



**CCC** | Corruption and  
Crime Commission

# A report into WA Police Force's identification and management of at risk officers

2 December 2021



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# CHAPTER ONE

## Overview

- [1] First Class Constable A<sup>1</sup> is a front line police officer who had worked at the same busy metropolitan station for over four years. A normal shift entailed attending hostile, violent situations and dealing with members of the community who were often affected by drugs and alcohol.
- [2] From outward appearances, Constable A did his job with no issues. From the WA Police Force's (WA Police) perspective, Constable A did not have a history of misconduct allegations or pattern of reportable incidents, such as use of force.<sup>2</sup> There appeared to be no cause for concern.
- [3] It was not until February 2020 that WA Police was alerted of potential behavioural issues concerning Constable A through two separate complaints. Both reports were made by Constable A's peers. Had the reporting officers not shown courage in voicing their concerns, these incidents may have remained unaddressed.
- [4] Although the complaints concerned different events, they were similar in nature. In each case, the reporting officer questioned the appropriateness of Constable A's actions in gaining control of a situation by punching a person in custody to the head.
- [5] WA Police mandates reporting use of force incidents in certain situations. Empty hand tactics, such as a punch, are only reportable when the subject suffers a bodily injury that requires medical care.
- [6] Constable A's actions were scarcely documented. Constable A reported the first incident via a mandatory use of force report because the person received medical treatment. However, the report did not accurately record the number of times he punched the person in custody. Despite the severity of force used in the second incident, no report was submitted because the person was not suspected of having sustained an injury.
- [7] The use of force to a person's head or neck can result in serious and sometimes, non-visible injuries. Concussion or asphyxia are just two examples. Current WA Police data does not capture all incidents when force is used to these areas. This diminishes the ability for WA Police to identify if this is a widespread issue.

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<sup>1</sup>This report does not contain the true names of the persons involved. As this review is principally about process, the Commission has concluded there is no public interest in identifying individuals.

<sup>2</sup> The term use of force means the application of force on a person.

[8] In the Commission's opinion, any significant force used to the head, as illustrated in the cases involving Constable A, should trigger a mandatory use of force report.

[9] Both complaints against Constable A were investigated by the Internal Affairs Unit (IAU).

[10] IAU conducted the investigations simultaneously and in both cases, concluded the actions of Constable A were appropriate and proportionate in the circumstances. No further issues were identified.

[11] The Commission has a responsibility to ensure allegations of serious misconduct are dealt with in an appropriate way. The Commission conducted a review of the actions taken by WA Police into the two incidents of alleged excessive use of force by Constable A.

[12] A review is not an investigation. A review examines an authority's action. It enables the Commission to assess the conclusion reached by WA Police. The Commission applies the principles laid down in *House v R* (1936) 55 CCR 499 when deciding whether the conclusions reached by WA Police were reasonably open. Did the decision maker:

- act on a wrong principle;
- take into account irrelevant considerations;
- act on a mistaken view of the facts;
- fail to take into account a material consideration; or
- is the conclusion unreasonable?

[13] If the answer to these is 'no' then the decision maker has reached a conclusion that is reasonably open on the particular facts.

[14] In the Commission's opinion, both investigations were inadequate and therefore the findings were not reasonably open.

[15] The lines of enquiry explored by IAU were limited. The investigations relied principally on evidence available on WA Police systems and on interview with Constable A. No contact was made with the officers who reported the incidents, witnesses or the person subject to the use of force.

[16] Based on footage capturing the incidents, Constable A engaged in further acts of force and unprofessional behaviour. These were not identified or considered as part of the IAU investigations.

[17] In both incidents, no consideration was given as to whether Constable A notified lock up staff of the force applied to the head area, so depriving the staff of a decision whether to seek medical attention.

[18] Following the review, the Commission communicated its concerns and WA Police committed to re-investigate both matters.

[19] In addition to re-investigating those original matters, WA Police created an early intervention file for Constable A to analyse any behavioural concerns. Two additional use of force incidents involving Constable A were identified which required further investigation. Both incidents occurred after the original investigations.

