

# Review of an arrest incident by Western Australian Police at Hamilton Hill

1 November 2018



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## **Corruption and Crime Commission**

|                       |   |                     |  |
|-----------------------|---|---------------------|--|
| <b>Postal Address</b> | PO Box 330<br>Northbridge Post Shop<br>WA 6865  | <b>Email</b>        | <a href="mailto:info@ccc.wa.gov.au">info@ccc.wa.gov.au</a> |
|                       |   | <b>Website</b>      | <a href="http://www.ccc.wa.gov.au">www.ccc.wa.gov.au</a>   |
| <b>Telephone</b>      | (08) 9215 4888<br>1800 809 000<br>(toll free for callers<br>outside the Perth<br>metropolitan area) | <b>Twitter</b>      | @CCCWestAus  |
|                       |   | <b>Office Hours</b> | 8.30 am to 5.00 pm,<br>Monday to Friday                    |
| <b>Facsimile</b>      | (08) 9215 4884  |                     |  |

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# INTRODUCTION

## Overview

- [1] On 1 December 2016, Mr Colin Copperwaite was asleep under a tree in Hobbs Park, Hamilton Hill. Neighbours were concerned for his welfare and called for help. Police officers attended the scene.
- [2] The officers established there was an outstanding warrant for Mr Copperwaite's arrest. They tried to detain him, but he resisted. He was taken to the ground. Attempts to taser him were ineffective as the taser malfunctioned.
- [3] Mr Copperwaite's partner, Ms Jacqueline Briffa, was in a house nearby. She saw the altercation and ran to assist him becoming physically involved with the officers.
- [4] As the taser had malfunctioned, the officers used 'empty hand' tactics to try to subdue Mr Copperwaite and Ms Briffa. These are tactics taught to police officers to lawfully overcome resistance. Watching neighbours became concerned at the use of these tactics and filmed part of the incident.
- [5] Mr Copperwaite and Ms Briffa were subdued and arrested. Film of the incident was played on the news outlets. WA Police Force commenced an investigation to determine whether the force used by the officers was excessive.
- [6] The first police investigation found that the tactics used by the officers were compliant with training and policy and the force was not excessive. The Commission monitored and reviewed this investigation and found it to be adequate.
- [7] When Mr Copperwaite and Ms Briffa's charges were brought before the Magistrates Court in Fremantle, the evidence presented to the court caused the Magistrate to form a different opinion and question the credibility of the officers involved.
- [8] As a result, the WA Police Force commenced a second investigation conducted by the Internal Affairs Unit (IAU). This investigation examined both the conduct of the officers during the incident, and those who prepared the evidence for prosecution.
- [9] This investigation concurred with the original findings that the officers at the scene did not use excessive force. However, it found that officers responsible for preparing the evidence for the prosecution had failed in

their duties. As a result, significant evidence corroborating the officers' accounts was not presented to the court, resulting in discrepancies between police and the court's findings.

- [10] The Commission has a responsibility to ensure that allegations of serious misconduct are dealt with in an appropriate way. Understandably, the film of this incident, which is very confronting, has been the subject of considerable public attention.
- [11] The Commission exercises its power in a number of ways including investigation, monitoring and review.<sup>1</sup> It chose to review the conclusions to determine whether the resulting findings were reasonably open to be made.
- [12] The Commission considered whether to carry out its own investigation but concluded that it would review the police investigation which was assessed as thorough.
- [13] The film captured only part of an event that spanned minutes. The Commission had access to enhanced versions of what was filmed and to all the statements of evidence of witnesses.
- [14] In the Commission's opinion, despite the nature of the exchange that was filmed, the IAU investigation was thorough and the conclusions it reached were reasonably open. The Commission forms no opinion of misconduct.

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<sup>1</sup> *Corruption, Crime and Misconduct Act 2003 Act (CCM Act)* s 41.

