

A report on the deployment of police dogs

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INTRODUCTION

- [1] In 2020, the JSCCCC conducted an inquiry into the Commission's oversight of excessive use of force allegations against members of WA Police.¹
- [2] The JSCCCC report recommended the Commission undertake an audit of police dog bite incidents to determine whether the use of force was justified and adequately reported by WA Police.²
- [3] The Aboriginal Legal Service of WA (ALSWA) provided the JSCCCC and the Commission with information suggesting the prevalent use of police dogs on Aboriginal and Torres Strait Islander persons.³ The historic and anonymised nature of the information impacted the Commission's ability to verify the information and identify lines of enquiry, therefore limiting the assessment of each incident. Nevertheless, consideration was given to the concerns raised by ALSWA.
- [4] The Commission initiated a thematic review of the serious misconduct risks associated with the deployment of police dogs.⁴ Specific consideration was given to WA Police training practices; compliance with the Use of Force policy; and the likelihood of serious injury relating to police dog use.
- [5] The Commission's thematic review included:
- an analysis of WA Police data, including use of force reports involving police dogs;
 - assessment of all notifications of excessive use of force by a police dog made to the Commission in the 2020-2021 financial year; and
 - a random audit of use of force reports submitted for a one month period, including (where available) viewing associated body worn camera (BWC) footage.
- [6] WA Police officers are empowered to use such force as is reasonably necessary to reduce a threat and gain control of a person.⁵ Police dogs are one use of force option.⁶

¹ Joint Standing Committee on the Corruption and Crime Commission, *Report 2, IF NOT THE CCC ... THEN WHERE? An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against members of the WA Police Force*, September 2021. [Committee Details \(parliament.wa.gov.au\)](https://parliament.wa.gov.au/Committee/Details), accessed 14 March 2022.

² Ibid 72.

³ Aboriginal Legal Service of Western Australia, *The Use of Police Dogs on Aboriginal and Torres Strait Islander People in Western Australia*, August 2020.

⁴ *Corruption, Crime and Misconduct Act 2003*, s 41.

⁵ *Criminal Investigation Act 2006* and *Criminal Code Act 1913*.

⁶ *WA Police Manual*, FR-01.01 Use of Force - Generally.

- [7] An officer may use a trained animal to assist in exercising their powers, so long as all reasonable measures are taken to ensure the animal does not injure a person or damage property.⁷
- [8] The WA Police Canine Unit is responsible for the training of police dogs. This report focuses on the use of general purpose police dogs, trained to locate persons and bite on an 'apprehend' command.
- [9] The Canine Unit acknowledges deployment of a police dog may result in serious injury. When considering the level of force appropriate, a police officer is trained to make a decision based on the information and intelligence available to them, their appreciation of the situation and the perception of the threat they face. As a use of force option it considers the use of a police dog to sit between a taser and firearm when an officer is considering what tactical response is reasonable in the circumstances.⁸
- [10] Significant improvements in the deployment of police dogs and the mitigatory associated risks have been made since 2016.
- [11] The Canine Unit has undergone major reform. The introduction of contemporary training methods along with better dog selection has resulted in improved canine handler control.
- [12] WA Police has amended the circumstances in which police dogs can be used, with deployment now defined as either challenge⁹ or apprehend.¹⁰ Reporting is required in both instances. This has improved accountability when a dog is the use of force option selected by a handler.
- [13] The canine handler's use of a verbal warning is a key initiative in minimising the risk of injury. This warning raises awareness to the police dog's presence and provides an opportunity for the person to submit to arrest.
- [14] The Commission identified a gap in the policies and procedures specific to the use of police dogs.
- [15] The Canine Unit confirmed reliance on lesson plans from the training syllabus as providing the guiding principles for handlers. The absence of defined policies and procedures creates ambiguity as to the expected operational use of a police dog and hinders review of this force option.
- [16] Data analysis revealed a higher representation of police dog deployment on Aboriginal and Torres Strait Islander persons. The Commission did not

⁷ *Criminal Investigation Act 2006*, s 17.

⁸ WA Police Force Intranet, Emergency Management- Mounted and Canine.

⁹ No physical contact is made by the dog to the persons in a 'Challenge' deployment.

¹⁰ Physical contact (bite) is made by the dog to the subject in an 'Apprehend' deployment.

identify any systemic factors which gave rise to the higher representation. It remains unclear what factors contribute to this higher representation.

- [17] The Commission makes two recommendations to WA Police:
- Undertake further analysis of police dog use to explore reasons for the higher representation of Aboriginal and Torres Strait Islander persons.
 - Develop and implement Canine Unit policies and procedures.
- [18] The Commission will review the WA Police response to these recommendations in 12 months' time.
- [19] Before finalising the Report, the Commission gave WA Police an opportunity to respond. The responses have been incorporated into this Report.

CHAPTER ONE

WA Police Canine Unit

- [20] WA Police has a specialist Canine Unit to provide support at incidents. The unit is responsible for training both canine handlers and police dogs.
- [21] Selected police officers are partnered with a police dog and undertake an 18 week course to become a canine handler. The program is designed to equip both the handler and police dog with skills for operational deployment.
- [22] Canine handlers were stationed in the Perth metropolitan area and Bunbury, Kalgoorlie and Broome. Since September 2021 all canine services are based in the Perth metropolitan area.