[20] In September 2021, IAU informed the Commission that multiple allegations in respect of Constable A's actions in relation to all four incidents had been sustained. The matter has been recommended for disciplinary proceedings under the *Police Act 1892* s 23.<sup>3</sup>

[21] WA Police should ensure it can identify and implement strategies to assist officers who may be considered at a higher risk of engaging in serious misconduct. In this case, due to the inadequate investigations, this did not occur.

[22] The Commission has made two recommendations to WA Police:

- Review the early intervention system to identify at risk officers and give support while offering other options such as retraining or reallocation of duties.
- Consider expanding the requirement to report use of force when empty hand tactics are used to the head or neck.

[23] WA Police's response to the recommendations is detailed later in the report.

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<sup>3</sup> The s 23 process is used when the seriousness of allegations is such that managerial investigations are inappropriate. Possible outcomes from the s 23 process range from a reprimand to dismissal.

## CHAPTER TWO

### Empty hand tactics

- [24] Police officers are often required to make split-second judgements in volatile situations. Training is provided to assist officers to develop the skills required to make immediate and appropriate decisions for scenarios they will face. This includes use of force options. Officers also learn by experience.
- [25] Police officers are authorised to use force to exercise their powers or overcome any resistance (offered or suspected) while exercising their powers. For example, force can be used by a police officer to restrain a person, effect an arrest or execute a warrant.<sup>4</sup>
- [26] Various force tactics are available to police officers to reduce a threat and gain control of a person. These include empty hand tactics.<sup>5</sup>
- [27] Empty hand tactics are self-defence or control techniques that do not involve the use of a weapon. Examples include strikes, punches, kicks and compliance holds.
- [28] Empty hand tactics present a lower risk of injury than other use of force options and are suitable for many situations. Empty hand tactics can be used:
  - a) to prevent bodily injury<sup>6</sup> to any person;
  - b) as a technique to effect arrest;
  - c) to prevent escape from arrest; and
  - d) to prevent damage to property.
- [29] Empty hand tactics are likely to be the most commonly used force option. There are risks associated with any use of force including empty hand tactics. Provided the use of force is justified or necessary, those risks must be accepted as part of the requirement for police officers to keep the peace and protect the community.

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<sup>4</sup> *Criminal Investigations Act 2006* s 16; *Criminal Code Act 1913* (Criminal Code) Chapter XXVI.

<sup>5</sup> Police Manual FR-01.01 Use of Force - Generally.

<sup>6</sup> Police Manual FR-01.01.1 Reporting Use of Force - Justification for Use, Reporting Protocols, Guidelines and Procedures, defines 'bodily injury' as 'something in the nature of damage to bone, muscle, tendon, skin, organ or any part of which the human body is constructed'.

[30] Any use of force, including empty hand tactics, must be reasonably necessary in the circumstances. Any officer who uses excessive force may be liable for criminal charges<sup>7</sup>, disciplinary action, or both.

### **Reporting empty hand tactics**

[31] WA Police manages use of force risks in various ways, including mandatory reporting requirements. WA Police reviews use of force data to consider policy changes based on trends or potential deficiencies.

[32] Officers are required to submit a use of force report when empty hand tactics are used on a person who sustains a bodily injury requiring medical care.

[33] In April 2020, WA Police updated the definition of 'requiring medical care'.<sup>8</sup> Currently a use of force report is required if bodily injury is:

- identified by an officer; or
- identified or claimed by the person.

[34] All other instances are not reportable. For this reason there are gaps in the available data.

[35] As empty hand tactics are used frequently in the course of general policing, a requirement to report use of force in every instance would place too great a burden on the officer and WA Police, without a material benefit.

[36] However, the dangers associated with empty hand tactics applied to high risk areas of the body, as outlined in the cases in this report, are such as to lead to a recommendation to consider reporting of force applied to the neck and head.

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<sup>7</sup> Criminal Code s 222.

<sup>8</sup> Corruption and Crime Commission, *Final review of the WA Police Force response to an incident in the lock up of a country town*, 17 June 2021; Police Manual FR-01.01.01 Reporting Use of Force Justification for Use, Reporting Protocols, Guidelines and Procedures.

