

Review of a police use of force incident in Northbridge on 10 November 2019

27 May 2021



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CHAPTER ONE

Introduction

- [1] In the early hours of 10 November 2019, in the Roe Street car park in Northbridge, a young man, Mr A, was arrested by Senior Constable (S/C) Valleekanthan. He was later charged with disorderly conduct and obstructing police.
- [2] Immediately after the arrest, and while being forcibly moved by the arresting officer, the police officer used a neck restraint on Mr A, described by the arresting officer as a rear naked chokehold.
- [3] Mr A fell and received an injury to his forehead, and bruises and scratches on his body. It is likely he lost consciousness. Mr A was handcuffed while he was on the ground.
- [4] Shortly after Mr A was arrested, one of the other police officers at the scene, First Class Constable (1/C) Harrison, issued a move on order¹ to one of Mr A's companions, Ms X.
- [5] There was a delay of about one hour and 10 minutes before Mr A was taken to Royal Perth Hospital, where he waited until 5.00 am. Mr A did not receive medical attention.
- [6] The next day, 11 November 2019, Mr A made a complaint to the Corruption and Crime Commission (Commission) and the WA Police Force.
- [7] Mr A's complaint was that S/C Valleekanthan had used excessive force in his arrest.
- [8] This report is the result of the Commission's investigation of the incident. The Commission's investigation was not confined to the use of force. The Commission considers that S/C Valleekanthan engaged in serious misconduct and that 1/C Harrison engaged in reviewable police action, which is also serious misconduct under the *Corruption, Crime and Misconduct Act 2003* (CCM Act).²

Role of the Commission

- [9] The Commission assesses all complaints of excessive use of force by police as possible serious misconduct.

¹ *Criminal Investigations Act 2006* s 27 and Criminal Investigation Regulations 2007, Schedule 1.

² Per definitions of 'serious misconduct', 'police misconduct' and 'reviewable police action' in CCM Act s 3.

[10] Serious misconduct by a police officer includes all types of misconduct, including when a police officer:³

- whilst acting in their official capacity, commits an offence punishable by 2 or more years imprisonment, such as assault causing bodily harm; or
- takes advantage of their employment by exercising a lawful power or a discretion for an improper purpose or dishonestly; or
- takes action that is contrary to law, or is unreasonable, unjust or oppressive.

Commission's review of the police investigation

[11] The police investigated the incident and found the officer had breached the Police Manual by using a neck restraint to physically control a suspect, but that the force used was not excessive.

[12] The Commission reviewed the police investigation material. The initial review raised two concerns.

[13] Firstly, the extent and duration of the force applied to Mr A at the time of his arrest was significant and applied in unusual circumstances.

[14] Secondly, Mr A remained handcuffed, sitting on the ground for some time in a public car park, without medical attention for a head injury inflicted while Mr A was in police custody.

[15] As a result of these concerns, the Commission decided to carry out a full investigation of the allegation under the CCM Act s 33(1)(a).

[16] During its investigation, the Commission examined video footage, spoke to witnesses and, in August 2020, examined the officers involved in the arrest on oath. The Commission also sought expert advice on WA Police Force use of force policy, training and guidelines from Mr Markham. He is the use of force capability advisor at the WA Police Force Use of Force Operational Skills Training and Tactical Unit at the WA Police Academy.

[17] The Commission's investigation was delayed by the charges brought by the WA Police Force against Mr A. On 5 January 2021, Mr A was convicted in the Perth Magistrates Court of one charge of disorderly behaviour in public. This arose from comments he made to police officers while they were arresting a friend, Ms Y.

³ CCM Act ss 3, 4(c).

[18] On 5 January 2021 the charge against Mr A of obstructing a public officer was permanently stayed by the Chief Magistrate, Mr Steven Heath. This was because the WA Police Force had failed to comply with its disclosure obligations under the *Criminal Procedure Act 2004* and with a court issued summons to produce records. The WA Police Force was given several opportunities by the Court to comply. The material that was not provided to the Defence in adequate time included CCTV footage of the incident from the Roe Street car park, evidence relating to the initial complaint made by Mr A and the internal investigation undertaken by the WA Police Force.

Issues

[19] The Commission's investigation considered:

- Was the arrest of Mr A lawful?
- Was the force applied to Mr A during or immediately after the arrest excessive? A particular issue was whether the form of neck restraint used by S/C Valleekanthan was justifiable.
- Was there a lawful basis for giving a move on order to Mr A's companion, Ms X?
- Was Mr A appropriately dealt with after his arrest? A particular issue was whether the police did enough to secure medical attention for him.

[20] These matters will be considered in turn.

[21] The Commission's conclusions are set out in Chapter Six.

[22] Any person adversely named in this report was given an opportunity to view the relevant portions of the report and make submissions. Where appropriate, the Commission amended the draft report to reflect any submissions made.

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CHAPTER TWO

Was the arrest lawful?

Introduction

- [23] This chapter considers whether Mr A's arrest was lawful.
- [24] The answer depends on the law surrounding the ability to effect an arrest, Mr A's conduct up to the time of his arrest, and the arresting officer's reasonable suspicions about how Mr A might continue to behave.
- [25] If Mr A's arrest was not lawful, the use of force against him to effect that arrest was not authorised.
- [26] If Mr A's arrest was lawful, then the use of force against him was only authorised, or justified, if Mr A was resisting arrest or obstructing a police officer at the time of arrest. The use of more force by an officer than is justified under the circumstances is unlawful.

The power of arrest for disorderly behaviour

- [27] A person who uses insulting, offensive or threatening language or behaves in an insulting, offensive or threatening manner engages in behaviour in a disorderly manner.⁴ A person who behaves in a disorderly manner in a public place, or in the sight or hearing of any person in a public place, commits an offence of behaving in a disorderly manner.⁵
- [28] The *Criminal Investigation Act 2006* (CI Act) confers power on a police officer to arrest a person for a disorderly behaviour offence if the officer forms a reasonable suspicion at the time that:
- the person has committed, is committing, or is just about to commit, the offence; and
 - if the person is not arrested:
 - it will not be possible to obtain and verify the person's name and other person's details;
 - the person will continue or repeat the offence; or
 - the person will commit another offence.⁶

⁴ *Criminal Code* s 74A(1).

⁵ *Criminal Code* s 74A(2).

⁶ CI Act s 128(3).