WA Police dogs

- [23] Police dogs are animals specially trained for use as a tactical option by qualified canine handlers.¹¹
- [24] Police dogs are trained for a particular purpose. Some are trained for narcotic detection and others for general purpose. Some police dogs are trained in dual purposes.
- [25] General purpose police dogs are trained to locate property and persons. They are taught to engage subjects immediately, a capability known as 'locate and engage' or 'find and bite'.
- [26] The canine handler trains and manages the agility, tracking, searching and bite skills of their police dog. A police dog must remain under physical or verbal control of a handler at all times.

Use of force by police dogs

- [27] Police officers may use force to reduce a threat and gain control of a subject. The circumstances in which force can be used and the applicable restrictions are prescribed in legislation and WA Police policy.¹²
- [28] Any force used must be reasonably necessary in the circumstances and officers are individually accountable for force used.

¹¹ *WA Police Manual*, FR-01.01 Use of Force - Generally.

¹² *Criminal Investigation Act 2006*, ss 16 and 17, *Criminal Code Act 1913*, s 233, and *WA Police Manual*, FR 01.01 Use of Force - Generally.

- [29] WA Police Use of Force policy outlines various force tactics available to officers.¹³ Police dogs are one tactical force option, with use restricted to qualified canine handlers.
- [30] The policy requires officers to use WA Police's Situational Tactical Options Model decision making process to guide them in responding to operational policing tasks.¹⁴
- [31] Selection of tactical options is not a linear progression. Officers should use the least force possible, and escalate or de-escalate their choice of force options in response to dynamic circumstances.
- [32] Depending on the type and level of force used, police officers are required to report incidents involving the use of force. This enables WA Police to record, monitor and evaluate the use of tactical options in the operational environment.¹⁵
- [33] The Use of Force policy outlines the reporting process for use of force incidents.¹⁶
- [34] Use of force reports are subject to supervisory review. The report and any associated BWC footage is reviewed and escalated for approval through the officer's chain of command.
- [35] A final review is conducted by the Operational Skills Training Faculty (OSTF) Use of Force Coordinators Office. That office considers whether the use of force complied with relevant legislation and policies.
- [36] The review of use of force reports may identify training, reporting and investigation gaps. Should any significant issues be identified, an officer may be subject to disciplinary or managerial investigation.

Use of force reporting data

- [37] The Commission analysed WA Police use of force reporting data for police dog use between the financial years 2015-2016 to 2019-2020.¹⁷
- [38] During this five year period there were milestones in the development, management and oversight of WA Police police dog capability.

¹³ *WA Police Manual*, FR-01.01 Use of Force - Generally.

¹⁴ *Ibid.*

¹⁵ *WA Police Force Manual*, FR-01.01.1 Reporting Use of Force - Justification for Use, Reporting Protocols, Guidelines and Procedures.

¹⁶ *Ibid.*

¹⁷ Corruption and Crime Commission, *WA Police Force- Use of force tactical option: Police dogs*, January 2021. This data used in police dog report was first requested from WA Police in August 2020 in accordance with the Commission's Strategic Themes and Impact Plan and scheduled Strategic Intelligence products.



Figure 1: Timeline of police dog governance maturity

- [39] WA Police reviewed 317 police dog use of force reports within the five year period. Nearly 200 of these were recorded during the 2019-2020 year.
- [40] The sudden increase in reports was attributed to changes in police dog reporting requirements in 2018-2019. As discussed later in this report, the Canine Unit amended its practice to include both challenge and apprehend deployments, significantly increasing the number of police dog reports.
- [41] The Commission's analysis of available WA Police use of force reporting data for the period did not find any systemic, cultural or policy issues to indicate the use of police dogs was excessive, discriminate or inadequately reported and/or governed.
- [42] However Aboriginal and Torres Strait Islander persons, including juveniles, are statistically over-represented as subjects in police dog use of force reporting. The Commission could not identify any internal police procedures, practices or bias, which might account for this over-representation.
- [43] WA Police were provided a copy of the Commission's analysis on 24 February 2021 which included options for consideration by WA Police to further augment policy and practices.¹⁸
- [44] On 21 May 2021, WA Police responded and confirmed three impending changes to police dog reporting. These changes aim to record additional information about the circumstances which led to the police dog deployment.¹⁹

¹⁸ Disseminated to WA Police Force - Letter from Acting Commissioner Ellis to Commissioner Dawson - 24 February 2021.

¹⁹ Disseminated to the Corruption and Crime Commission, Letter from Commissioner Dawson to Acting Commissioner Ellis, 21 May 2021.

CHAPTER TWO

Assessment of 2020-2021 notifications involving police dogs

- [45] During the 2020-2021 financial year, the Commission received 14 notifications of alleged serious misconduct involving the use of force by police dogs. Notifications were made by WA Police, ALSWA and members of the public.
- [46] The 14 notifications related to nine separate matters.²⁰
- [47] The Commission assessed each matter to determine if a reasonable suspicion of serious misconduct could be formed.
- [48] The Commission formed a reasonable suspicion of serious misconduct for five of the matters and referred them to WA Police for action and outcome, subject to Commission oversight.²¹
- [49] There was insufficient evidence to form a reasonable suspicion of serious misconduct for the remaining four matters.
- [50] However, for the purposes of this review, all nine matters were considered to assist the Commission's understanding how WA Police deals with serious misconduct risks associated with police dogs.
- [51] These matters and the wider review observations are discussed below.

