



## Further review of the WA Police Force response to an incident in the lock-up of a country town

9 April 2020



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## INTRODUCTION

- [1] When the Commission releases a report, it may make recommendations to an agency as to how to address a misconduct risk. The Commission may further report on whether or not an agency accepts a recommendation and if so, what progress has been made in implementing it.
- [2] On 21 March 2018, the Commission reported to Parliament on its review of the WA Police Force response to a use of force incident in a country town.<sup>1</sup>
- [3] The Commission's report considered both the use of force incident and additional issues, including deficiencies in custody recordkeeping and management, use of force reporting and aftercare, and the supervision of junior officers, both during and after the incident.
- [4] The report also raised concerns about the management by the WA Police Force of officers who demonstrate a pattern of behaviour in excessive use of force.
- [5] The Commission made four recommendations for improvements to officer training and changes to policy, specifically relating to custody management and use of force reporting.
- [6] On 16 April 2019, the Commission sought information from the WA Police Force regarding the actions taken in response to these recommendations. On 7 June 2019, the WA Police Force provided a response outlining the initiatives being implemented or proposed to address each recommendation.
- [7] On 30 July 2019, the Commission advised the WA Police Force it would undertake a number of review activities to examine each of the initiatives and would also review their response to a more recent use of force incident involving the same officer.
- [8] While the Commission experienced some initial delays in the provision of information, the WA Police Force actively engaged with and assisted the Commission throughout its review.
- [9] This report details actions taken by the WA Police Force in response to the Commission's recommendations, and the Commission's review of that response. The report also includes a case study detailing the circumstances of the officer's more recent excessive use of force incident and the Commission's review of the WA Police Force's response to it.

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<sup>1</sup> Corruption and Crime Commission, *Review of Police response to an incident in a country town where excessive force was used and an arrested person's details not recorded*, 21 March 2018.

[10] While the response and proposed initiatives by the WA Police Force are for the most part appropriate, questions remain in relation to the ongoing practical application and effectiveness of these initiatives, especially considering the more recent incident.

## RECOMMENDATION ONE

**The Commission recommends that consideration be given to 'bespoke training' being provided to individuals who demonstrate a pattern of behaviour in excessive use of force, along with close monitoring and management.**

### **The Commission's report**

- [11] The Commission's 2018 report detailed the arrest and subsequent treatment of Mr Rhodes by Senior Constable (S/C) Herman, First Class Constable (1/C) Taylor and other officers.<sup>2</sup>
- [12] On the night of his arrest, force was used on Mr Rhodes by S/C Herman on three occasions: outside a licenced venue; inside the sally port of the local police station; and in the custody management area of that station.
- [13] While Mr Rhodes received no reported injuries in the first two interactions, he was later found to have suffered a significant injury to his knee, as a result of being taken to the ground with a leg sweep by S/C Herman in the custody management area.
- [14] Mr Rhodes, who was handcuffed at the time, was unable to break his fall and immediately after falling, indicated he was in pain. He repeatedly claimed to be injured but was not provided with any medical care. After a period of time in the holding cell, Mr Rhodes was conveyed home.
- [15] Mr Rhodes later sought medical attention which confirmed he had sustained grade two medial collateral ligament damage to his left knee.
- [16] Mr Rhodes subsequently reported the incident. The Internal Affairs Unit (IAU) took carriage of the investigation.
- [17] The Commission's review found that the WA Police Force considered the evidence regarding S/C Herman's use of force and dealt with the matter adequately. However, the Commission noted S/C Herman's extensive complaints history and questioned the effectiveness of previous managerial interventions arising from sustained outcomes of excessive use of force against S/C Herman, including one involving the use of a leg sweep.
- [18] The Commission recommended that the WA Police Force consider 'bespoke training' to address the individual needs of officers who demonstrate repeated patterns of behaviour in the excessive use of force, along with their active management.

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<sup>2</sup> Names are anonymised in the Review and in the 2018 Report.