- [29] The power is based on the reasonable suspicion of the arresting officer. The arresting officer must form a reasonable suspicion in relation to both paragraphs (a) and (b), above, before an arrest can be made. If an officer does not have a reasonable suspicion in terms of paragraph (b), the officer can still bring a disorderly behaviour charge by way of summons, but the offender cannot be arrested at that time.
- [30] A person under arrest is immediately in police custody and must be taken to a police station or lockup for processing and charging, or elsewhere to receive medical attention if that is more pressing. Police officers must accurately record when a person is taken into custody and their subsequent movements.⁷
- [31] An arrest will occur when it is made plain by what is said or done by an officer that the suspect is no longer a free person.⁸ On occasion, it will be enough to inform the suspect that he or she is under arrest.
- [32] Police officers have a discretion to summons a person to face a charge at a later date, instead of using the power of arrest and charge.
- [33] An arrested person can be released to summons, meaning the person is released from custody. Charges against that person will then be initiated by way of summons, rather than at the police station or lockup.

The time of the arrest

- [34] There is some uncertainty about the precise moment when Mr A was placed under arrest.
- [35] It is clear, however, that Mr A was arrested, at the latest, while he was standing with his back to a wire mesh fence in the Roe Street car park at about 2.00 am on 10 November 2019.
- [36] The events up to that point in time are detailed in this chapter. Later events are discussed in later chapters.

The initial altercation

- [37] In the early hours of 10 November 2019, Mr A was enjoying a night out in Northbridge with Ms X and a small group of her friends, including Ms Y.
- [38] At around 1.30 am on Sunday morning, the group was moving through the open air Wilson car park on Roe Street. A photograph of the car park is Figure A.

⁷ Police Manual LP-04.00 Admission and Release.

⁸ *Cox v Western Australia* [2011] WASCA 30, [16].



Figure A

Roe Street car park - the green cross indicates the original location where the group, inclusive of Mr A, was initially approached by police officers. The yellow circle indicates where Ms Y was arrested and the red cross references the location at which Mr A was arrested by S/C Valleekanthan.

- [39] Mr A and his friends were accosted in the northern corner of the car park by another group of people. Ms Y's wallet was taken. The two groups became aggressive towards each other and engaged in heated discussions.

[40] Two police officers, S/C Valleekanthan and 1/C Harrison, from the Northern Regional Operational Group were in the vicinity. A primary role of the Northern Regional Operational Group is deployment of officers as a presence to maintain public order.

[41] S/C Valleekanthan and 1/C Harrison arrived on the scene, separated the two groups and instructed each to move away from the area.

Ms Y's Arrest

[42] Ms Y did not take kindly to being moved on. S/C Valleekanthan said Ms Y yelled at the police: 'Don't tell me what to do', 'Who do you think you are?', 'Don't fucking touch me', 'dog c...s'.⁹

[43] 1/C Harrison also gave evidence that Ms Y was 'very aggressive'. She 'kept trying to run back towards officers' and was 'held back by a couple of her friends.'

[44] 1/C Harrison warned Ms Y that if she continued shouting and swearing, she would be arrested for disorderly behaviour.¹⁰

[45] Ms Y continued to attempt to approach officers while the other members of her group complied with the request to move on.

[46] As Ms Y's group moved away from the car park corner to the centre of the car park. 1/C Harrison approached Ms Y to arrest her for disorderly behaviour. CCTV footage from a City of Perth camera shows that Ms Y was arrested in the middle of the Roe Street car park, near the pay station, indicated by the yellow circle in Figure A.

[47] Mr A and his small group stayed in the vicinity of the arrest. 1/C Harrison told the Commission that members of the group, including Mr A, continued to approach Ms Y, who was sitting on the ground while being handcuffed by S/C Valleekanthan.

[48] The CCTV footage shows at least one male and one female from Mr A's group moving in immediately after 1/C Harrison grabs hold of Ms Y, and that they both attempt to pull the officers away from Ms Y. The footage shows the female actively grabbed S/C Valleekanthan and forcibly pushed him at least once. The unidentified male and female were not placed under arrest.

[49] The police repeatedly told the group to stand back. 1/C Harrison drew his baton and raised it to shoulder height yelling commands to step back. 1/C Harrison maintained a presence between S/C Valleekanthan, Ms Y and

⁹ S/C Valleekanthan transcript, private examination, 17 August 2020, pp 17-18.

¹⁰ 1/C Harrison transcript, private examination, 14 August 2020, p 30.

the rest of the group. S/C Valleekanthan was aware that 1/C Harrison was there and had drawn his baton.

- [50] Mr A retreated but recorded the officers' actions using his mobile phone.¹¹ 1/C Harrison told the Commission that he noticed Mr A recording the incident.¹²
- [51] From the footage reviewed by the Commission, at least two other males were around the officers during Ms Y's arrest.
- [52] The footage also confirms that Mr A had his arm out in front and was using his mobile phone to record the arrest of Ms Y.
- [53] The still image below is taken from the City of Perth CCTV. Mr A and Ms X are highlighted in yellow. Mr A is holding out his arm using a mobile telephone to record Ms Y's arrest. The arresting officer's location is shown by the red arrow, next to a lamp post and near an unknown male in a white cap.



- [54] Ms Y was handcuffed by S/C Valleekanthan on the ground.¹³

¹¹ CCTV Footage 1. Mr A's mobile phone footage was destroyed during the incident.

¹² 1/C Harrison transcript, private examination, 14 August 2020, p 12.

¹³ CCTV Footage 1.