# CHAPTER ONE

## Role of the Commission

- [15] In the Commission's report tabled in Parliament on 21 March 2018, the Commission set out its approach to its review and oversight functions in respect of the WA Police Force.<sup>2</sup>
- [16] Every day police officers confront potentially violent situations which may put them or others at risk.
- [17] They are trained in tactics to use controlled force in circumstances that to an outsider may appear confronting and excessive.
- [18] It is lawful for a police officer engaged in the lawful execution of a warrant, or in making any arrest, and for any person lawfully assisting the officer, to use such force as may be reasonably necessary to overcome any force used in resisting such execution of arrest.<sup>3</sup>
- [19] Although a police officer may lawfully use force executing a warrant or arresting a person, the use of more force than is justified by law under the circumstances is unlawful.<sup>4</sup>
- [20] Whether the use of force is excessive, or may be more than reasonably necessary, depends on the particular circumstances.
- [21] A person, including a police officer, is entitled to use force in self-defence if three conditions are met:
- (a) *the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and*
  - (b) *the person's harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and*
  - (c) *there are reasonable grounds for those beliefs.*<sup>5</sup>
- [22] In a prosecution for assault where a person is asserting that the harmful act was done in self-defence, or that force used was excessive or more than reasonably necessary, the prosecution must negate, beyond reasonable doubt, those circumstances. Often that will be difficult.

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<sup>2</sup> *Review of Police Response to an Incident in a Country Town where Excessive Force was used and an Arrested Person's Details not Recorded (2018).*

<sup>3</sup> Criminal Code s 231.

<sup>4</sup> Criminal Code s 260.

<sup>5</sup> Criminal Code s 248(4).

- [23] The conclusions of the IAU investigation must be judged against these legal principles.

## CHAPTER TWO

### The incident

- [24] On 1 December 2016, Mr Copperwaite was asleep under a tree in Hobbs Park, Hamilton Hill. His partner, Ms Briffa, was in a nearby residence packing to move.
- [25] Mr Copperwaite's neighbours were walking in Hobbs Park around 2.00 pm and observed him. He appeared to be unconscious. Their call for an ambulance was received by St John Ambulance at 2.08 pm.
- [26] An ambulance attended the scene at 2.23 pm. Mr Copperwaite was easily roused and indicated that he was just sleeping and was not unwell.
- [27] The WA Police Force sent an available police vehicle to attend the park to conduct a priority 2 welfare check on Mr Copperwaite. This job was received by First Class Constable (1/C) Charlotte Richardson, Police Constable (PC) James Hitchen and Probationary Constable (Prob/C) Sharna Thompson.
- [28] PC Hitchen was a fourth year Constable. 1/C Richardson had six years' experience as a police officer in the United Kingdom and had completed a transitional course at the WA Police Academy three months before. Prob/C Thompson had graduated from the Academy one year earlier.
- [29] The officers arrived at Hobbs Park at approximately 2.30 pm, a few minutes after the ambulance had left. They parked their vehicle close to Mr Copperwaite and went to speak with him. The officers formed the view that he may be under the influence of a substance.
- [30] In response to the officers' initial enquiries, Mr Copperwaite provided a false name; however, the officers were able to identify him using the police database. They realised that Mr Copperwaite had an outstanding return to prison warrant. He also had warnings for violent behaviour. The warnings did not mean Mr Copperwaite was in fact a violent person, but are relevant to the officers' states of mind as they approached him.
- [31] The officers approached Mr Copperwaite to arrest him on the outstanding warrant. The officers stated that Mr Copperwaite attempted to escape. They took him to the ground in an attempt to handcuff him.
- [32] 1/C Richardson said she believed that she and her colleagues were at risk of serious injury and attempted to drive-stun Mr Copperwaite with her taser, but it failed. She removed the taser cartridge then successfully drive-stunned him to the lower back before it failed again. A 'drive-stun'



involves direct contact between the device and the subject. WA Police Force Taser Policy FR01.06 directs that officers may use the taser in drive-stun mode if a cartridge is attached. The use of a taser in drive-stun mode without a cartridge is likely to cause pain but not incapacitation.