## **The WA Police Force response**

- [19] In their response of 7 June 2019, the WA Police Force advised the Commission of a number of initiatives being undertaken in response to the Commission's recommendation.
- [20] In August 2018, the Operational Skills Faculty implemented a program to deliver bespoke training to officers who demonstrate a pattern of excessive use of force.
- [21] Bespoke training programs are customised for each individual officer. These incorporate both theoretical and practical assessments to address the specific issues identified with an officer's performance.
- [22] Officers are identified for bespoke training through an embedded monitoring process within IAPro, the database used by the WA Police Force to manage conduct related incidents. Additionally, an officer can be recommended for bespoke training in response to an IAU investigation, or following the review of a use of force report.
- [23] In consultation with the relevant district office, the use of force capability advisor at the Operational Skills Faculty co-ordinates the attendance and delivery of bespoke training at the WA Police Force Academy. In regional areas, the capability advisor liaises directly with district trainers to arrange the completion of any training requirements.
- [24] Once identified for bespoke training, an officer is subject to an administrative suspension of their critical skills qualifications. This effectively suspends an officer's operational status until completion of the nominated training.
- [25] On completion of all bespoke training requirements, an officer's administrative suspension is lifted and they can resume full operational duties, pending any further managerial action. The officer is subsequently monitored by IAU and their local district for a further 12 months, with an option to extend that period should any further concerns be identified.
- [26] As of January 2020, a total of eight officers had completed bespoke training. No officers have had their monitoring period extended.

## **The Commission's review**

- [27] The WA Police Force have demonstrated a commitment to intervene and manage officers who display a pattern of excessive use of force, through the development and implementation of a bespoke training program,

along with associated monitoring and management of the officer for the ensuing 12 months.

- [28] This is an appropriate response to the Commission's recommendation.
- [29] The Commission notes however, that during its review of the incident detailed in the case study included in this report, issues were identified in relation to how information is shared between areas within the WA Police Force responsible for undertaking conduct related investigations.
- [30] The Commission suggests the WA Police Force reflect on the Commission's observations and consider whether current information sharing practices are limiting its ability to identify officers who may have patterns of behaviour requiring intervention.
- [31] **The Commission considers this recommendation to be complete.**

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## RECOMMENDATION TWO

**The WA Police Force should consider whether the deficiencies in custody records and management, including use of force reporting and after care, are isolated to this incident or reflect a more general lack of understanding within the Force.**

### **The Commission's report**

- [32] The Commission's report identified a lack of awareness and understanding of the responsibilities associated with custodial records and management by all five officers involved in Mr Rhodes' arrest and custody management.
- [33] At no point during his initial interaction with officers, arrest or subsequent release, were Mr Rhodes' details entered into the Custodial Management Application (CMA), the system used by the WA Police Force to record all details of the custody management process.
- [34] Numerous officers of varying rank failed to recognise and adhere to established policies and procedures. This led to a lack of records relating to Mr Rhodes' time in custody, the injury he suffered and the consideration of, and requirement for, medical care. Furthermore, no use of force report was submitted. These officers demonstrated a significant lack of understanding of their obligations to correctly record and report on the use of force incident.
- [35] In response to these concerns, the Commission recommended that the WA Police Force consider whether these deficiencies were an isolated incident, or whether they reflect a more general lack of understanding within the WA Police Force.

### **The WA Police Force response**

- [36] In October 2017, the WA Police Force released the Custodial Lock-up Standard Operating Procedures (Custodial Lock-up SOPs). These procedures outline the responsibilities and requirements of officers when dealing with people in custody and highlight WA Police Force's current philosophy for custodial care and detainee rights.
- [37] On 23 March 2018, an updated version of the Custodial Lock-up SOPs was released.
- [38] In April 2019, the WA Police Force created a Custodial Care intranet page and desktop icon providing frontline staff with easy access to relevant manuals and policies including the Custodial Lock-up SOPs, comprehensive CMA guides and frequently asked questions.