Mr A's arrest

- [55] S/C Valleekanthan first noticed Mr A as S/C Valleekanthan was crouching, handcuffing Ms Y.¹⁴
- [56] S/C Valleekanthan said he saw Mr A over his left shoulder and heard him shout and swear once. His evidence was Mr A said, 'You fucking dog c..t, I'll fucking kill you. How dare you fucking ... '.¹⁵
- [57] S/C Valleekanthan did not give evidence that these threats were repeated. S/C Valleekanthan could not recall if Mr A kept using offensive words once he was told he was under arrest.¹⁶
- [58] Ms X also recorded events on the night. In video footage taken by Ms X and provided to the Commission by Ms Y, Mr A can be heard saying 'Pull your fucking bat, you fucking dog, you're a fucking dog, you fucking touch a girl c..t, you fucking touch a girl'.¹⁷
- [59] At this stage 1/C Harrison has his baton drawn while S/C Valleekanthan is crouched behind him on the ground handcuffing Ms Y. 1/C Harrison repeatedly, loudly and authoritatively directs the group in company with Ms Y to 'move back',¹⁸ and raises his baton while stepping forward.
- [60] At the time Mr A was standing within six metres of Ms Y filming her arrest on his mobile phone. Ms X was next to Mr A, talking to him and positioning herself to hinder his movement towards the police officers. She was encouraging him to retreat.
- [61] The footage then shows S/C Valleekanthan get up from his crouching position and move towards Mr A, who started retreating.
- [62] S/C Valleekanthan gave evidence that, at the time, he believed Mr A was 'trying to get to him' and the only reason Mr A could not was because a blonde girl [Ms X] was stopping him. He believed Mr A was about two metres away at the time.¹⁹
- [63] As S/C Valleekanthan approached him, Mr A was facing S/C Valleekanthan, walking backwards with both arms out wide, holding his mobile phone in his right hand. He also had a wallet and mobile phone, belonging to a friend, in his left hand.

¹⁴ 1/C Harrison transcript, private examination, 14 August 2020, p 22.

¹⁵ S/C Valleekanthan transcript, private examination, 17 August 2020, p 23.

¹⁶ Ibid 76.

¹⁷ Ms X video footage.

¹⁸ Ibid.

¹⁹ S/C Valleekanthan transcript, private examination, 17 August 2020, pp 23-24.

- [64] Mr A did not attempt to run away. From the footage available to the Commission, he appeared calm as he retreated.
- [65] S/C Valleekanthan had recently been issued with a body worn camera, but he did not activate it during this incident. The body worn camera self-activated later, when S/C Valleekanthan was standing behind Mr A applying the neck restraint. The body worn camera has a 30 second buffer that is continuously overwritten. However, once the body worn camera is activated, the buffer is not overwritten and the camera preserves 30 seconds of vision prior to activation. Sound during the buffer period is not preserved.
- [66] The image below is taken from S/C Valleekanthan's body worn camera, worn on the officer's chest, as he approached Mr A. This image is the perspective of S/C Valleekanthan 30 seconds before applying the neck restraint to Mr A.



- [67] By the time S/C Valleekanthan came into physical contact with Mr A, Mr A was backed up near the perimeter wire mesh fencing visible in the background of the photo. The fence was roughly 13 to 15 metres from Ms Y.
- [68] It is not clear when S/C Valleekanthan first told Mr A that he was under arrest.
- [69] S/C Valleekanthan claimed that Mr A was told he was under arrest when he was getting up from the ground after handcuffing Ms Y and began moving towards Mr A.

- [70] However, the evidence supports a conclusion that S/C Valleeekanthan had stood up and started to approach Mr A before he said to Mr A that he was under arrest.
- [71] At the commencement of the video footage taken by Ms X, a female voice can be heard to say 'arrest for?' as the footage shows Mr A walking backwards towards the wire mesh fence. It is safe to assume that it was Ms X's voice. It was likely a response to the assertion, at that time, that Mr A was under arrest. The question was spoken before S/C Valleeekanthan placed his hands on Mr A to effect the arrest, but some short time after S/C Valleeekanthan got up.²⁰
- [72] S/C Valleeekanthan stated he decided to arrest Mr A when he was 'on the ground, handcuffing the female'.²¹ It may be that the decision was made as S/C Valleeekanthan was getting up. Regardless, the decision was made before Mr A retreated towards the fence.
- [73] S/C Valleeekanthan gave evidence that he decided to arrest Mr A for disorderly behaviour. He said he was motivated by Mr A's behaviour in being verbally abusive, aggressive and angry.²²

Commission of a disorderly behaviour offence

- [74] The language set out at paragraphs [56] and [58] amounts to behaving in a disorderly manner. The car park was a public place. Mr A contends his behaviour and comments should be viewed in context, in that he was of the view the police officers had used excessive force in their dealings with Ms Y.
- [75] However, Mr A has entered a guilty plea and been fined in the Perth Magistrates Court. The Commission is satisfied that S/C Valleeekanthan could have formed a reasonable suspicion that a disorderly behaviour offence was committed.
- [76] That is the first limb of the requirement under the CI Act for an arrest for a disorderly conduct offence.

Mr A's future conduct

- [77] For S/C Valleeekanthan to have the lawful authority to arrest Mr A under the CI Act, S/C Valleeekanthan also had to form a reasonable suspicion that unless Mr A was arrested:
- he would not be able to obtain Mr A's name and details; or

²⁰ Ms X video footage.

²¹ S/C Valleeekanthan transcript, private examination, 17 August 2020, p 29.

²² Ibid.

- Mr A would commit another offence or continue committing the same offence.

[78] S/C Valleekanthan said that because of 'the way [Mr A was] behaving, he wouldn't give me his details'.²³ He stated that he arrested Mr A in order to obtain his details.

[79] S/C Valleekanthan never attempted to ask Mr A for his personal details.

[80] However, at the time S/C Valleekanthan stood up from Ms Y:

- Mr A had been verbally abusive towards the officers, complaining loudly about their conduct towards Ms Y.
- Mr A was part of a larger group that had been abusive towards the officers and had swirled around the scene of the arrest. Mr A did not attempt to dissociate himself from the behaviour of the other members of this group.
- Although Mr A was retreating from the scene of Ms Y's arrest, and was being urged to retreat by Ms X, he was making occasional movements back towards the arrest scene.

[81] The Commission accepts that S/C Valleekanthan may reasonably have held the belief that he would not be able to obtain Mr A's name and details. It follows that S/C Valleekanthan was entitled to arrest Mr A.

[82] The question whether Mr A would, in fact, have continued to engage in disorderly conduct is more problematic, but it is not necessary to reach a conclusion on this point.

Alternatives to arrest

[83] While the Commission considers that the decision to arrest Mr A was within the scope of the power to arrest, there may have been more effective ways to deal with Mr A, such as the provision of a move on order or summons, rather than a formal arrest process.

Conclusion

[84] The Commission does not consider that Mr A's arrest was unlawful.

²³ S/C Valleekanthan transcript, private examination, 17 August 2020, pp 77-78.

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CHAPTER THREE

Was the force used excessive?

Introduction

- [85] This chapter deals with whether the force used by S/C Valleekanthan in connection with Mr A's arrest was excessive.