No reasonable suspicion of serious misconduct formed

- [52] In 2020-2021, the Commission was notified of four historic matters. They all occurred between 2016 and 2018, and involved the alleged inappropriate use of police dogs on Aboriginal and Torres Strait Islander people. Three matters were alleged to involve juveniles.
- [53] The Commission's assessment considered each incident individually and determined that in all four matters, the police dogs were used in accordance with the policy in place at the time. Specifically, the police dogs provided assistance in the arrest of a person(s) wanted for a serious offence, who actively evaded arrest.
- [54] The Commission noted the age and vulnerabilities of the persons arrested and, more specifically, a mistaken identity which led to a wrongful arrest.
- [55] The Commission's assessments concluded that on the information available to the canine handlers at the time of the arrests, coupled with

²⁰ A matter may contain more than one police dog incident.

²¹ *Corruption, Crime and Misconduct Act 2003* ss 40 and 41.

the action of the individuals in fleeing the scenes, the deployment of the police dogs remained reasonable in each of the circumstances.

- [56] The Commission did not form a reasonable suspicion of serious misconduct and therefore took no further action for all four matters.

Commission's review of suspected serious misconduct

- [57] The Commission formed a reasonable suspicion of serious misconduct for five matters and referred them to WA Police for action.
- [58] The Commission conducted a review of the five matters investigated and finalised by WA Police.²²
- [59] Concerns were identified with the actions taken by WA Police in response to two of the five matters.

Incident 1 - Use of a police dog to protect other officers during an arrest

Background

- [60] In 2020, the Commission was notified of concerns surrounding the use of a police dog from an incident that occurred in December 2017.
- [61] The incident involved a canine handler who responded to a triple zero call about a man and woman arguing outside a local country store. The caller advised the man had cut himself with a knife and was injured, but no longer had the knife in his possession.
- [62] As the first officer on the scene, the canine handler attempted to engage with the man and place him under arrest. The man was injured and bleeding. He ignored the canine handler and walked away. The canine handler called for assistance and returned to his vehicle to retrieve the police dog.
- [63] Two other officers arrived, located the man and placed him under arrest. In their attempt to apprehend him, a struggle ensued and all three parties fell against a fence.
- [64] The canine handler arrived to the struggle and instructed his police dog to 'hold him' causing the dog to bite the man on the calf. The man submitted to the arrest and was transported to hospital.
- [65] After the incident, the canine handler reported the use of the police dog. During a routine review, Use of Force Coordinators from OSTF questioned whether the use of the police dog was an appropriate force option to de-escalate the situation. Specifically, there was an imminent need for

²² *Corruption, Crime and Misconduct Act 2003* s 41.

force to be used and, if so, whether other lower force options were available.

- [66] Being unable to determine whether the use of the police dog was in accordance with policy, OSTF referred the incident to the Canine Unit for evaluation.
- [67] The Canine Unit determined the use of the police dog was justified, based on the canine handler's failed attempts to de-escalate the situation with verbal challenges and his perception that another officer would be injured.
- [68] The Canine Unit agreed that lower force options may have been available, but were of the view that they were only available to the two officers involved in the struggle. The canine handler was required to maintain physical control of the police dog, and the other officers' close proximity to the subject precluded him from using another force option.
- [69] The use of the police dog was deemed appropriate and the report finalised by OSTF.
- [70] In 2020, ALSWA submitted a complaint on its client's behalf, highlighting the following adverse comments made by the Magistrate during the man's trial:

In my view Officer X's use of the dog was premature. Though the accused was resisting he was not in a position to overpower either officers. He had no ready access to a weapon; he was not making any threats; and although he was clearly upset and highly agitated he was not out of the officer's control. Officers Y and Z, in my view, were still in control of the situation. Though [the police dog's] assistance made the arrest easier this is no justification for using the dog at this point. I find that the use of the dog is excessive and renders Officer X's arrest unlawful.²³

- [71] The incident occurred prior to the roll-out of BWC.

WA Police investigation

- [72] The complaint was allocated by WA Police to the Canine Unit for investigation.
- [73] The investigation examined the actions of the officer in accordance with the Use of Force policy and summarised the following key considerations:
 - evidence from all three officers stated empty hand tactics were not effective in overcoming the man's resistance;
 - there was a risk posed by the man's uncontrolled bleeding; and

²³ Magistrates Court of Western Australia Transcript, 21 September 2018, p 5. The comments have been anonymised.

- the location of the knife had not been verified and remained unknown.

[74] The investigation concluded that at the point of deploying the police dog, the canine handler held a reasonable suspicion that use of force was required to prevent another officer from being injured.

[75] The WA Police investigation decided the officer's actions were therefore in compliance with the Use of Force policy, which permits the use of a police dog to affect an arrest or prevent injury.

Commission's review

[76] The WA Police investigation was thorough and considered all available evidence.

[77] WA Police advised that while they accepted the Magistrate's decision, they believed the concerns raised were in response to the limited evidence presented at trial, and that a more comprehensive prosecution case may have resulted in a different outcome.

[78] Without CCTV or BWC footage, the Commission acknowledges the difficulty in determining the exact circumstances faced by the officers. The situation was dynamic. Multiple officers were present and split second decisions were made.

[79] The difficulty in determining the appropriateness of the force used is complicated further by the absence of Canine Unit policy defining the expected use of police dogs - an issue which restricted the ability of the OSTF in reviewing this force option.