## **The Commission's review**

- [39] The WA Police Force have focused their efforts on ensuring that all officers are aware of their custodial responsibilities through the development and dissemination of Custodial Lock-up SOPs, supporting policies and guidelines.
- [40] This approach, when considered in conjunction with additional custodial training for officers (recommendation three), demonstrates an ongoing commitment by the WA Police Force to ensure all officers are aware of, and compliant with, their responsibilities relating to custody recordkeeping and management, including reporting on use of force incidents and aftercare.
- [41] **The Commission considers this recommendation to be complete.**

## RECOMMENDATION THREE

**Consideration should be given to ensuring that custody officers have sufficient training and experience to carry out their duties. In particular, consideration should be given as to whether probationary constables should carry out the duties of a custody officer without direction from a more experienced officer.**

### **The Commission's report**

- [42] The Commission's report identified significant risks associated with junior or inexperienced officers being left unsupervised in the designated role of lock-up keeper.
- [43] On the night of Mr Rhodes' arrest, the lock-up keeper was a probationary constable with less than six months operational policing experience. Despite the officer's lack of experience, the Commission's report identified four officers of senior rank to the probationary constable, who failed to provide any supervision or guidance to the probationary constable during, or after, Mr Rhodes' time in custody.
- [44] In addition, the shift supervisor failed to identify any deficiencies in the probationary constable's response to the incident, resulting in a total lack of custodial records.
- [45] The Commission recommended that the WA Police Force ensure that custody officers have sufficient training and experience to carry out their duties, and appropriate supervision if necessary.

### **The WA Police Force response**

- [46] In September 2018, the WA Police Force implemented Custody Lock-Up Keeper/Shift Supervisor Training.
- [47] The training is designed to improve frontline officers' knowledge and skills in managing the care and safety of individuals in their custody. The training complements the existing foundation training delivered to recruits and transitional and auxiliary officers.
- [48] Completion of the training is mandatory. As of December 2019, 96 per cent of frontline officers have completed the course.
- [49] In addition, the Perth Watch House (the Watch House) has a trainer dedicated to training police auxiliary officers (PAOs) who are responsible for custody support, including undertaking the role of lock-up keeper. All custody support PAOs complete a nine month probation period at the

Watch House prior to commencing at a metropolitan or regional police station.

- [50] As of February 2020, the WA Police Force have 13 custody support PAOs based at regional locations to support frontline officers.

## **The Commission's review**

- [51] The implementation of mandatory Custody Lock-Up Keeper/Shift Supervisor Training and the significantly high completion rate of that training, demonstrates an ongoing commitment by the WA Police Force to improve custodial knowledge and practices across the State.
- [52] The continued commitment by the WA Police Force to provide appropriately trained custody support PAOs to regional areas is also recognised by the Commission.
- [53] The Commission acknowledges that due to resourcing and operational constraints, the WA Police Force may, by necessity, continue to utilise probationary constables in the role of lock-up keeper. However, the commitment of the WA Police Force to ensure all officers are adequately trained to perform this role will help ensure that lock-up keepers and shift supervisors are aware of their responsibilities, should this practice continue.
- [54] **The Commission considers this recommendation to be complete.**

## RECOMMENDATION FOUR

**In scenarios where officers do not identify 'bodily injury', but the subject is clearly in severe discomfort following a use of force incident, it is recommended that such a scenario is reflected within the purpose and intent of the policy to record the incident in a use of force report.**

### The Commission's report

- [55] The Commission's report found that the WA Police Force's use of force policy was ambiguous and open to interpretation in respect of when an officer is required to submit a use of force report.
- [56] The Commission identified that under the policy, a use of force report is required when a member uses empty hand tactics on a subject and causes bodily injury requiring medical care.
- [57] After being taken to the ground in the police station, Mr Rhodes displayed overt signs of pain and discomfort and repeatedly advised the officers that he had sustained an injury. Mr Rhodes was not offered or provided medical care and no use of force report was submitted.
- [58] The officers involved in Mr Rhodes' arrest did not consider that a use of force report was required, as they either did not believe Mr Rhodes had suffered a bodily injury, or believed that a use of force report was only required when medical treatment was provided.
- [59] The Commission therefore recommended the use of force policy be amended to ensure that in such situations, officers are obliged to record these incidents in a use of force report.