## CHAPTER THREE

### Initial investigations by WA Police

#### The first incident - November 2019

- [37] On 29 November 2019, police officers were called to respond to a male assaulting a female in a public place.
- [38] Two probationary officers attended the scene and after a struggle, handcuffed the suspect. Despite being placed on the ground, suspect 1 continued to struggle and shout abuse. The probationary officers asked for back up.
- [39] Constable A and another probationary officer went to assist. The presence of additional officers did not change suspect 1's behaviour.
- [40] After a short period, the officers lifted suspect 1 to his feet and walked him to the police vehicle. Suspect 1 continued to struggle and show aggression.
- [41] Constable A took charge and pushed suspect 1 into the open pod of the police vehicle. Suspect 1 became seated and facing towards Constable A, still handcuffed with his hands behind his back. As Constable A was leaning into the pod, suspect 1 kicked Constable A in the chest.
- [42] Constable A responded by punching suspect 1 to the face. Constable A retreated before leaning back into the pod to punch him to the face a second time.
- [43] The incident was captured on body worn camera (BWC) footage.
- [44] Suspect 1 was later taken to a lock up where he alleged he had been assaulted by Constable A and requested medical treatment. Suspect 1 had significant swelling and bruising to his left eye and was taken to hospital for medical treatment by other officers.
- [45] Suspect 1 was later charged with a number of offences including assaulting a public officer by kicking Constable A.
- [46] Months later on 27 February 2020, a brief quality assistant reviewed the evidence for suspect 1's charges. After viewing the BWC footage, the brief quality assistant raised concerns about the actions of Constable A in punching suspect 1 twice to the head following the kick.
- [47] The brief quality assistant consulted with senior management within WA Police and a police conduct report was submitted about the use of force.

[48] The charge of assault public officer was later withdrawn as the BWC footage to support the charge was inconclusive. No officer gave evidence and the footage was not shown to the Court.

[49] On 28 February 2020, WA Police notified the Commission of this matter.<sup>9</sup>

#### **IAU investigation and conclusion**

[50] The investigation focused on the use of force incident and sought to establish whether the actions of Constable A in punching suspect 1 to the head twice, was an excessive use of force.

[51] The investigation considered evidence including the BWC footage, custody management records and statements from all attending officers contained on the brief of evidence. Suspect 1 was not spoken to, nor were any possible witnesses.

[52] The investigation found that suspect 1 sustained a black eye and later received medical treatment while in custody.

[53] Constable A was not invited to participate in a criminal interview. IAU concluded both self-defence and provocation were criminal defences open to Constable A. A criminal investigation outcome of 'not sustained'<sup>10</sup> was recorded.

[54] Following the conclusion of the criminal investigation, a managerial investigation commenced. The managerial or disciplinary process is different from a criminal investigation in that officers are compelled to answer questions, and the burden of proof is on the balance of probabilities.

[55] Constable A provided evidence during the compulsory managerial interview, in which he claimed:

- Suspect 1 was aggressive and a risk.
- Empty hand tactics were used as means to gain control.
- He shoved suspect 1 a couple of times.
- He only struck suspect 1 once to the head so that the pod door could be closed.

[56] From a disciplinary point of view, IAU concluded the first punch 'may have been reasonably necessary in the circumstances'. The same conclusion was

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<sup>9</sup> *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 28.

<sup>10</sup> The investigation failed to disclose sufficient evidence to clearly prove or disprove the allegations made in the complaint.

reached about the second punch. A managerial outcome of 'exonerated'<sup>11</sup> was recorded.

[57] The Commission accepts the first punch may have been explained by reason of provocation but there was no justification for the second punch in the circumstances.

### **The second incident - February 2020**

[58] On 1 February 2020, Constable A and a probationary officer attended an incident involving a male assaulting a female in a public place. At the scene the officers located suspect 2, a young man.

[59] The two officers approached suspect 2 and explained why they were there. Suspect 2 was not violent towards the officers but refused to provide his particulars to enable his identity to be established. After unsuccessful negotiations, suspect 2 was placed under arrest. He was handcuffed to the rear, put in a police vehicle and taken to a police station.