[80] The reliance on the opinion of a subject matter expert from the Canine Unit was evident. The Commission noted the Canine Unit Training Supervisor who reviewed the use of force report in 2018 was also involved in the subsequent investigation process in 2020.

[81] While the Commission acknowledges the value of knowledge provided by subject matter experts, the lack of an independent person to review a process presents a risk in adequately managing conflicts of interest and/or perceptions of bias. WA Police response to this paragraph is:

WA Police Force Emergency Management and Specialist Support Division (EM & SS Division) continuously review all facets of Canine Unit operations to ensure compliance with policy, procedures and best practice.

The internal Subject Matter Experts at all times demonstrate professionalism and independence in their review of incidents. Professional Standards Portfolio also provide independent oversight of all incidents, as does the Commission.

[82] Despite this response the risks remain.

- [83] Irrespective of these concerns, on the evidence available to the Commission considers the conclusions reached by WA Police were reasonable and open to be made. They were not clearly wrong or unreasonable.

Incident 2 - Arrest using a police dog captured on Police Air Wing video footage

Background

- [84] In July 2020, ALSWA sought compensation on its client's behalf for unlawful use of force by a police dog during an arrest in 2017. The incident was subsequently notified to WA Police and the Commission.
- [85] The 2017 incident occurred during the arrest of a man for his suspected involvement in an aggravated burglary. A canine handler who was already in the area and responding to incidents of a similar nature, was called to attend the burglary which had just occurred while the occupants were home.
- [86] With the assistance of the Police Air Wing (PolAir), the man was located in the vicinity of the alleged offences. The man continued to evade arrest by fleeing on foot into the darkness. PolAir used night vision cameras to record the man, who crossed a major dual lane highway and hid in the middle island bushes.
- [87] The canine handler was directed to the area and used the police dog on a lead to search the bush area. The police dog located and bit the man on his thigh and buttock area.
- [88] The complaint alleged the man was bitten by the police dog after he was located by the canine handler and had surrendered. It alleged the use of force in the arrest was unnecessary and excessive.

WA Police investigation

- [89] The complaint was assigned by WA Police to the Canine Unit for investigation.
- [90] The investigation examined the PolAir footage and all relevant evidence, including interviews with the complainant and canine handler. The footage rebutted the claim that the police dog engaged after the man was located and surrendered.
- [91] The investigation concluded the use of the police dog in effecting the arrest was appropriate. The man was suspected of committing a serious offence

and the use of the police dog prevented his escape. Use of the police dog in these circumstances aligned with WA Police policy.

Commission's review

- [92] The PolAir footage was vital in the review of this incident. The footage demonstrated the continued actions of the man to avoid arrest, despite having had prior opportunities to surrender.
- [93] The incident occurred at night, so visibility was reduced for officers including the canine handler. The canine handler's account that he did not see the man until after he was located and bitten by the police dog, is supported by the footage. The police dog is seen to engage almost immediately upon locating the man. This is followed by the man raising his hands.
- [94] PolAir visually located the man's hiding spot just prior to the use of the police dog. An opportunity for the canine handler to cease searching and wait for other officers to arrive and apprehend the suspect was an option. This may have resulted in a lower force option being used to effect the arrest.
- [95] However, the dynamic nature of the incident, the risk of further escape and the lack of clarity as to what information was provided by PolAir to the canine handler at the time of the incident, are factors that likely impacted this decision.
- [96] On the evidence available, the Commission considers the use of the police dog reasonable and the conclusions reached by WA Police were open to be made.

Incident 3 - Police dog used at an out of control gathering

Background

- [97] In mid-2020, police officers were called to attend an out of control gathering. The incident was captured on BWC footage and showed a dynamic environment with multiple youths in the area. The crowd was violent and targeting police.
- [98] The canine handler attended the scene to assist in dispersing the crowd. Using the police dog on a short lead, the canine handler assisted officers by telling the youths to move on.
- [99] The police dog was in close proximity to the group when a young girl fell to the ground. The girl was bitten on the leg by the police dog. She was later arrested by other officers for disorderly conduct.

- [100] WA Police received a complaint from the girl and her family. It alleged the use of the police dog was unnecessary and resulted in a significant injury that required surgery.

WA Police investigation

- [101] The complaint was assigned by WA Police to the Canine Unit for investigation.
- [102] The investigation considered the canine handler's perception of the circumstances and the girl's behaviour, specifically, her unpredictable nature, ongoing abuse towards police officers and continued non-compliance with police directions.
- [103] The proximity of the girl to the police dog, the dynamic nature of the situation and the impact of this environment on the dog, were highlighted as contributing factors to the incident.
- [104] The investigation concluded the deployment of the police dog was appropriately used to arrest the girl and aligned with relevant legislation, training and guidelines.
- [105] The investigation recommended a review of attendance by canine handlers at out of control gatherings.

Commission's review

- [106] The Commission reviewed all available BWC footage. The girl appears intoxicated, belligerent and does not promptly leave the area when asked. The girl is seen approaching the area where police are actively struggling with another group. As the group is being moved on, the girl falls to the ground and is bitten by the police dog.
- [107] The canine handler immediately pulls the dog back and in doing so, the police dog drags the girl towards the canine handler, before it lets go. Distressed and injured, the girl becomes verbally aggressive and uncooperative with officers.
- [108] The canine handler does not immediately arrest the girl or advise her she is being charged with disorderly conduct. This occurs sometime later when the canine handler is heard asking for another officer's assistance in locating the girl to charge her.
- [109] The canine handler's use of force report states he used the police dog to protect other officers and disperse youths from the area. However, it is not clear from the report whether the handler made a conscious decision to arrest the girl, or instructed the dog to apprehend.