- [33] A member of the public saw the commotion. Mr X<sup>6</sup> ran to assist police.
- [34] Ms Briffa saw that the altercation involved her partner and ran to intervene.
- [35] Ms Briffa tried to pull PC Hitchen off Mr Copperwaite but Prob/C Thompson pulled her away and wrestled with her on the ground. During this altercation, PC Hitchen shouted out that Ms Briffa was attempting to remove 1/C Richardson's firearm from her holster.
- [36] Nearby residents were alerted to the incident and became concerned. Three neighbours began to intermittently film the incident. The film is of varying quality.
- [37] The neighbours' film depicts PC Hitchen and 1/C Richardson holding Mr Copperwaite on the ground, assisted by Mr X, and trying to handcuff him. The film also depicts Prob/C Thompson struggling on the ground with Ms Briffa.
- [38] The film shows 1/C Richardson going to assist Prob/C Thompson and delivering two kicks to Ms Briffa's side. The film also shows Ms Briffa kicking at both officers. She is eventually subdued by the officers.
- [39] The film also shows PC Hitchen deliver four knee strikes and ten hand strikes to Mr Copperwaite's upper and middle back area. This was reportedly done in an attempt to have Mr Copperwaite release his arms from underneath his stomach. Following a lengthy struggle, he was handcuffed and restrained.
- [40] PC Hitchen activated an emergency button during the incident and backup arrived. Mr Copperwaite and Ms Briffa were arrested. Mr Copperwaite was charged with providing false details and obstructing police, while Ms Briffa was charged with three counts of assaulting a public officer and one count of aggravated possession of a firearm.

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<sup>6</sup> It is not in the public interest to name the individual.

## **CHAPTER THREE**

### **The first police investigation**

- [41] Neither Mr Copperwaite nor Ms Briffa initially made a complaint about the force used on them by the police officers. However, one of the neighbour's mobile phone film was televised by Channel 9 news on 5 December 2016. The WA Police Force immediately commenced an investigation into the incident and notified the Commission. The Commission decided to actively monitor and review their investigation to ensure it was conducted adequately.
- [42] The first investigation was conducted by an Inspector in the South Metropolitan District.
- [43] The Commission received the report of the first police investigation on 14 March 2017.
- [44] The investigator made a number of attempts to interview Mr Copperwaite without success. The investigator did however receive a complaint Mr Copperwaite made to the Ombudsman about the incident.
- [45] The investigator also met twice with Ms Briffa and arranged for her to be interviewed, but she failed to attend.
- [46] The investigator obtained statements from civilian witnesses, including nearby residents and Mr X and reports from officers who attended the scene after the arrest. He also spoke with subject officers PC Hitchen, 1/C Richardson, and Prob/C Thompson.
- [47] The investigator also considered other relevant evidence including information from St John Ambulance, dispatch details for the police vehicle, forensic evidence from 1/C Richardson's firearm and holster, the taser and cartridge and custody records.
- [48] The investigator considered relevant legislation and policy and obtained advice from the WA Police Force Use of Force Capability Advisor at the Operational Safety and Tactics Training Unit about the appropriateness of the force used.
- [49] The investigator determined that Mr Copperwaite had resisted arrest and the officers had no option but to use force to subdue him on the ground. Once on the ground, the officers were unable to control Mr Copperwaite due to his strength and resistance.

- [50] The officers attempted various force options including the deployment of a taser which malfunctioned and had no effect on Mr Copperwaite. Had it discharged correctly, it is likely that the officers would have gained control of Mr Copperwaite and the threat would have been reduced.
- [51] The accounts of the officers indicated that PC Hitchen used elbow and knee strikes, as well as palm thrusts/punches, to gain control of Mr Copperwaite and pull his arms from underneath his body where he was holding them tightly. Mr Copperwaite did not respond to the officer's instruction to stop resisting. It appeared to the officers that Mr Copperwaite was affected by a substance affording him abnormal strength. He was eventually subdued.
- [52] Ms Briffa interjected herself causing a second struggle to ensue between herself and Prob/C Thompson. The officers' accounts indicate that PC Hitchen observed Ms Briffa grab 1/C Richardson's service Glock and shouted "gun", which was heard by the officers. He hit Ms Briffa's hand away from the holster from where it was said the gun had been partially removed. 1/C Richardson kicked out at Ms Briffa to put distance between them.
- [53] 1/C Richardson saw Ms Briffa as the primary threat as she had allegedly kicked 1/C Richardson, bitten her and Prob/C Thompson, and attempted to take the firearm. She went to Prob/C Thompson's aid and kicked Ms Briffa twice in an attempt to gain distance and control. Eventually Ms Briffa was also subdued.
- [54] The investigator found that the officers' use of empty hand tactics to gain control of Mr Copperwaite and Ms Briffa was in line with legislation and police policy and training and was proportional to the resistance being offered by Mr Copperwaite and Ms Briffa. This was supported by the Use of Force Capability Advisor's review of the incident. The allegations of excessive force against the officers were unfounded.