[60] On route to the station, suspect 2 manoeuvred the handcuffs to the front of his body. Upon arrival, the handcuffs were not repositioned and he was escorted with no issues from the vehicle into a charge room which contained a holding cell.<sup>12</sup>

[61] As suspect 2 stood in the charge room, Constable A removed the handcuffs. Without warning, suspect 2 spat at Constable A's face.

[62] Constable A reacted immediately and punched suspect 2 to the face. The punch was so powerful it pushed him backwards into the holding cell, causing the back of his head to collide with the concrete wall.

[63] Straightaway Constable A followed suspect 2 into the cell, grabbed him, pulled him out and took him to the ground in the charge room area.

[64] While suspect 2 was face down on the ground, Constable A knelt next to him, held his ear and spoke aggressively. Constable A then pulled his arm back forcefully and applied handcuffs. Suspect 2 was lifted to his feet by the handcuffs and removed from the charge room.

[65] A probationary officer and police auxiliary officer (PAO) witnessed the incident which was also captured on CCTV.

[66] Suspect 2 was later taken to a Watch House and charged with various offences including 'assault public officer' for spitting at Constable A.

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<sup>11</sup> The act complained of did occur but was justified, lawful and proper.

<sup>12</sup> A holding cell is a small room within a charge room used to secure arrested persons who are awaiting processing. It is a concrete and glass structure, secured by a door.

- [67] At the Watch House, suspect 2 did not respond to the routine admission questions asked of him, including those asked by a nurse. He was later seen that night by another nurse for the purposes of obtaining a blood sample for infectious disease testing.
- [68] Within hours of the incident, the probationary officer who witnessed the incident raised concerns with a supervisor. The supervisor knew that suspect 2 spat at Constable A but was not aware of the subsequent punch.
- [69] The supervisor reviewed the CCTV footage and identified concerns in the use of force by Constable A, specifically the punch and the action of lifting the man up off the ground by the handcuffs. A police conduct report was submitted.
- [70] On 5 February 2020, WA Police notified the Commission of this matter.<sup>13</sup>

#### **IAU investigation and conclusion**

- [71] The investigation considered whether the use of force by Constable A in punching suspect 2 to the face, was excessive.
- [72] The investigation identified that no use of force report was submitted by Constable A. However, this was considered in accordance with policy, as suspect 2 did not complain of any injuries nor were there any records or proof he sustained an injury.
- [73] The investigation considered the CCTV footage without audio from the police station and custody management records. Suspect 2 was not interviewed and no other possible witnesses were interviewed. Witness accounts from the probationary officer and PAO were considered but only as statements contained on the brief of evidence in relation to the charge against suspect 2.
- [74] Constable A was not invited to participate in a criminal interview. IAU concluded both self-defence and provocation were criminal defences open to Constable A. An outcome of not sustained was recorded.
- [75] Constable A later provided evidence during a compulsory managerial interview where he explained the punch was an immediate reaction to being spat at.
- [76] From a disciplinary point of view, IAU concluded that the punch was justified and proportionate in the circumstances. The outcome of exonerated was recorded.

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<sup>13</sup> CCM Act s 28.

## CHAPTER FOUR

### The Commission's reviews

- [77] Upon receipt of WA Police's final investigation reports, the Commission conducted a review of each matter.
- [78] The Commission reviewed all available evidence, including the associated footage.

#### **Review of the first incident - November 2019**

- [79] There were significant failings in the IAU investigation. The lines of enquiry explored by IAU were limited, resulting in a number of issues left outstanding. Specifically, IAU did not:
  - a) Contact suspect 1 for a statement or seek to obtain medical records.
  - b) Interview the other attending officers to explore lines of enquiry specific to its investigation, as opposed to relying upon the evidence prepared for prosecution.
  - c) Identify and interview Watch House staff.
  - d) Identify the unprofessional conduct by Constable A to suspect 1 after he was secured in the police vehicle.
  - e) Identify the existence of Constable A's use of force report and/or compare it with the BWC footage.
  - f) Challenge Constable A's version of events, including having only punched suspect 1 once.
  - g) Establish whether Constable A was aware if suspect 1 sustained any injuries.
  - h) Consider if the first punch to the head was appropriate and necessary given the risks of serious injury.
  - i) Consider if the second punch to the head was appropriate and necessary given the risks of serious injury coupled with the fact suspect 1 was not at that time obstructing the vehicle door.
  - j) Address the risks associated with force used to a person's head.
  - k) Establish whether Constable A considered the risk of concussion.
  - l) Identify and establish why there were no custody management records to reflect the use of force to suspect 1's head, including the

custody risk classification, until suspect 1 made a complaint himself sometime after the incident.