[110] The officer's perceived risk, which appears to be in response to the crowd more than the specific actions or behaviours of one person, and the dynamic circumstances of the incident, raises the question as to whether use of the police dog in this instance, was accidental.

[111] On the evidence available, the Commission considers the conclusions reached by WA Police were not open to be made. WA Police response to this paragraph is:

This incident has been reviewed by WA Police Force Professional Standards Portfolio with no issues raised. Accordingly, WA Police Force has a contrary view to the Commission which should be noted.

[112] The Commission acknowledges the changes to the Use of Force policy on 28 October 2020,²⁴ to remove the use of police dogs at public order incidents. This may prevent similar instances from occurring in the future.

Incident 4 - Use of police dog at night to locate suspects in a waste facility

Background

[113] In the early hours of 3 September 2020, WA Police were notified of a suspicious vehicle at a regional waste management facility. Upon arrival, the canine handler discovered a freshly cut hole in the boundary fence and located items nearby.

[114] The canine handler used the police dog on a lead to assist in searching the premises for person(s) suspected of trespassing and stealing from the waste facility. During the search of the facility, the police dog apprehended two persons in different locations, biting one on the upper arm and the other on the back of the head/ear.

[115] Both parties received an Infringement Notice for Trespass.

[116] Following the incident, both persons notified the Commission separately and alleged the use of the police dog was unnecessary and resulted in serious injury. Surgery was required to one person's ear which was almost completely detached and the other person required multiple sutures to their arm.

[117] BWC footage captured the incidents.

²⁴ WA Police Manual, FR-01.01 Use of Force Generally, review date 30 August 2017.

WA Police investigation

- [118] The matter was assigned to the regional district for investigation who completed a desktop review based on the BWC footage. Neither complainant was contacted or interviewed.
- [119] The investigation determined that although both parties received an injury as a result of their arrest, the use of force was authorised, justified and excused by law.

Commission's review

- [120] The WA Police investigation relied solely on the BWC footage and the canine handler's use of force report. No interviews were conducted or further information obtained.
- [121] The Commission reviewed the BWC footage. It was night-time and dark. The facility had limited lighting. Despite this, the canine handler is seen to only use his torch intermittently, mostly to assist him in travelling over fences. The torch is turned off during active searching for the suspected person(s).
- [122] The canine handler can be heard issuing three quiet challenges as he commences searching. A challenge is a verbal command of 'Police Canine! Come out now, or I will release the dog and you may be injured!'.²⁵ The challenge affords an opportunity for any person to make themselves known and comply with the officer's instructions.
- [123] The handler walks a considerable distance and climbs through a fence. Nine minutes after the last challenge was given, the police dog locates and bites the first person on the arm. The handler is heard asking 'surely, you heard me' and the person replying 'I didn't'.²⁶
- [124] After this arrest, the officer commenced searching for and located the second person near a vehicle. The person stated he was sleeping and didn't hear the officer approaching.
- [125] The WA Police investigation did not seek to clarify the version of events from the perspective of the persons injured.
- [126] In considering the darkness and passage of time between the officer's challenges, it is considered reasonable that the person did not hear the canine handler approaching. It is unclear how WA Police were able to conclude that the force used in the circumstances was not excessive.

²⁵ WA Police, *Use of Force for Police Dog- Operational Deployment Lesson Plan*, 27 November 2019.

²⁶ WA Police, Canine Handler Body Camera Footage, 3 September 2020.

- [127] In the absence of further investigative actions, the Commission considers the action taken by WA Police was inadequate.
- [128] In a response to a draft copy of this report,²⁷ WA Police advised it is incorrect for the Commission to reach the above conclusion. In the view of WA Police 'the Investigating Officer provided a comprehensive analysis and reached a sound conclusion in recommending the subject officer should be exonerated'. The Commission's view has not altered.

Incident 5 - An officer's repeated misuse of a police dog

Background

- [129] To assist in monitoring use of force incidents, WA Police are alerted internally when an officer reports three force incidents within a three month period. This may result in the officer's performance being reviewed.
- [130] In 2020, a canine handler submitted eight use of force reports within three months triggering an alert. Subsequently the Internal Affairs Unit (IAU) conducted an audit on the officer's force incidents, including a review of associated BWC footage. The audit identified three incidents where the handler engaged in unprofessional conduct by using profane language towards members of the public.
- [131] WA Police notified the Commission, advising the matter was allocated to the Canine Unit. In finalising its action, WA Police recorded an outcome of 'sustained' for the three incidents and the handler received verbal guidance.
- [132] The Commission's assessment of these incidents continued after WA Police's finalisation and identified additional concerns that were not considered by WA Police, specifically, the provocative manner the police dog was used in all three incidents.
- [133] The concerns prompted the Commission's assessment scope to widen and consider 24 use of force incident's involving the officer from 12 December 2019 to 2 April 2021.
- [134] The Commission identified further instances of unprofessional conduct and six occasions where it was alleged the handler had used excessive force by activating his police dog to intimidate controlled suspects.
- [135] The Commission formed a reasonable suspicion of misconduct with respect to multiple use of force incidents and referred them back to WA Police for action.