## **The Commission's first review**

- [55] The Commission reviewed this investigation.
- [56] The Commission's review recognised that some of the film was unclear and that the situation was not a typical situation involving a person resisting arrest. The Commission's review agreed that had the taser operated, it would likely have de-escalated the situation.
- [57] The Commission's review concluded the investigation had been conducted adequately and it was open to find that the use of force by each officer was justified.
- [58] The WA Police Force were advised of the outcome of this review on 29 May 2017.

## CHAPTER FOUR

### The trial

- [59] As the police investigation proceeded, so did charges against Mr Copperwaite and Ms Briffa which were heard together on 22 June 2017 in the Magistrates Court at Fremantle. The brief of evidence for the charges was prepared by Detective First Class Constable (Detective 1/C) Bethany May.
- [60] Each of the subject officers gave evidence at trial. Some of the neighbours who had been present were called as witnesses for the prosecution. Ms Briffa gave evidence for the defence.
- [61] The prosecution witnesses, in particular the subject officers, were subjected to rigorous cross-examination by defence counsel who raised the following concerns:
- a) PC Hitchen's strikes on Mr Copperwaite could have commenced before the recording started, prompting Ms Briffa to intervene. If so, he could have struck Mr Copperwaite up to 20 times.
  - b) The weight placed on Mr Copperwaite by the officers could have prevented Mr Copperwaite from releasing his hands which were beneath him.
  - c) Ms Briffa was handcuffed during the part of the film when it was alleged she grabbed 1/C Richardson's firearm and would have been unable to remove it.
  - d) Ms Briffa was handcuffed when 1/C Richardson kicked her.
  - e) 1/C Richardson and Prob/C Thompson's Use of Force reports were very similar.
  - f) There were a number of discrepancies between the officers' Use of Force reports and their evidence given in court. In particular, their evidence of how PC Hitchen pushed Ms Briffa's hand from 1/C Richardson's firearm was inconsistent.
- [62] Mr Copperwaite was convicted of obstructing a public officer and received a nominal fine. Otherwise, he and Ms Briffa were acquitted of all other charges.
- [63] In his reasons for his decision, the Magistrate commented that the evidence of the officers was unreliable and brought the WA Police Force into disrepute.

- [64] The Magistrate reasoned that PC Hitchen may have commenced striking Mr Copperwaite before the film started and that Ms Briffa was acting in defence of Mr Copperwaite when she tried to pull PC Hitchen off him.
- [65] The Magistrate found that Ms Briffa was handcuffed when 1/C Richardson kicked her and the allegation that she partially removed 1/C Richardson's gun was nonsense. The Magistrate found that the officers' evidence about this was an attempt to mislead the court.
- [66] The Magistrate noted that the force used by PC Hitchen was excessive and that 1/C Richardson and Prob/C Thompson chose not to intervene.
- [67] These findings were also reported in the media.

## **CHAPTER FIVE**

### **The second police investigation**

- [68] The findings of the Magistrate prompted IAU to commence a second investigation on 30 October 2017. The subject officers were stood aside.
- [69] IAU undertook a criminal investigation into allegations that Mr Copperwaite and Ms Briffa were assaulted by the officers and that the officers knowingly gave false testimony in court.
- [70] A managerial investigation was also conducted to examine the conduct of the officers involved in the preparation and prosecution of the charges against Mr Copperwaite and Ms Briffa.
- [71] The Commission chose to monitor and review this investigation.<sup>7</sup>