### The WA Police Force response

- [60] In late 2018, a working group was established between the WA Police Force's Academy Operational Skills Faculty and Policy Development Division to review all policies relating to use of force and tactical options.
- [61] It is envisaged that this project will identify any ambiguity and gaps in current use of force policy and training requirements.
- [62] The recommendations in the Commission's report were acknowledged and welcomed by the WA Police Force as further evidence of the need to review the current use of force policy.
- [63] The WA Police Force advised that the Commission's recommendation will be considered for inclusion in the revised policy.

## **The Commission's review**

- [64] The Commission has been provided with a draft version of the proposed Operational Safety and Tactics Manual which identifies areas earmarked for possible amendment or revision.
- [65] As the working group is yet to complete its review or enact any policy amendments, the Commission is unable to determine whether the proposed WA Police Force response will be sufficient to address its concerns.
- [66] The Commission will follow up on the findings of this working group and the implementation of this recommendation in one year's time.
- [67] **The Commission considers this recommendation to be incomplete.**

## CASE STUDY - A FURTHER INCIDENT INVOLVING SENIOR CONSTABLE HERMAN

### Background

- [68] On 22 September 2018, S/C Herman and another officer attended premises and arrested a heavily intoxicated male in relation to a domestic disturbance.
- [69] In response to passive resistance offered by the male during the arrest, S/C Herman used empty hand tactics to place the male's left arm into an 'arm bar' position.
- [70] On hearing a 'pop' from the male's left arm, S/C Herman immediately released him from the arm bar position and enquired as to whether he was injured. After the male responded that he was uninjured, the officers transported him back to the police station.
- [71] Once at the station, CCTV recorded the male falling heavily after exiting the police vehicle. He was assisted up by the officers and placed into a holding cell. A short time later, he was served with a Police Order, released from custody and transported to a residential address.
- [72] The following day, the male sought medical treatment and was advised that he had sustained a fracture to his left elbow. He subsequently underwent surgery.
- [73] On 24 October 2018, the WA Police Force notified the Commission of this matter in accordance with the *Corruption, Crime and Misconduct Act 2003* s 28. The Commission's assessment considered the use of force allegation and identified allegations relating to custodial management and reporting and the duty of care of an arrested person while in custody.
- [74] On 25 February 2019, the Commission, in noting that the WA Police Force had finalised their investigation, committed to conduct a review of the WA Police Force response to this matter.

### The WA Police Force investigation

- [75] On 25 October 2018, the relevant district was tasked by the Police Conduct Investigation Unit (PCIU) to undertake an investigation into the incident.

[76] The investigation was assigned to a sergeant who conducted a managerial investigation. The following allegations were identified and considered in response to the actions of S/C Herman and another officer:

- Excessive Force;
- Breach of Code of Conduct - Use of Force Reporting;
- Breach of Code of Conduct - Procedure (Custody); and
- Breach of Code of Conduct - Duty of Care.

[77] The sergeant conducted a number of enquiries, obtained officer statements and reviewed the WA Police Force records relating to the arrest. The sergeant concluded that while it was probable that the injury was sustained at the time of the male's arrest, the use of force by both officers was appropriate and in accordance with current use of force policy requirements.

[78] The allegations of excessive use of force and breach of Code of Conduct, for failing to submit a use of force report were not sustained.

[79] The sergeant, in considering the allegations relating to breach of custody procedures and duty of care, found that the arrested male was intoxicated to such a level that he could be deemed an incapable person, and therefore required a heightened level of care and monitoring to ensure his safety.

[80] It was noted that even after observing the male fall at the station, neither officer notified the lock-up keeper or shift supervisor of his condition. Furthermore, no health assessment was conducted of the male while he was in custody.