²⁷ WA Police Letter to CCC- Response to *Corruption, Crime and Misconduct Act 2003* s 86 process, 3 December 2021.

WA Police investigation

[136] The matter was assigned to the Canine Unit for investigation. The investigation considered relevant use of force reports, BWC footage, training information and evidence provided by the handler.

[137] The investigation identified six occasions where the handler continued to command the police dog to 'watch-him' after the suspects had submitted to the arrest and were compliant. WA Police response to this paragraph is:

WA Police Force has a contrary view, that the command was used incorrectly in only two of the six incidents and the other four uses were correct. Managerial action was taken in each instance where the command was incorrectly used.

[138] When a suspect is compliant, it is only appropriate to use the 'watch-him' command if the circumstances change. On the six occasions, this was not the case.

[139] The handler's evidence that the command was used for various reasons, including to reinforce the dog's training, was not accepted.

[140] The investigation found no issues with the handler's decision to deploy the dog. However, it concluded the use of the dog was not in accordance with training practices and breached WA Police Use of Force policy. An outcome of 'sustained' was recorded and it was recommended the handler receive further training and supervision.

[141] In addition, a series of further recommendations were made to improve supervision of handlers and widen the review of police dog use, including the review of all canine handler BWC footage.

Commission's review

[142] The WA Police investigation adequately responded to the allegations identified and referred by the Commission.

[143] The Commission acknowledges the recommendations made to improve the supervision and review of police dog use.

[144] It remains a concern however that these allegations were not identified by WA Police during the use of force reporting quality assurance process or the report audit.

[145] WA Police policy mandates the requirement to report all police dog use, including the review by Canine Unit supervisors at multiple levels of command. Therefore, it remains unclear what impact these recommendations will have in governing the use of police dogs.

- [146] In the six matters, Canine Unit supervisors did not identify any concerns with the use of the police dog. It wasn't until the Canine Unit Training Supervisor reviewed the files that concerns were raised.
- [147] In the absence of Canine Unit policies and procedures to uphold the expected use of a police dog, all evaluation falls to Canine Unit training experts.

CHAPTER THREE

Audit of reported police dog use

- [148] The Commission is only notified of police dog incidents when concerns are raised or identified by persons external to the Commission, including WA Police. As a result, not every incident involving the use of a police dog is reported to the Commission.
- [149] A review of all reported incidents involving the deployment of police dogs, was conducted by the Commission for the month of February 2021. Nine reports were submitted during this month.
- [150] These incidents were not reported to the Commission because no concerns were identified with the force used, nor the actions of the canine handler.
- [151] The Commission reviewed the use of force reports and associated BWC footage for all nine incidents to determine whether a reasonable suspicion of serious misconduct could be formed.
- [152] Six different handlers submitted a use of force report, with two officers involved in more than one incident. Five reports (just over 50%) related to the use of police dogs in regional areas.
- [153] Aboriginal and Torres Strait Islander persons were involved in seven of the nine incidents. Two incidents involved juveniles.
- [154] The Commission acknowledges the over-representation of persons from Aboriginal and Torres Strait Islander backgrounds. However, no evidence was identified to suggest the canine handlers were actively targeting Aboriginal persons, nor was there any instance of an officer using racial commentary.
- [155] Each report was examined to understand the justification for the police dog deployment and its alignment to the Use of Force policy. Associated BWC footage was viewed to identify any inconsistencies with the facts included in the use of force report.
- [156] BWC footage fully captured all but one incident. A recording malfunction was attributed to one incident being only partially recorded. For all nine incidents, the BWC footage supported the canine handler's written report.
- [157] Only two of the nine incidents resulted in the police dog physically apprehending a person, neither of whom were juveniles. Both persons sustained injuries that required medical treatment.

- [158] The deployment of a police dog in seven of the incidents was considered in accordance with the Use of Force policy. That is to say, the evidence supported the canine handlers' reported belief that there was a risk of escape from arrest for a serious offence and/or a risk of serious injury to any person.
- [159] In the remaining two incidents, the police dog appeared to be used as a professional presence and compliance tool. No verbal challenge was issued and the deployment did not involve an apprehension.
- [160] The WA Police Use of Force policy does not speak to the use of police dogs for professional presence. The appropriateness of this technique and any reporting requirements, is a matter for WA Police.

CHAPTER FOUR

Summary

Police dog training practices

- [161] Since 2016 the Canine Unit has undergone significant reform.
- [162] In 2017, WA Police reported that unacceptable training methods and internal processes had led to a culture of under-reporting canine bites and ongoing canine behaviour issues. The lack of control posed a risk to the public, police officers and WA Police reputation.²⁸
- [163] In response, WA Police made significant changes to dog selection and training methodology.
- Before you didn't know if the dog was going to bite you or the crook ... now with the dog we have here that is command driven, we have a usable tool not a liability.*²⁹
- [164] The development of canine standards aligned to the Australia New Zealand Policing Advisory Agency (ANZPAA) Guidelines for Police Dog Handling was critical.
- [165] The following initiatives have since been implemented by WA Police to enhance a canine handler's control of the police dog during deployment:
- Selection of a different dog breed.
 - Changes to the police dog capabilities.
 - Improved initial training of both police dog and canine handler.
 - Mandatory ongoing training and competency assessment processes.
- [166] The changes implemented attempt to ensure the decision making, in every situation, remains with the canine handler.
- [167] In late 2020, WA Police invited the Commission and ALSWA to an information and demonstration session by the Canine Unit. The demonstration of police dog capabilities was particularly valuable in displaying the way police dogs are trained and used.
- [168] Police dogs were previously trained to stand off and bark, unless there was a threat. The decision to bite was based on the dog interpreting the threat,

²⁸ WA Police Force, Benefits Interim Report: External training provider for canine operations-November 2017, December 2017.