#### **Evidence considered**

- [72] IAU interviewed Mr Copperwaite but found his recollection of events to be vague and uncertain. Their attempts to obtain Ms Briffa's assistance were unsuccessful so they had regard to her evidence given in court.
- [73] IAU considered the evidence gathered by Detective 1/C May for the prosecution brief which included statements from civilian and police witnesses, as well as statements from the subject officers, forensic evidence from 1/C Richardson's firearm and holster, photographs of the officers' injuries and photographs of the incident.
- [74] IAU concluded that Detective 1/C May missed other pieces of evidence. This included police radio communications from the scene, Prob/C Thompson's medical records and statements from other witnesses.
- [75] IAU also considered film of the incident and arranged for it to be enhanced, stabilised and slowed, to improve clarity.
- [76] The film was also amalgamated with the radio communications from the scene, data about when the police database was searched and the taser deployed, to obtain a clearer sequence of the events at the time.

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<sup>7</sup> CCM Act ss 40 and 41.

[77] This enhancement more clearly depicted the following sequence of events:

- 1/C Richardson searched on the police database and identified Mr Copperwaite.
- There were attempts to discharge a taser shortly following this, as the officers attempted to effect arrest.
- PC Hitchen called over the police radio, "urgent ... put your hands behind your back".
- Film commenced depicting 1/C Richardson, PC Hitchen and Mr X attempting to restrain Mr Copperwaite and Prob/C Thompson trying to restrain Ms Briffa.
- 1/C Richardson stood and kicked Ms Briffa twice.
- PC Hitchen called over the police radio, "we need urgent backup at the park, we've got two POIs fighting with us".
- More film showed 1/C Richardson and Prob/C Thompson restraining Ms Briffa, while PC Hitchen and Mr X struggled with Mr Copperwaite.
- PC Hitchen performed two knee strikes and ten hand strikes to Mr Copperwaite's back.
- Mr Copperwaite struggled against PC Hitchen and Mr X, who used their full body weight to try to hold him to the ground. PC Hitchen delivered two further knee strikes.
- 1/C Richardson called over the police radio, "One restrained, attempted to go for a firearm ... still trying to restrain the other one".
- PC Hitchen and Mr X managed to handcuff Mr Copperwaite. Mr X moved away from him. Both appeared exhausted.
- The radio operator asked "Can you find out whether they have seized that firearm as well or if they've thrown it?" and then asked the officers to confirm that they still had their firearms.
- PC Hitchen responded that all the firearms were secure and that Ms Briffa "just went to grab for it". PC Hitchen then advised that empty hand tactics and tasers were used during the arrest.

[78] IAU noted that the radio communications were significant corroborative evidence from the scene that Ms Briffa attempted to remove

1/C Richardson's firearm. The Commission notes that the radio communication contemporaneously supports, at the least, a belief by 1/C Richardson of an attempt to remove the firearm. This evidence was not obtained by Detective 1/C May or presented in court.

- [79] IAU asked the Use of Force Capability Advisor to consider the enhanced film and whether the use of force was appropriate. The Advisor confirmed his opinion that the officers' actions were reasonably necessary in the circumstances to overcome the resistance presented by both Ms Briffa and Mr Copperwaite.
- [80] The Advisor noted that the enhanced film depicted Ms Briffa was handcuffed during the entirety of the film, and any attempt to grab the firearm must have occurred before the film started.
- [81] He also noted that the ineffective taser deployment contributed to the protracted and serious nature of the incident, as well as the officers' heightened awareness of the risk to them following Ms Briffa's attack on PC Hitchen and attempt to remove the gun. 1/C Richardson's taser was found to have had a unique fault and was subsequently replaced.
- [82] IAU obtained Prob/C Thompson's medical records from the evening of the incident, which noted that she had marks on her arm that could include a superficial abrasion made by teeth and scratches.
- [83] IAU considered Ms Briffa and Mr Copperwaite's custody records which indicated that Mr Copperwaite had some light scratches and was sent to hospital for alcohol withdrawal. Ms Briffa's records indicated that an officer kned her in the head and she had a sore wrist and left upper arm. She did not request or receive medical attention on the date of the incident.
- [84] IAU also considered the Use of Force reports completed by the officers after the incident. WA Police Force policy states that officers must submit a Use of Force report in any incident involving use of a firearm, taser or OC spray, or where there is bodily injury requiring medical care.
- [85] PC Hitchen completed two Use of Force reports. The first only addressed his own force used on Mr Copperwaite and not that used by others. Prior to the trial, he was asked to complete a supplementary report by his supervisor addressing both 1/C Richardson's taser deployment and Ms Briffa's attempt to grab the firearm. Only PC Hitchen's first report was presented as evidence in court.