The ability to use force in an arrest

- [86] It is lawful for a person engaged in an arrest to use such force as may be reasonably necessary to overcome any force used by an offender in resisting an arrest.²⁴ In determining if excessive force is used, whether notice of the cause of arrest is given may be relevant.²⁵

- [87] It is also lawful for a police officer to use any force against any person that is reasonably necessary to use in the circumstances:

- to exercise the power of arrest; and
- to overcome any resistance to exercising the power of arrest that is offered, or that is reasonably suspected will be offered.²⁶

- [88] In order for S/C Valleekanthan's use of force to be lawful, the force must have been reasonably necessary to:

- effect the arrest of Mr A; and
- overcome any force that was actually used by Mr A in resisting the arrest; or
- overcome any resistance Mr A offered, or that was reasonably suspected by S/C Valleekanthan that he would offer in the arrest.

Pepper spray

- [89] Events which occurred before S/C Valleekanthan stood up from his crouching position near Ms Y in the centre of the car park are set out in Chapter Two.

- [90] After S/C Valleekanthan stood up and moved towards Mr A, he took out his OC spray (oleoresin capsicum or pepper spray). From the video footage viewed by the Commission, S/C Valleekanthan held his OC spray in his right

²⁴ *Criminal Code* s 231(1); CI Act s 16(1).

²⁵ *Criminal Code* s 231(2)(b).

²⁶ CI Act ss 16(1).

hand at shoulder height. This is consistent with the WA Police Force training and guidelines for the use of OC spray as a control mechanism.

[91] At that time, however, Mr A's behaviour was not threatening. He still had both arms outstretched at shoulder height.

[92] S/C Valleekanthan did not use his OC spray on Mr A and put it back in the pouch on his belt.

The seatbelt hold

[93] S/C Valleekanthan then continued to move towards Mr A. Mr A retreated calmly with his arms outstretched, as described in Chapter Two.

[94] At this point, Mr A appears to be recording himself and what was happening on a video call with another person on his mobile phone, which was held in his right hand. He was not physically aggressive.

[95] When S/C Valleekanthan reached Mr A, Mr A was standing still with his arms up and out to the side. He had his back to the wire mesh fence. S/C Valleekanthan observed that Mr A 'wasn't trying to fight or punch me or anything like that' and that he had a mobile phone in his right hand and something in his left.²⁷

[96] S/C Valleekanthan wanted to try to turn Mr A around, to take him back towards 1/C Harrison.²⁸

[97] Once they were both at the fence, S/C Valleekanthan attempted to pull Mr A down by grabbing the collar of Mr A's shirt with his left hand. S/C Valleekanthan said he did this to get Mr A to lean forward to handcuff him, although he had already used his handcuffs on Ms Y.

[98] S/C Valleekanthan is slightly shorter than Mr A.

[99] S/C Valleekanthan moved around under Mr A's left arm and grabbed him around the right shoulder from the side. He stood slightly behind Mr A.

[100] This was described as a seatbelt hold: S/C Valleekanthan's right arm was like a seatbelt going round Mr A's right shoulder

[101] S/C Valleekanthan appears to have used this restraint to attempt to forcibly move Mr A, rather than reduce any threat Mr A posed.

[102] According to S/C Valleekanthan, Mr A said 'No, I'm not under arrest. I haven't done anything'.²⁹

²⁷ S/C Valleekanthan transcript, private examination, 17 August 2020, pp 34-35.

²⁸ Ibid 39.

²⁹ Ibid 36, 54-55.

- [103] There is no evidence that, at this stage, Mr A had been told why he was under arrest, or to move to the centre of the car park.
- [104] S/C Valleekanthan grabbed hold of Mr A's left shoulder using his right hand.
- [105] S/C Valleekanthan instructed Mr A to 'move, move' and Mr A kept saying 'I haven't done anything. I'm not under arrest'.³⁰ Mr A continued to focus on the mobile phone in his right hand.

Lateral vascular neck restraint

- [106] S/C Valleekanthan gave evidence that he felt Mr A's left arm move. The movement can be seen on Ms X's video footage. S/C Valleekanthan said he thought Mr A was trying to get him in a headlock. Doing so would have required Mr A to put his arm around S/C Valleekanthan's neck. Mr Valleekanthan ducked under Mr A's arm and ended up behind him.
- [107] Mr A still had his mobile phone in his right hand.³¹
- [108] S/C Valleekanthan altered his position, moving his right forearm around the front of Mr A's neck area and positioning his left hand on the back of Mr A's head. He then attempted to forcibly move Mr A towards 1/C Harrison.
- [109] The image below is taken from video footage on Ms X's mobile phone. It shows S/C Valleekanthan pulling Mr A's torso backwards with his right forearm under Mr A's jaw whilst pushing Mr A's head forward with his left hand at the back of Mr A's neck. This neck restraint can be described as a type of lateral vascular neck restraint (LVNR).

³⁰ S/C Valleekanthan transcript, private examination, 17 August 2020, p 40.

³¹ Ibid.



- [110] S/C Valleekanthan wanted Mr A in the middle of the car park with Ms Y. He kept telling Mr A to 'move, move'. The perception is that S/C Valleekanthan was using the LVNR as a method of escorting an arrested suspect.
- [111] S/C Valleekanthan accepted in evidence that he was applying pressure from his chest onto Mr A's back trying to move him forward toward where Ms Y was located.³² S/C Valleekanthan's position behind Mr A, with his arm around Mr A's neck, made this task difficult. The pressure was enough to activate S/C Valleekanthan's body worn camera.
- [112] After a few seconds, Mr A fell forward to the ground and S/C Valleekanthan fell on top of him. S/C Valleekanthan's body worn camera remains obscured during the fall, indicating that his body remained pressed up against the back of Mr A until Mr A struck the ground first, with

³² S/C Valleekanthan transcript, private examination, 17 August 2020, p 46.

S/C Valleekanthan on top of him. The body worn camera lens then becomes unobscured and Mr A is shown lying prone with his head face down on the ground, motionless with his left hand limp. Mr A then lifts his head and appears dazed.

- [113] Mr A's head struck the bitumen of the car park. His fall forward appeared unsupported. Mr A does not appear to have attempted to extend his arms to break his fall, which indicates that he may have been unconscious at the time.
- [114] 1/C Harrison provided his handcuffs to S/C Valleekanthan, who applied them to Mr A.
- [115] Mr A sustained a significant laceration to his forehead, a black eye, bruising, cuts and scratches. Later, when he was at the hospital, Mr A told staff that he had lost consciousness.