- m) Identify why no formal complaint was taken from suspect 1 on the night.

[80] The IAU investigation concluded that both punches were necessary in the circumstances. The Commission does not agree. When Constable A delivered the second punch, the need for force had clearly ended. The man was seated, handcuffed and he was not obstructing the door. Constable A chose not to close the door and instead delivered the second punch.

[81] In managerial interview, Constable A stated the punch was an immediate reaction. IAU did not question his reasoning for the second punch.

[82] The IAU investigation was inadequate. The Commission considers the conclusions reached by IAU were not open.

#### **Review of the second incident - February 2020**

[83] The Commission concluded there were significant failings in the IAU investigation. The lines of enquiry explored by IAU were limited, resulting in a number of issues left outstanding. Specifically, IAU did not:

- a) Contact suspect 2 or his legal representatives for a statement and enquire about any medical assistance that may have been sought after the incident.
- b) Interview the reporting probationary officer or PAO to explore lines of enquiry specific to the investigation.
- c) Question why no officer who witnessed the punch thought to provide suspect 2 with medical assistance.
- d) Establish whether officers considered the risk of concussion or other serious injury.
- e) Clarify if any Watch House staff, including a nurse who examined suspect 2, were informed of the punch.
- f) Identify and establish why there were no custody management records to reflect the use of force to suspect 2's head, including the man's custody risk classification.
- g) Clarify why Constable A did not inform the supervisor of the punch.
- h) Address the risks associated with force used to a person's head.

- i) Identify or address the additional application of force of throwing suspect 2 to the ground.
- j) Identify or address the additional application of force of lifting suspect 2 up by the handcuffs.
- k) Identify the aggressive behaviour by Constable A when he held suspect 2's ear.
- l) Obtain the audio component to the CCTV footage.

[84] The footage associated with this incident clearly shows the punch to suspect 2 was an immediate reaction to being spat at. However, the force of the punch was significant, to such a degree that it is unreasonable to suspect the man suffered no injury at all. Despite this, the risks associated with serious injury such as concussion were not considered.

[85] This was the second incident in a matter of months involving Constable A punching a person in custody to the head. IAU expressed no concerns with this pattern of behaviour.

[86] In managerial interview, Constable A mentioned the punch was an instant reaction. IAU did not question the lack of thought behind the force used by Constable A nor the power applied to the punch.

[87] It is accepted that despite training, a police officer may on occasion react impulsively to a provocative act such as occurred in this case. Retaliation may not be proportionate to the insult offered but nevertheless be regarded as provocation sufficient to excuse the assault. Police officers may expect to be confronted with provocative behaviour on occasion and should have strategies to deal with such behaviours. Training and keeping such strategies current is a managerial responsibility.

[88] A number of issues in relation to this matter were not addressed. Therefore, the conclusions reached by IAU were not open.

## CHAPTER FIVE

### Subsequent action by WA Police

- [89] On 4 December 2020, Commission officers met with the WA Police Professional Standards Division (Professional Standards) to discuss the Commission's concerns with the investigations. Following this meeting, a comprehensive list of the Commission's concerns was provided to Professional Standards.<sup>14</sup>
- [90] A commitment was made by Professional Standards to address the issues and provide a response.<sup>15</sup>
- [91] On 11 June 2021, the Commission was provided with an adequate update on the actions taken.<sup>16</sup> By then, Professional Standards had created an early intervention file to identify any risks with Constable A's conduct.