- [86] IAU considered evidence by all relevant civilian witnesses. It was noted that Mr X's evidence corroborated the officers' account of the incident but he was not called to give evidence in court.
- [87] IAU interviewed the subject officers again to clarify issues relating to their court testimony. The officers explained they were encouraged by the prosecutor to be more expressive about the events than they had been in their reports which accounted for differences in some of the language they used. IAU's enquiries determined that all of the officers were relatively inexperienced in giving evidence in court, particularly under cross-examination.
- [88] The officers responsible for preparing the briefs of evidence and prosecuting the charges against Mr Copperwaite and Ms Briffa were interviewed.
- [89] Detective 1/C May accepted that she did not consider or chose not to obtain the police radio communications, Prob/C Thompson's medical records, or a better statement from Mr X, which could have assisted the prosecution. Someone else disclosed the Use of Force reports and missed PC Hitchen's second report.
- [90] Detective 1/C May advised that she moved districts while preparing the brief, but passed it to the South Metropolitan Brief Quality Manager for checking, as the charges originated in that district.
- [91] Sergeant (Sgt) Jo-Anne Zilko was that Brief Quality Manager. Her responsibility is to review briefs to ensure they are ready for court. She failed to review Detective 1/C May's brief and passed it straight to the prosecutor. She did not accept that it was her responsibility to review.
- [92] Sgt Matt Barker prosecuted the charges. He had concerns about the film and the accounts of the officers but did not believe them to be lying. He had concerns about Mr X's evidence and did not call him as a witness as he was concerned he would not be truthful. He encouraged the officers to show emotion, be more descriptive and not minimise the event.

### **Conclusions by the Internal Affairs Unit**

- [93] IAU's enquiries established there was significant evidence to indicate that Ms Briffa did attempt to remove 1/C Richardson's firearm. This included the accounts of the officers and Mr X, the police radio communications from the scene, the officers' reports and the fact that 1/C Richardson's firearm and holster were sent for forensic testing. However, not all this evidence was presented to the court.

- [94] IAU found the officers to be credible and appreciated that the attempted removal of one of their firearms would have greatly increased their perception of the threat to themselves and the public. This increased the level of force that was acceptable in that situation.
- [95] IAU found that the criminal allegations of assault against PC Hitchen and 1/C Richardson were exonerated as their use of force was in line with police training and policy. The same allegation against Prob/C Thompson was unfounded as there was no evidence that she kicked Ms Briffa or acted unlawfully.
- [96] According to IAU, the allegations that the officers knowingly gave false testimony to the Magistrates Court in Fremantle were unfounded. Significant evidence corroborating their accounts was not presented in court. While the officers, particularly 1/C Richardson, become confused in their recollection of some events, inconsistencies in their accounts were partly due to their preparation with the prosecutor who encouraged them to use different terminology.
- [97] IAU also considered whether disciplinary charges should be brought against any of the officers for breaches of the *Police Force Regulations 1979*. PC Hitchen and 1/C Richardson were exonerated of using unnecessary force pursuant to Reg 609(b). The same allegation against Prob/C Thompson was unfounded. Allegations that those officers failed to carry out their duties in a proper manner pursuant to Reg 605(1)(b) were also unfounded.
- [98] Disciplinary findings under Reg 605(1)(b) were sustained against both Detective 1/C May and Sgt Zilko who were responsible for preparing and checking the prosecution brief of evidence. IAU found that Detective 1/C May did not conduct the investigation to an acceptable standard and Sgt Zilko chose not to take responsibility for, and failed in her duties as Brief Quality Manager.
- [99] The Prosecution Branch were asked to review the prosecution and advise whether improvements could have been made.
- [100] IAU identified some issues with the supervision of the officers preparing the briefs of evidence.
- [101] IAU noted that the issues identified in this investigation are applicable to a number of other recent prosecutions. They have established a working party to examine gaps in process and identify areas for improvement.