²⁹ Ibid, 1.

according to the circumstances and a person's behaviour. Now, police dogs are trained to bite immediately, with the canine handler responsible for deciding when and how to use the police dog.

- [169] With 'find and bite' training comes the risk that any contact with a police dog may result in the police dog biting the person. A key strategy in mitigating this risk is the verbal challenge. Where practicable, canine handlers are required to issue a verbal challenge of 'Police Canine! Come out now, or I will release the dog and you may be injured!'.³⁰ This affords a person the opportunity to submit to arrest prior to any force being used.
- [170] The Canine Unit has further safeguarded the handlers' control by implementing emergency recall competency and use of an electronic collar. Both initiatives enable a handler to recall the police dog to the heel position, even after instructed to apprehend. This ensures the handler maintains control and the dog can adjust to changing circumstances.
- [171] Both the canine handler and police dog are also subject to regular testing of skills against core competency standards. The police dog's full operational status relies on achieving and maintaining the required standard.
- [172] In late 2021 and in response to logistical challenges involved in the ongoing training and testing of police dogs, WA Police decided to transfer all regional canine handlers and police dogs back to the metropolitan area. All police dogs are now based in the metropolitan region. However, they may be deployed to regional areas for specific operational needs.

Compliance with WA Police policy and procedures

- [173] In late 2018, the Canine Unit introduced two categories for the use of police dogs - 'challenge' or 'apprehend'.
- [174] Both are used to reduce a threat and gain control of a person. However, the circumstances for use vary depending on the handler's perception of risk. A challenge does not involve physical contact between the dog and person. During apprehend the canine handler instructs the dog to make physical contact in the form of a bite.
- [175] Prior to any use of a police dog, the handler must reasonably suspect there is a risk of serious injury to any person or a risk the person will escape arrest for a serious offence. Only when the risk is **imminent** [emphasis added], can a police dog be used to apprehend.³¹

³⁰ WA Police, *Use of Force for Police Dog- Operational Deployment Lesson Plan*, 27 November 2019.

³¹ *WA Police Manual*, FR-01.01 Use of Force - Generally.

- [176] In the 2018-2019 year, reporting requirements were implemented to include both challenge and apprehend police dog deployments. Prior to these changes, a use of force report was only required when a police dog caused a bodily injury that required medical care. This change greatly improved data collection, accountability and monitoring of police dogs as a force option.
- [177] WA Police has an overarching Use of Force policy that outlines police dogs as a tactical option. It describes the justification for use and reporting protocols. In 2020, WA Police amended this policy to align to the Canine Unit changes made in 2018.
- [178] In response to this review, the Canine Unit advised that lesson plans from their training syllabus form the guidelines for dog handlers in the safe deployment of their police dogs, there is no additional policy, procedure or guidelines.³²
- [179] BWC footage now assists substantially with the internal and external monitoring of compliance with policy and procedures. However, in the absence of prescribed Canine Unit practices and procedures, it is difficult for external areas, including OSTF, to review and determine the appropriateness of a police dog deployment.
- [180] The Commission's review identified multiple occasions on which WA Police failed to detect the improper use of a police dog. This is despite having quality assurance processes involving review by a minimum of two supervising officers and the OSTF.
- [181] The Commission's review noted the heavy and often sole reliance on subject matter experts from the Canine Unit. Most incidents required review by the Canine Unit training supervisor to determine the appropriateness of a police dog deployment and whether the canine handler's actions were in accordance with training procedures.
- [182] WA Police reliance on one person's expert opinion does not allow for an objective review of matters and ultimately creates a single point of failure.
- [183] Further, the absence of local level policy and clearly documented guidelines does not promote independent investigation and increases the risk of issues not being identified or addressed. It is crucial these risks are managed, given the likelihood of conflicts of interest or perception of bias in a small specialist unit.

³² Email from WA Police Force to CCC, February 2021.

Likelihood of serious injury

- [184] Legislation permits officers to use force and prescribes the circumstances for when force and animals can be used to exercise their powers.³³
- [185] An officer who uses an animal must take all reasonable measures to ensure the animal does not injure any person or damage any property.³⁴
- [186] Legislation further restricts the level of force that can be used to prevent escape from arrest. While it is lawful for a person to use such force as is reasonably necessary to prevent the escape of a person sought to be arrested, any force likely to cause death or grievous bodily harm is restricted to offences that are punishable by life imprisonment.³⁵
- [187] The review considered the likelihood of a police dog to cause injury.
- [188] Thirty four percent of police dog incidents considered as part of this thematic review resulted in a person being apprehended and requiring medical treatment. Only one person received significant injuries that may have been considered likely to endanger life, or cause permanent injury to health.
- [189] Based on this limited information, the risk that a police dog will cause grievous bodily harm appears to be low. However, the sample size is too small to be definitive.
- [190] Nevertheless, the Commission considers a police dog apprehension is likely cause **serious injury** [emphasis added]. WA Police defines serious injury as a 'bodily injury of such a nature to cause or be likely to cause any person to require medical care'.³⁶
- [191] This view appears consistent with the Use of Force policy for the management and use of police dogs as a tactical option.
- [192] WA Police intranet states '[general purpose] canine deployments have a high likelihood of resulting in serious injury' and on a linear model 'the application of a general purpose canine is considered to be between a firearm and Taser'.³⁷
- [193] Given this risk, it is critical that police dog apprehension is avoided where possible. The verbal challenge remains the key strategy in managing the risk of serious injury.