Was the force reasonable?

The initial use of force

- [116] It is useful to differentiate between the initial seatbelt hold, described at [93] to [105], and the LVNR, described at [106] to [115].
- [117] When S/C Valleekanthan applied the seatbelt hold, Mr A was standing with his back to the wire mesh fence. Although Mr A was arguing about whether he was arrested, it does not appear he was being threatening. He had retreated as S/C Valleekanthan approached him, rather than indicating he wished to fight.
- [118] S/C Valleekanthan could not have thought that Mr A presented a serious threat, given he had put his OC spray away as he approached Mr A. S/C Valleekanthan said it was 'obvious he wasn't trying to fight me at that time'.³³ Despite this, S/C Valleekanthan moved to physically take hold of Mr A.
- [119] It is also significant that S/C Valleekanthan did not explain to Mr A why he was under arrest. While there may have been a need for S/C Valleekanthan to get Mr A back to the area where 1/C Harrison and Ms Y were, that need was not so urgent that S/C Valleekanthan could not have told Mr A why he had been arrested.
- [120] The Police Manual only permits a police officer to use a neck hold restraint if they hold a reasonable belief there is imminent risk of grievous bodily

³³ S/C Valleekanthan transcript, private examination, 17 August 2020, pp 32-33.

harm (GBH) or death to any person.³⁴ Imminent means something that will happen at any moment. GBH means an injury of such a nature as to cause, or likely to cause permanent injury to health. That requirement reflects the significant risks that could occur if a neck restraint is applied.

- [121] In order for S/C Valleeekanthan to be justified in using a neck hold restraint on Mr A, the Police Manual requires him to reasonably believe that at any moment his, or another's, life will be in danger. It is not sufficient that S/C Valleeekanthan says that was his subjective belief at the time. It is necessary that he is supported by circumstances, which when judged objectively, justify his belief.
- [122] The seatbelt hold involves the officer standing behind the subject with one arm going underneath the subject's armpit with the officer's opposite arm going over the subject's shoulder. This gives a degree of control.
- [123] The seatbelt hold is not a technique taught by the Operational Skills Training and Tactical Unit (OSTTU). Mr Markham states that it is a Brazilian Jiu Jitsu technique that is referred to in the Regional Operations Group Advanced Empty Hand Tactics (AEHT) training package. At the time of this incident S/C Valleeekanthan had not attended any AEHT training. It appears that S/C Valleeekanthan had not received training or guidance from the WA Police Force on the use of the seatbelt hold.
- [124] However, it does not appear the seatbelt hold involved any significant risk to Mr A.
- [125] Consequently, the Commission does not consider that the force used at this stage was excessive.
- [126] As described above, S/C Valleeekanthan transitioned from the seatbelt hold to applying a LVNR.
- [127] S/C Valleeekanthan referred to this position as a rear naked chokehold. He said that he used it previously in 'situations where you think you're going to get seriously hurt'.³⁵ S/C Valleeekanthan was asked in what situations it was reasonable to put someone in that hold. S/C Valleeekanthan said he had 'since learnt ... you can only do this when you're fearing GBH or death'.³⁶
- [128] S/C Valleeekanthan was not given training in the use of that particular restraint in Australia or the UK, where he previously served as a police officer.

³⁴ Police Manual FR 1.4.2 Use of Head or Neck Holds.

³⁵ S/C Valleeekanthan transcript, private examination, 17 August 2020, p 67.

³⁶ Ibid 70.

- [129] S/C Valleekanthan said he learnt it in the job when it 'gets really serious sometimes'.³⁷
- [130] 1/C Harrison gave evidence that the hold was not a standard WA Police Force hold³⁸ and he had never used such a hold in Western Australia.³⁹
- [131] S/C Valleekanthan claimed he did not apply any pressure to the back of Mr A's head, and that the only reason his left hand went there was because he was trying to walk one way and Mr A was trying to walk another.⁴⁰
- [132] S/C Valleekanthan did not accept he applied significant pressure to Mr A's neck. S/C Valleekanthan told the Commission Mr A's chin sat on his forearm, which was not around Mr A's neck. S/C Valleekanthan said there was a gap between Mr A's neck and S/C Valleekanthan's forearm.⁴¹
- [133] The video footage, including the image at [109] does not support S/C Valleekanthan's position.
- [134] The evidence suggests that significant force was applied.
- [135] When asked whether a rear naked chokehold was a risky position, S/C Valleekanthan responded 'I wouldn't say it's risky - like, I don't - I mean, anything to do with the neck is obviously - you know, it's not - it's a vulnerable part of your body, but I wouldn't necessarily say it's risky'.⁴²
- [136] When asked whether the rear naked chokehold position was dangerous, S/C Valleekanthan said 'I don't think it's dangerous, because I'm not putting any pressure on that position'.⁴³
- [137] When applying any neck restraint, there is a risk that pressure will be applied to the trachea. Mr Markham's opinion was that force was deliberately applied to Mr A's neck.
- [138] Additionally, a consequence of using a LVNR can be reduced blood supply to the brain and loss of consciousness in less than 10 seconds. This is due to the pressure placed on the carotid artery in the person's neck.
- [139] A fall due to lack of consciousness can result in spinal injury, brain damage and death. Damage to the trachea and larynx can also occur from applying a neck hold. The trachea and larynx are the respiratory structures of the throat. Again, the damage is as a result of compression.

³⁷ S/C Valleekanthan transcript, private examination, 17 August 2020, p 73.

³⁸ 1/C Harrison transcript, private examination, 14 August 2020, p 37.

³⁹ Ibid 39.

⁴⁰ S/C Valleekanthan transcript, private examination, 17 August 2020, p 42.

⁴¹ Ibid 72.

⁴² Ibid 68.

⁴³ Ibid 66.

- [140] S/C Valleekanthan was aware of at least some of those consequences. In this case, Mr A fell forward and S/C Valleekanthan fell on top of him. In an incident of this nature, there must be a risk of substantial injury. S/C Valleekanthan placed his forearm around the front of Mr A's neck. It was reasonably foreseeable this would cause injury.