[102] IAU noted that police body cameras would have captured the crucial interaction with Mr Copperwaite and Ms Briffa which occurred prior to the mobile phone recording undertaken by members of the public.

## CHAPTER SIX

### The Commission's second review

- [103] The Commission reviewed IAU's investigation to ensure that the investigation was conducted adequately and IAU's findings were reasonably open on the evidence.
- [104] The investigation was thorough and to a high standard. IAU went to considerable lengths to clarify the different findings of the WA Police Force and the court.
- [105] While there is a lack of clear evidence to support the claims that Ms Briffa assaulted the officers and tried to remove 1/C Richardson's firearm, radio communications and the officers' actions during the incident appear to support their belief that both occurred. There is also a lack of clarity regarding at what point in the incident Ms Briffa was handcuffed; however, IAU's finding that these incidents occurred before the film commenced was reasonable.
- [106] The court had difficulty accepting PC Hitchen's evidence regarding the resistance offered by Mr Copperwaite. At first glance, the original film showing him striking Mr Copperwaite is very confronting. Close examination of the enhanced film supports the officers' accounts that Mr Copperwaite was very strong as he resisted arrest, requiring their full body weight to restrain him. It is unclear whether any strikes occurred before the film started.
- [107] IAU concluded that the officers' use of empty hand tactics on Mr Copperwaite and Ms Briffa did not constitute excessive force. In the Commission's opinion, this conclusion was reasonably open. Mr Copperwaite was very strong when resisting arrest, and the use of these tactics complied with police policy.
- [108] There is an issue whether 1/C Richardson's kicks to Ms Briffa while she was handcuffed amounted to excessive use of force.
- [109] This issue is unable to be resolved. The film shows that Ms Briffa was handcuffed (though still struggling) at the time of the kicks.
- [110] The film does not of course depict anything that happened earlier. There is support for 1/C Richardson's belief that Ms Briffa had tried to remove the firearm before she was handcuffed. The time difference between the attempt and the kicks is unknown. This was a violent incident with heightened arousal for all participants.

- [111] Having regard to all the circumstances, there is no basis to contradict IAU's finding that the use of force by 1/C Richardson in kicking Ms Briffa was a reasonable response.
- [112] IAU's finding that Prob/C Thompson did not kick Ms Briffa at all is also a reasonable conclusion on all the available evidence.
- [113] IAU's conclusion that these officers did not knowingly attempt to mislead the court is more difficult. The explanation that the poor evidence given at times by the officers was likely a result of their inexperience, lack of proper preparation and rigorous cross examination, does not justify their failure to clearly present the facts.
- [114] A police officer, indeed any witness, has an obligation to tell the unvarnished truth. That said, experience has shown that even honest witnesses can become confused and, at times, give unreliable evidence.
- [115] The Commission has no material to contradict the conclusion reached by IAU. The Commission notes that the poor presentation significantly contributed to the failure to present to the court evidence that might have confirmed the officer's accounts.
- [116] The findings that Detective 1/C May and Sgt Zilko failed to perform their duties in a proper manner were reasonable. There was significant evidence that, if presented to the court, may have changed the outcome of the proceedings. Both officers received verbal guidance and letters of corrective advice.
- [117] The Commission notes that WA Police Force is seeking to apply lessons learnt during this investigation to other matters involving prosecutions.
- [118] In one year's time, the Commission will seek further information from the WA Police Force as to the findings of the working group that has been established to enquire into these issues.

## CHAPTER SEVEN

### Conclusion

- [119] While the Commission often reports on matters where it has formed an opinion of serious misconduct, it will also report on occasion where it has not formed such an opinion. There is a public interest in both. The latter provides reassurance that a matter has been properly investigated by an agency and appropriate conclusions have been drawn.
- [120] The Commission has concluded that the IAU investigation was comprehensive.
- [121] The conclusions reached by IAU as to the conduct of various officers were open.
- [122] The resolution of this incident may have been easier if police officers were wearing body cameras. The Commission supports the recent decision by the WA Police Force to introduce cameras from 2019.