³³ *Criminal Investigation Act 2006*, ss 16 and 17.

³⁴ *Ibid.*

³⁵ *Criminal Code Act 1913*, s 233.

³⁶ *WA Police Manual*, FR-01.01 Use of Force - Generally.

³⁷ *WA Police Force Intranet*, Emergency Management - Mounted and Canine.

Cultural and other considerations

- [194] In considering the actions of a canine handler in deploying a police dog, attention must be given as to what information was known by the handler, at that point in time, as to the ethnicity, age and vulnerabilities of the suspect.
- [195] Police officers work in dynamic circumstances and it is not reasonable to assume that every officer is aware of a subject's age and ethnicity prior to deploying a police dog. A subject may be hiding from discovery or the incident may be occurring at night or when visibility is poor.
- [196] The Commission's review has continued to identify a higher representation of Aboriginal and Torres Strait Islander persons as the subject of police dog use.
- [197] The review has not identified any evidence of canine handlers culturally targeting Aboriginal persons in the deployment of police dogs.
- [198] However, whatever the reason, the high representation is concerning.
- [199] As part of ongoing efforts across government to improve the criminal justice system for Aboriginal and Torres Strait Islander people, it is recommended the WA Police conduct a further analysis of police dog use to explore the reasons for this high representation.

CHAPTER FIVE

Conclusion

- [200] Since 2016, WA Police has implemented continual improvements in respect to the deployment of police dogs. The changes have improved the visibility and accountability of this force option.
- [201] A number of the matters detailed in this report were notified by ALSWA to the Commission or WA Police, years after the incident had occurred. Such a significant delay in reporting limits the ability of the Commission to take meaningful action.
- [202] The Commission's review considered each matter and the appropriateness of the action against WA Police Use of Force policy in effect at the time of the incident. Some of the issues identified in these historic matters would not occur today, due to changes implemented by WA Police to policy, police dog capability and training practices.
- [203] While the full impact of these changes is yet to be measured, a further analysis of recent WA Police use of force reporting data suggests the total number of police dog deployments are trending downwards.
- [204] In addition, zero police dog deployments were reported in regional areas for the period October to December 2021. This is most likely a because of the centralisation of canine services.
- [205] Aboriginal and Torres Strait Islander persons continue to be highly represented, being the subject of sixty one percent of all police dog deployments for the 2020-2021 financial year.
- [206] The continued high representation of Aboriginal and Torres Strait Islander persons and police dog deployments is concerning. Further consideration by WA Police is required to explore reasons for this and if possible, to implement strategies to reduce the risks associated with the use of police dogs and aboriginal people.
- [207] In recognising the likelihood of serious injury, the Commission also encourages WA Police to continue to identify ways to reduce the need for a police dog to apprehend a person. WA Police advise that 'it will always seek continuous improvement in operational activities. The EM & SS Division will continue to work with Canine Unit to identify methodology to reduce the requirement for police dog interventions in apprehending suspects'.

[208] The requirement of canine handlers to issue a verbal challenge prior to a police dog being used is considered crucial in providing an option for a person to succumb willingly to an arrest, without the need for force. While the review noticed some variation in the wording of the challenge used by officers, this is not unusual given the dynamic circumstances in which they are operating.

[209] That being said, in the absence of Canine Unit policies and procedures, there remains a deficiency in understanding the expected practices of a canine handler and police dog. This creates ambiguity as to the appropriateness of the police dog use and limits the ability for consistent oversight of this force option.

Recommendations

[210] The Commission makes the following recommendation to WA Police:³⁸

- Develop and implement WA Police Canine Unit Policy, Procedure and/or Guidelines.

[211] WA Police response to this recommendation:

In January 2022, WA Police Force's EM & SS Division commenced an assessment of Canine Unit's operations.

The assessments include:

- *Developing formal Canine Unit Standard Operating Procedures and Guidelines; and*
- *Reviewing all WA Police Force policies related to Canine Unit operations, updating and cross referencing accordingly.*

[212] The Commission makes the following recommendation to WA Police:

- Undertake further analysis of police dog use to explore and address reasons for the higher representation of Aboriginal and Torres Strait Islander persons in police dog deployments.

³⁸ *Corruption, Crime and Misconduct Act 2003*, s 43.

[213] WA Police response to this recommendation:

WA Police Force will review the higher representation of Aboriginal and Torres Strait Islander persons involved in police dog deployments, noting it is likely this may correlate with:

- *The over representation of Aboriginal and Torres Strait Islander people in the criminal justice system; and*
- *The higher proportion of Aboriginal and Torres Strait Islanders in regional WA, where over fifty per cent of reviewed incidents occurred.*

[1] The Commission commends WA Police for addressing the recommendations already. The Commission will conduct a review of the WA Police response to the recommendations in 12 months' time.