Senior Constable Valleekanthan's state of mind

- [141] S/C Valleekanthan acknowledged that Mr A had not tried to physically assault or punch him. As noted before, S/C Valleekanthan put away his OC spray as he approached Mr A.
- [142] However, the video footage shows that while S/C Valleekanthan was restraining Mr A in the seatbelt hold, Mr A was continuing to attempt to lift his left arm, which was holding a mobile phone. Mr A's left arm did momentarily drop but was lifted immediately. When it did drop, it touched S/C Valleekanthan's left shoulder. It did not wrap around his neck.⁴⁴
- [143] It is not clear whether the movement of Mr A's left arm was deliberate or a consequence of S/C Valleekanthan moving Mr A along, or both. However, lifting the arm up after it dropped appears deliberate.
- [144] S/C Valleekanthan said that it was very worrying when Mr A's arm dropped around his neck. S/C Valleekanthan said that if 'he dived to his left and landed on top of him with his arm around his neck it would have been terrible'.⁴⁵
- [145] S/C Valleekanthan claimed the arm coming around his head would 'put me into fear of GBH or death if he did put me on the floor and had ... me in a headlock ... he's got access to my firearms or Taser or other equipment'.⁴⁶
- [146] When he was shown video footage, S/C Valleekanthan accepted that Mr A appeared to be focussed on the mobile phone in his right hand. S/C Valleekanthan noted that Mr A was not relaxed and that it was in the middle of a situation during the arrest.⁴⁷
- [147] Mr A's arm may have moved because S/C Valleekanthan was beginning to push Mr A forward. In any event, the contact with the back of S/C Valleekanthan's neck was momentary. It did not reasonably give rise to S/C Valleekanthan fearing GBH or death.
- [148] A further consideration is that any risk posed by Mr A's left arm, was only temporary. S/C Valleekanthan ducked under Mr A's arm and moved behind

⁴⁴ Ms X's footage.

⁴⁵ S/C Valleekanthan transcript, private examination, 17 August 2020, p 65.

⁴⁶ Ibid 70.

⁴⁷ Ibid 66.

Mr A, so it was not possible for Mr A to place his arm around S/C Valleekanthan's neck. S/C Valleekanthan used the neck restraint immediately after.

- [149] S/C Valleekanthan opined that at the time he thought Mr A was trying to get him in a headlock, although he accepted that the video footage looks very different.⁴⁸
- [150] Police have a difficult job and often have to make quick decisions in volatile situations. However the Commission does not accept that S/C Valleekanthan's perception of physical threat could be so different from the incident footage.

Was the use of the lateral vascular neck restraint excessive?

- [151] The neck restraint used by S/C Valleekanthan, the LVNR, carries a heightened risk of injury.
- [152] Mr Markham viewed the video footage of the interaction between S/C Valleekanthan and Mr A. Mr Markham stated that the neck hold employed by S/C Valleekanthan on Mr A was a technique which was included in the OSTTU training program until October 2013. It was removed at that time due to the risks of serious injury associated with its use. S/C Valleekanthan has never been trained in the use of this technique by the WA Police Force.
- [153] Mr Markham stated in his report to the Commission that the LVNR is a technique that involves applying pressure to the carotid arteries situated at either side of the neck. The subject becomes unconscious and is incapacitated due to decreased cerebral blood flow caused by compression of the carotid artery. Once supply of oxygenated blood to the brain is reduced the result is unconsciousness. This can happen within seconds.
- [154] An unconscious subject will be a dead weight. Prior to October 2013, the OSTTU training and guidelines directed that a LVNR should only be used as a last resort where life was in immediate danger. The guidelines directed that an unconscious subject should be lowered to the ground in a controlled manner so as not to risk spinal cord injury.
- [155] The use of the LVNR was not necessary to effect the arrest or overcome any force threatened by Mr A in resisting arrest, or reasonably suspected by S/C Valleekanthan. When S/C Valleekanthan approached Mr A, Mr A remained facing him with a mobile phone in one hand and a wallet and phone in the other. In that stance, it is difficult to understand how Mr A

⁴⁸ S/C Valleekanthan transcript, private examination, 17 August 2020, p 81.

was resisting the arrest. If Mr A had wanted to run, he would have done so.

[156] According to S/C Valleekanthan, Mr A resisted by attempting to move 'towards his right' and 'move away' whilst also 'trying to film himself'.⁴⁹ This degree of resistance does not justify the use of the neck restraint.

[157] The Commission does not accept that S/C Valleekanthan reasonably suspected that Mr A would actively resist the arrest. The threat posed by Mr A's left arm dropping on S/C Valleekanthan's shoulder was not substantial. More importantly, it was fleeting. Mr A raised his arm and S/C Valleekanthan moved behind Mr A. Mr A's left arm was no longer an immediate threat.

No record of the lateral vascular neck restraint

[158] The WA Police Force's investigating officer found the evidence did not support the contention that S/C Valleekanthan was in apprehension of death or GBH which would justify the use of a neck hold.⁵⁰

[159] This reflects S/C Valleekanthan's description of his state of mind in the Use of Force report written two days after the incident.

[160] The Use of Force report submitted by S/C Valleekanthan only records the use of a seatbelt hold and an attempt to place Mr A's arms behind his back. It makes no mention of the use of the neck restraint. Unsurprisingly, the Use of Force report does not use the expression rear naked chokehold. It did note that a taser was not used because there was a 'lack of threat level required' and a firearm was not used as there was 'no fear of death or GBH'.⁵¹

[161] WA Police Force operational officers are required to undertake critical skills training programs to meet the organisation's standard on use of tactical options to reduce a threat and gain control. The Combined Critical Skills 1 and 2 training requalification program is required every year. S/C Valleekanthan undertook this requalification training 6 months before the incident. Critical Skills 3 training involves a mandatory weapons training and requalification program every year. S/C Valleekanthan undertook this retraining seven months before the incident.

[162] Empty Hand Technique (EHT) training is part of the WA Police Force recruit training and no annual refresher requalification is offered. The Regional Operations Group provided additional EHT techniques training from 2019.

⁴⁹ S/C Valleekanthan transcript, private examination, 17 August 2020, pp 42, 45-46.

⁵⁰ WA Police Force Internal Investigation Report, A/Superintendent Ridley, 28 January 2020, p 15.

⁵¹ Use of Force Report, 12 November 2019, p 1.

These were predominately Brazilian Jiu Jitsu techniques. Over the six training sessions in 2019 and 2020, S/C Valleekanthan only attended one session. It was in January 2020, after the incident.

Conclusion

- [163] The Commission considers that the use of the LVNR described at [106] to [115] was not justified in the circumstances. It was an excessive use of force.

