaining the circumstances of Charlie being handed to Bell by Ms C the previous night. He told Davis the child's grandfather has informed police that the child's mother has said Bell made threats to take and kill the child. He explained that at that time they did not have a statement from the child's mother relating to the threats.
- [117] Davis responded that on that basis there was nothing POC could do to assist. He explained that the legislation the POC operate under requires a serious and imminent threat to the child and they would require direct evidence of the threat/s.
- [118] Withers explained that Bell had taken a child that was not his. Davis responded that for the POC that was not an issue that necessarily concerned the welfare of the child and it could perhaps be followed up as a criminal matter through the district's Crime and Intelligence Coordination Unit (CICU). He added that CICU would then pay for the triangulation.
- [119] Davis told Withers that if he could take a statement from the mother providing direct evidence of specific threats, then Withers could call POC again, or the mother may provide evidence for a criminal investigation. Withers clarified that a statement would be required and ended the call.
- [120] Between 11.10 am and 12.28 pm the running sheet was updated and a record made of Ms Mullaley saying she was assaulted by Bell and she'd spoken to Bell's cousin who told her Bell was heading to Mullewa.
- [121] At 11.25 am Withers provided information to Detective Sergeant Tony Wilson of the Broome Detective office about the matter.
- [122] Handwritten notes made by Wilson indicate he was advised Ms Mullaley had been the victim of a DVI by Bell, he had taken the child, was believed to be heading to Mullewa and that threats had been made to harm the

⁴⁰ Memorandum: Internal Investigation Account - MULLALEY, signed by Withers 26 September 2013, p3.

⁴¹ Telephone call Withers to POC (Davis) 10:58hrs 20 March 2013.

child and Ms Mullaley, by Bell. The notes include a query from Wilson to Withers in relation to when the information about the threats was provided to police. The notes indicate the information was provided "this morning".⁴² It appears the officers had not been made aware of the contents of Carberry's notebook, Pearson's briefing to Connor or relevant information provided by Mr Mullaley during the night. The outcome of the meeting is recorded as "WITHERS to continue Missing Persons inquiries. WILSON advises WITHERS is doing exactly what Dets [sic] would be doing."⁴³

- [123] At 12.57 pm A LOTBKF was broadcast to all districts by CICU.
- [124] At 1.15 pm Mr Mullaley's friend, Mr E, attended Roebourne Police Station after he saw Mr Mullaley's vehicle (being driven by Bell) and telephoned Mr Mullaley who informed him Bell had taken Charlie.
- [125] The task relating to the LOTBKF on the vehicle detailed by Mr E was located on CAD. Broome Police Station was contacted and Leonard told the officer they had received similar information and had contacted Karratha Police Station.
- [126] At 1.55 pm Broome Police were informed Bell had taken a child into the Fortescue Roadhouse and was performing CPR on the child.

2.1.1 Observations

- [127] Ms Mullaley discharged herself from the hospital against medical advice when she found out that Charlie was missing. During the morning of 20 March 2013, Mr Mullaley and Ms Mullaley attended the police station on a number of occasions. Withers said they wanted to take a statement from Ms Mullaley however she considered that to be a waste of time and would not assist.
- [128] The events of 19 March 2013, and Mr Mullaley's inability to gain appropriate police assistance overnight, cannot be discounted as factors affecting Ms Mullaley's attitude to assisting police with a statement on 20 March 2013. Nevertheless her lack of cooperation thwarted the actions of Withers after the Missing Person report was created at about 9.00 am.
- [129] Despite the Mullaley family's perception of a lack of police action, police records indicate after Bell failed to return Charlie in the morning, the officers followed correct police procedure and took reasonable action in an attempt to locate Bell and return Charlie to Ms Mullaley.
- [130] However, had the night shift supervisor Connor taken action to ensure all relevant information was collated and recorded correctly, the day shift staff would have been in a better position to understand and escalate their response sooner. A detailed statement from Mr Mullaley would have

⁴² Running Sheet Incident Report 200313 0910 14696.

⁴³ *Ibid.*

assisted and there was ample opportunity overnight for an attempt to be made to take a statement.

[131] The IAU investigation found Connor failed to complete a risk assessment and therefore was unable to identify the correct level of urgency applicable to a Missing Person. He was therefore unable to ensure the appropriate level of police response was provided.

[132] WA Police found that as senior officer and night shift supervisor at Broome Police Station during the incident, Connor failed to provide reasonable leadership to staff in relation to this matter. A Managerial Notice was served on him on 21 April 2015:

During the early hours of the morning on 20 March 2013, you were on duty as the shift supervisor at the Broome Police Station when, over a period of time, you received information from various sources that a significant incident had occurred. The information that you initially received included but was not limited to:

- *Tamica Anne Mullaley (Mullaley) had been assaulted in circumstances which strongly suggested domestic violence and that her de facto partner, Mervyn Kenneth Bell (Bell), was the perpetrator.*
- *Mullaley's 10 month old child, Charles Alan William Edward Derschow-Mullaley (Derschow-Mullaley) had gone missing.*
- *Bell, who was not related to the child, had taken Derschow-Mullaley.*
- *Bell had threatened to harm Derschow-Mullaley.*

Despite the fact that, including yourself, there were six police officers on duty and knowing that this situation existed, as the shift supervisor, you failed to instigate and direct any meaningful policing action aimed at locating either Derschow-Mullaley or Bell.⁴⁴

⁴⁴ Managerial Notice to Sergeant Darren Connor signed 20 April 2015, pp1-2.

CHAPTER THREE POSTSCRIPT

- [133] Bell stood trial in August 2014. On 26 September 2014 he was convicted of murder and sexual assault and subsequently sentenced to a term of life imprisonment with a minimum of 27 years before parole. The events the subject of this report were not part of the evidence at trial.⁴⁵
- [134] On 22 May 2015 Bell pleaded guilty to assaulting Tamica Mullaley and was sentenced to 4 years 10 months imprisonment concurrent with the life sentence.
- [135] On 7 September 2015 Bell took his life in Casuarina Prison.
- [136] Ms Mullaley was found guilty of assaulting police following a trial in September 2015. On 21 October 2015 the magistrate gave her a 12 month suspended sentence citing the need for the court to be merciful.
- [137] Mr Mullaley was convicted of obstructing police officers on 25 September 2015 and received a \$300 fine.

⁴⁵ *SOWA v Bell* [No 3] [2014] WASC 341 [740].