#### Early intervention program

- [92] In 2008, WA Police implemented an early intervention program (EIP) to identify individuals and business units at risk of potential or actual misconduct, and to intervene.<sup>17</sup>
- [93] The purpose of intervention is to identify and implement strategies, such as retraining, closer supervision and performance plans, to mitigate the risk.
- [94] The EIP is based on alerts programmed into the WA Police case management system. An alert is based on a set number of events. For example, an officer who is involved in a certain number of use of force incidents within a specific time period, will trigger an alert.
- [95] Once an alert is generated, it is analysed and if any concerns are identified, an early intervention file is created to commence an investigation of the identified issues.
- [96] Since its introduction, 682 early intervention files have been commenced.

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<sup>14</sup> Email from the Corruption and Crime Commission to Professional Standards Assistant Commissioner, 8 December 2020.

<sup>15</sup> Email from Professional Standards Assistant Commissioner to the Corruption and Crime Commission, 10 December 2020.

<sup>16</sup> Email from Acting Superintendent Ethical Standards Division to the Corruption and Crime Commission, 11 June 2021.

<sup>17</sup> Police Manual AD-16.11 Early Intervention Program.

- [97] Measuring the effectiveness of the program has been described by WA Police as difficult.<sup>18</sup>
- [98] In January 2020, WA Police conducted an early intervention review project.<sup>19</sup> The national professional standards early intervention project and national forum planned for late 2021, were placed on hold due to COVID-19.<sup>20</sup>
- [99] With regards to Constable A, there was no prolonged pattern of reported behaviour to detect the possibility for early intervention. Instead, early intervention was prompted by the Commission's involvement. It is unknown what the EIP will mean for Constable A.
- [100] The early intervention file identified two further historical use of force incidents that required investigation. Both instances involved the use of empty hand tactics against juvenile females.
- [101] Professional Standards re-investigated the original two matters in conjunction with the two newly-identified incidents, as part of its early intervention file.

#### **Two more incidents are identified and require investigation**

- [102] As part of the EIP for Constable A, IAU conducted a comprehensive review of use of force reports submitted and BWC footage captured by Constable A. The two further incidents identified are now under investigation by IAU.
- [103] These incidents occurred in August and September 2020, after IAU had finalised its first investigations into Constable A. Of significance, all use of force reports go through a quality assurance process. Why these issues were not picked up then is a matter for WA Police.
- [104] The Commission has not conducted a formal review of either matter. However, the Commission has viewed the associated footage and Constable A's use of force reports for both incidents.
- [105] Constable A's behaviour appears to have progressively worsened since IAU's original investigations and inadequate conclusions.
- [106] The August 2020 incident involved Constable A and other officers attending an apartment building in response to a man armed with a knife.

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<sup>18</sup> Email from Superintendent IAU to the Corruption and Crime Commission, 23 September 2021.

<sup>19</sup> WA Police Force submission to the Joint Standing Committee on the Corruption and Crime Commission, 19 March 2020.

<sup>20</sup> Email from Superintendent IAU to the Corruption and Crime Commission, 23 September 2021.

- [107] It took four officers, including Constable A, to remove the man from the building via an elevator. During this time, a juvenile female who witnessed the arrest attempted to enter the elevator too.
- [108] Constable A pushed the female to the chest to remove her from the elevator. After being pushed out of the area, the female immediately attempted to re-enter. Constable A reacted and struck her to the mouth resulting in a cut. Constable A's aggressive conduct did not stop there. He swore at the group who witnessed the strike and lunged at a man in the group who was making aggressive gestures towards Constable A.
- [109] The Commission is concerned with the actions of Constable A who appeared to be on edge. No attempt was made by Constable A to obtain the female's details and she was not charged with any offence.
- [110] It is questionable as to why force was used on the female, particularly a punch to the head.
- [111] The September 2020 incident involved Constable A, amongst many other police officers, who attended an out-of-control gathering involving juveniles at a community centre.
- [112] Constable A spoke to a young male. During the interaction a young female interjected and started to talk to the male. They appeared to know one another. Other presumed acquaintances joined.
- [113] Constable A reacted by telling the group of young people to 'shut up' and 'back off'. The female did not move, so Constable A swore at her and pushed her to the chest which caused her to fall to the ground.
- [114] The female became verbally abusive and Constable A continued to swear at her. Constable A made comments that she would 'love a bit' of Oleoresin Capsicum (OC) spray. The female walked off.
- [115] About one minute later, as Constable A and another officer were walking away from the crowd, the female could be heard swearing.
- [116] Constable A reacted and walked back to the crowd swearing and administered OC spray. Constable A then walked away from the crowd back to the officers who had formed a line.
- [117] It is clear the female irritated Constable A but it is again questionable whether Constable A's actions and reactions were necessary, justified and proportionate to the circumstances.