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CHAPTER FOUR

The lawfulness of the move on order

Introduction

[164] 1/C Harrison issued and served a move on order on Ms X at 2.10 am. The ground for the order was that Ms X 'had just committed or was committing an offence', the offence being 'disorderly behaviour in public'.⁵²

[165] This chapter considers whether the move on order was justified.

A move on order

[166] A police officer has the power to order a person in a public place to leave it, or a part of it, if the police officer reasonably suspects the person is doing or is just about to do an act that will involve violence, or cause a person to use or fear violence, or that the person is committing a breach of the peace, hindering, obstructing or preventing a lawful activity, or intends to commit an offence, or has just committed an offence.⁵³

Ms X's conduct

[167] It will be recalled that Ms X was one of the group which included Ms Y and Mr A, who were both arrested.

[168] The CCTV footage showed Ms X initially attempting to direct Ms Y away from officers. Ms X immediately got out of the way when the officers went in to effect the arrest of Ms Y, and started recording on her mobile phone. Ms X then stood with her arms folded before walking over to direct Mr A away from officers.⁵⁴

[169] The CCTV footage showed Ms X ushering Mr A away from the scene of the arrest.

[170] After Mr A's arrest, the CCTV footage showed Ms X standing next to other officers who had recently arrived. Ms X was a few metres away from Mr A and S/C Valleekanthan. She was recording on her mobile phone.⁵⁵

[171] At 1.56 am, S/C Valleekanthan walked up to Ms X and appeared to say something. Ms X continued to stand around officers several metres away from Mr A, filming.⁵⁶

⁵² Move on order No 467527, dated 10 November 2019; *The Criminal Code* s 74A.

⁵³ CI Act s 27(1).

⁵⁴ CCTV Footage 1.

⁵⁵ Ibid.

⁵⁶ Ibid.

- [172] At 2.02 am, 1/C Harrison walked up to Ms X and pointed away from the general area. Ms X interacted with 1/C Harrison before going down to record Mr A on the floor.⁵⁷
- [173] At 2.07 am, 1/C Harrison appeared to give a piece of paper, presumably the move on order, to Ms X. He gave general directions to Ms X that appeared to relate to the effect of the order.⁵⁸
- [174] S/C Valleeekanthan's body camera footage showed Ms X moving around the arrest area during the relevant period. Ms X said 'I've got it on video bro', 'He's my partner', 'I'm an adult as well', 'I'm allowed to stand here', and 'He told me I could stand here and film'.⁵⁹
- [175] Ms X asked S/C Valleeekanthan 'what is your name officer?' and 'what is your badge number?' Ms X said to the other officers in attendance 'It's on my phone, I've got video of this. What he was doing was filming, he was standing this close'.⁶⁰
- [176] Ms X again asked 'what is your name and your badge number?' S/C Valleeekanthan told Ms X to go away and Ms X responded 'I got told I could stay here, by this officer' and 'I got it all on camera'.⁶¹
- [177] Ms X faced S/C Valleeekanthan and said 'Your dignity is already gone ... disgusting ... disgusting'. 1/C Harrison approached Ms X to direct her away. Ms X said 'That's my partner and I'm sorry but I can't leave without him' and repeats 'I can't leave without him' several times.⁶²
- [178] Ms X said 'Where the fuck is the ambulance, you said you called one 10 minutes ago, where is it?'⁶³ Ms X called out to Mr A and an officer approached Mr A and told him that 'his girlfriend has got a pass'. Ms X then walked away from the area and was in discussion with other officers.⁶⁴
- [179] In examination before the Commission, 1/C Harrison agreed a civilian could use their mobile phone to record police activities and it would not amount to obstruction of police.⁶⁵
- [180] 1/C Harrison was asked about his interactions with Ms X. He said, 'Numerous times she was told to - to move away, and again she wanted to film. I said, "That's fine, you can film, but film from over there and give us

⁵⁷ CCTV Footage 1.

⁵⁸ CCTV Footage 2.

⁵⁹ S/C Valleeekanthan's body camera footage.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ 1/C Harrison transcript, private examination, 14 August 2020, p 16.

- give us space so we can do our job" and I asked her to move back numerous times'.⁶⁶

- [181] 1/C Harrison was asked how far away she was when filming. 1/C Harrison responded 'From anywhere between sort of one and two metres away to 10, 15 metres away. She kept coming back in and out and was told again by numerous officers to move away'.⁶⁷
- [182] When asked how Ms X was preventing the officers from doing their job, 1/C Harrison noted it was difficult as officers were trying to focus their attention on dealing with Mr A, and Ms X continued to approach officers, ask questions already answered and state they had not done anything.⁶⁸
- [183] 1/C Harrison's view was that, Ms X's conduct in not listening to instructions to move away, coming back, interrupting and asking questions, was sufficient to issue a move on order.⁶⁹
- [184] 1/C Harrison later told the Commission 'I had no issue with her filming. If she wanted to film the arrest, that's fine, but she just needed to move back so we could actually just have space to do our job'.⁷⁰

Was the decision to issue a move on order justified?

- [185] After reviewing all footage in the Commission's possession the Commission considers that that Ms X did not act in a manner that was insulting, offensive or threatening, or used language that was insulting, offensive or threatening.
- [186] Ms X used vulgar language when complaining about the lack of an ambulance, but it was by way of emphasis, rather than being directed at the police officers themselves. The only comment that could be considered insulting or offensive was when Ms X said that S/C Valleekanthan's dignity was gone. Ms X only swore once.
- [187] There was no reasonable, objective basis to justify 1/C Harrison's view that Ms X engaged in disorderly behaviour, or in any other conduct, obstructive or otherwise, constituting disorderly behaviour in public and deserving of a move on order being issued.

⁶⁶ 1/C Harrison transcript, private examination, 14 August 2020, p 25.

⁶⁷ Ibid.

⁶⁸ Ibid 26.

⁶⁹ Ibid 27.

⁷⁰ Ibid 28.

Conclusion

- [188] The Commission considers it was contrary to law for 1/C Harrison to have issued the move on order to Ms X.