[81] The allegations of breach of custody procedures and duty of care were sustained against both officers.

[82] The sergeant also identified deficiencies in the investigative practices of the officers in response to the domestic incident, however these were not addressed in the district investigation.

[83] On 26 December 2018, S/C Herman and the other officer received managerial intervention notices.

[84] In addition to the allegations against both officers, the investigation considered an allegation of breach of custody procedure against the lock-up keeper for failing to make appropriate records. The allegation was not sustained and the investigation was finalised.

- [85] On 11 January 2019, PCIU conducted a review of the investigation and identified concerns with the district investigation. The investigation was returned to the district for additional work.
- [86] On 4 March 2019, an amended report containing supplementary information that addressed the concerns raised through the PCIU review was returned to PCIU.
- [87] The subsequent investigation by the district considered and sustained allegations against both officers for failing to follow investigative procedures in relation to the domestic disturbance. Verbal guidance was given.
- [88] In March 2019, PCIU reviewed the actions taken and closed the file.

## **The Commission's review**

- [89] The Commission's review identified a number of concerns arising from the district's response to the incident, particularly in light of the findings of the Commission's 2018 report and the work undertaken by the WA Police Force in response to the Commission's recommendations.
- [90] The initial investigation undertaken by the district was incomplete and failed to address all the conduct related issues arising from the incident. The decision by the district to pre-emptively finalise the investigation and apply disciplinary sanctions prior to review by PCIU, hindered any possibility of appropriate remedial action.
- [91] The district investigation failed to recognise or document the similarities between the 2016 and 2018 incidents, specifically in relation to the failure of the involved officers to comply with custodial management and reporting requirements. In both instances, these failures extended beyond the arresting officers to include the lock-up keeper and supervisor, raising questions as to whether any lessons were taken from the first incident.
- [92] In addition, the Commission noted that the allegations against the lock-up keeper were not sustained, purely on a technicality, as the induction paperwork had not been signed.
- [93] While the Commission acknowledges that the arrested person made no complaint of injury, S/C Herman advised he heard a 'pop' during his application of the arm bar. S/C Herman and the other officer were also aware of the male's intoxicated state and the nature of his fall at the station. However, neither officer took steps to provide custodial care, nor did they submit a use of force report. This is despite both officers having over 10 years' experience.

- [94] The district investigation did not appropriately consider S/C Herman's significant complaint history, pattern of behaviour in excessive use of force, or that he was subject to monitoring by IAU as part of an 'early intervention' response. The Commission notes this may have been as a result of restrictions relating to information sharing.
- [95] During the course of its review, the Commission was made aware of information sharing practices within the WA Police Force which limit access to subject officers' conduct history. While it is for the WA Police Force to determine its practices in relation to the sharing of information, PCIU, an area responsible for reviewing district investigations, were unaware of, and unable to access, S/C Herman's extended conduct history records.

## CONCLUSION

- [96] The Commission's review of the WA Police Force's response to the recommendations arising from its 2018 report identified the significant commitment of the WA Police Force to address deficiencies in custodial management and the management of officers who demonstrate a pattern of excessive use of force.
- [97] The material provided to the Commission supports a whole of agency approach to increasing officers' awareness of their responsibilities in relation to recordkeeping, duty of care, use of force reporting and aftercare.
- [98] The Commission also recognises the development and implementation of bespoke training as an intervention and management tool for officers who display concerning behaviours or poor judgement in situations involving excessive use of force.
- [99] The Commission includes the case study to demonstrate the need for ongoing awareness, management and training, and a continued focus on ensuring compliance with the initiatives implemented.
- [100] **The Commission considers that the WA Police Force has taken appropriate steps to address recommendations one, two and three.**
- [101] The Commission recognises that the WA Police Force have committed resources to a review of its policies relating to use of force. However, due to the limited progress to date, it is unclear whether the proposed changes will address the Commission's concerns.
- [102] **In response to recommendation four, the Commission considers it incomplete and intends to follow up on this recommendation in one year's time.**