[118] The second investigation by Professional Standards is ongoing in the sense that Constable A is subject to disciplinary proceedings.<sup>21</sup> The Commission notes the improvement in quality of this investigation and the findings, particularly the lines of enquiry pursued, such as by obtaining medical records and statements and sustained findings inclusive of unnecessary use of force.

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<sup>21</sup> *Police Act 1892* s 23

## CHAPTER SIX

### Response to the Commission's recommendations

- [119] Before any report is published containing matters adverse to a person or body, the Commission allows the affected parties a reasonable opportunity to make representations to the Commission concerning those matters.<sup>22</sup> This process was undertaken for WA Police and Constable A.
- [120] No response was received from Constable A.
- [121] The Commission received a response from WA Police.<sup>23</sup> WA Police does not accept the two recommendations in this report.

### WA Police's response

- [122] **Recommendation 1: Review the early intervention system to identify at risk officers and give support while offering other options such as retraining or reallocation of duties.**
- [123] WA Police advised it has a case management system with a number of early intervention systems built in. One of those being an alert that is generated when an officer repeatedly reports use of force. Each alert is investigated. No system, which relies on those involved to self-report, will perfectly capture all use of force. Those involved may not submit a report based on perception, mistake, forgetfulness or deliberate avoidance.
- [124] BWC footage dip sampling and a brief review has, on a number of occasions, identified use of force or less than professional conduct. Supervisor review of BWC footage allows officers to be provided guidance and, if necessary, Police Conduct Reports submitted for early guidance and intervention.
- [125] WA Police advised it continues to endeavour to intervene early in situations of poor performance or misconduct, which may include re-training, education, discipline or in more serious cases standing an officer aside from operational duties or standing them down from all duties.
- [126] **Recommendation 2: Consider expanding the requirement to report use of force when empty hand tactics are used to the head or neck.**
- [127] WA Police advised strikes to the head, in a situation involving the use of empty hand tactics, whilst dangerous, is considerably less dangerous than

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<sup>22</sup> CCM Act s 86.

<sup>23</sup> Letter from Deputy Commissioner Blanch to the Corruption and Crime Commission, 11 November 2021.

some other use of force tactics. WA Police has finite resources and continually makes decisions to prioritise resources based on risk. Reporting on the use of other force options such as OC spray, batons, firearms and other weapons has been prioritised as being more dangerous than the use of empty hand tactics.

[128] WA Police also advised the current use of force policy is adequate and is regularly reviewed, or considered for review, based on trends or potential deficiencies. In the view of WA Police, an amendment of the type recommended, based on behaviours that are not seen as an agency trend, has limited merit and is unlikely to have a perceptible benefit to the community or WA Police.

## CHAPTER SEVEN

### Conclusion

- [129] A police officer's job is very difficult at times. Policing in high demand areas can be relentless and the impact of being regularly exposed to aggressive and volatile situations may adversely affect an officer's ability to assess and react appropriately to such situations.
- [130] For these reasons, WA Police must ensure it can identify and implement strategies to assist officers who may be considered at a higher risk of engaging in serious misconduct.
- [131] WA Police's commitment to re-investigate the inadequate investigations is welcomed. Without this, the further issues would not have been identified.
- [132] The outcome of further action by WA Police is yet to be finalised.
- [133] The Commission has made two recommendations to WA Police:
  - Review the early intervention system to identify at risk officers and give support while offering other options such as retraining or reallocation of duties.
  - Consider expanding the requirement to report use of force when empty hand tactics are used to the head or neck.
- [134] The Commission acknowledges the response by WA Police and reiterates the risks highlighted in this report which lead to the recommendations. As such the recommendations remain.