CHAPTER FIVE

Post arrest - serious misconduct risks

Medical assistance for arrested suspects

- [189] An arrested person is entitled to any necessary medical treatment.⁷¹
- [190] The WA Police Force imposes additional obligations on an arresting officer. The arresting officer is required to:⁷²
- take all reasonable action to obtain details relating to the nature and severity of the injury, to minimise the possibility of aggravation and unnecessary pain;
 - cause the arrested person to be examined by a medical practitioner as soon as possible; and
 - remain with that person until suitable arrangements for bail or alternative custody arrangements are organised or can be made.
- [191] Any action taken by a police officer that is unreasonable, or in breach of their duties, may amount to serious misconduct under CCM Act s 4.

Mr A's treatment

- [192] Mr A received a four centimetre laceration to the right side of his forehead, an injury to his right eye and bruising, cuts and scratches as a result of the fall.⁷³
- [193] Mr A reported to Royal Perth Hospital that he had lost consciousness and that he had been choked for 15 seconds.⁷⁴ S/C Valleeekanthan did not concede that Mr A lost consciousness.⁷⁵
- [194] From the body camera and Ms X's footage, it appeared that immediately after the fall, Mr A's left arm was limp and the officer had to pull it behind Mr A's back.⁷⁶ The footage Ms X took also showed that Mr A's legs did not appear to move for about 10 seconds after the fall.⁷⁷ This supports the contention that Mr A lost consciousness.

⁷¹ CI Act s 137(3)(a).

⁷² Police Manual AR 05.01.2 Rights of Arrested People.

⁷³ Royal Perth Hospital documents.

⁷⁴ Ibid.

⁷⁵ S/C Valleeekanthan transcript, private examination, 17 August 2020, p 91.

⁷⁶ S/C Valleeekanthan's body camera footage.

⁷⁷ Ms X video footage.

- [195] The Commission was unable to conclusively determine whether Mr A lost consciousness and, if he did, whether it was because he was choked during the arrest.
- [196] Mr A was arrested at about 2.00 am.
- [197] About six minutes after the arrest, S/C Valleekanthan radioed for an ambulance to attend for Mr A. S/C Valleekanthan said Mr A was conscious, breathing and bleeding from the head.⁷⁸
- [198] An ambulance had already been called to assist another member of the public. S/C Valleekanthan says he was advised by another officer that the member of the public had suffered a compound fracture to his leg.⁷⁹
- [199] An ambulance arrived at 2.18 am.⁸⁰ 1/C Harrison told the Commission 'when the ambulance crews arrived, their immediate priority was the person with the broken leg'.⁸¹
- [200] A person who has suffered a head injury should receive medical assistance as soon as reasonably practicable.
- [201] In his evidence, 1/C Harrison recognised that for head injuries, 'you always have to be careful' and if 'people start vomiting or showing signs of concussion, then you escalate things'.⁸²
- [202] Footage available to the Commission does not show that S/C Valleekanthan asked Mr A any questions about his injuries or whether Mr A was reviewed by ambulance officers when they attended for the other member of the public.
- [203] S/C Valleekanthan says he stood near to Mr A and monitored his condition by speaking to him and observing his behaviour and condition.
- [204] Four police vehicles attended: UN106, UN109, GI118 and GI119.
- [205] UN106 was S/C Valleekanthan and 1/C Harrison's vehicle. It was a Northern Regional Operational Group vehicle. It was likely parked on James Street throughout the incident.⁸³ S/C Valleekanthan said the vehicle could not be used to convey Mr A 'because it's only got two seats'.⁸⁴ 1/C Harrison agreed.⁸⁵

⁷⁸ S/C Valleekanthan's body camera footage; Incident report.

⁷⁹ S/C Valleekanthan's s 86 response, 30 April 2021.

⁸⁰ CCTV Footage 2.

⁸¹ 1/C Harrison transcript, private examination, 14 August 2020, p 40.

⁸² Ibid 10.

⁸³ S/C Valleekanthan transcript, private examination, 17 August 2020, p 7.

⁸⁴ Ibid 84.

⁸⁵ 1/C Harrison transcript, private examination, 14 August 2020, pp 43, 46.

- [206] UN109 arrived at the carpark at 2.07 am and stayed until 2.54 am.⁸⁶ The vehicle only had space for two people. It was probably the Northern Regional Operational Group vehicle 1/C Harrison referred to in his evidence.⁸⁷ This vehicle was not able to convey Mr A for the same reasons as UN106.
- [207] GI118 arrived at the car park at 2.04 am and left at 2.20 am to take Ms Y to the watch house.⁸⁸ GI118 was declared as 'not required to convey' at 2.34 am.⁸⁹ It is unclear why GI118 would be given this status, given Mr A remained on the ground in the car park, not having received medical attention.
- [208] GI119 arrived at 1.50 am, departed at 1.54 am and returned at 2.10 am. It remained on the scene until 3.01 am when it left to take Mr A to Royal Perth Hospital.⁹⁰
- [209] 1/C Harrison was asked why Mr A was not taken to Royal Perth Hospital sooner. He responded 'We were waiting for an ambulance. We were told it was coming. And we were told it was coming. And we waited and waited and waited. And in the end, we just thought "Well, we need to get - we need to take action". So we - we got the van to convey him.'⁹¹
- [210] S/C Valleeekanthan told the Commission that he believed that the ambulance he radioed for at 1.36 am would follow soon after the ambulance that attended for the member of the public, which arrived at 2.18 am.
- [211] GI119 released Mr A at Royal Perth Hospital. The location data for the vehicle records GI119 as being in the vicinity of Royal Perth Hospital for only 10 minutes.⁹²
- [212] S/C Valleeekanthan, as the arresting officer, did not go with Mr A in GI119 to ensure Mr A received medical assistance.
- [213] About one hour and 10 minutes passed from the time of arrest until Mr A was conveyed to the hospital.
- [214] Failure to comply with all obligations concerning the welfare of those in custody, including the provision of medical assistance as soon as possible, is a serious misconduct risk.

⁸⁶ CCTV Footage 2; CCTV Footage 3; UN109 ARL Data.

⁸⁷ 1/C Harrison transcript, private examination, 14 August 2020, p 43.

⁸⁸ CCTV Footage 1; CCTV Footage 2; GI118 ARL Data.

⁸⁹ Incident report, p 2.

⁹⁰ CCTV Footage 1; CCTV Footage 2; CCTV Footage 4.

⁹¹ 1/C Harrison transcript, private examination, 14 August 2020, p 43.

⁹² GI119 ARL Data.

Unlawful detention

- [215] An arrested person can be released to summons, meaning the arrested person is no longer under arrest and not subject to detention. Releasing a person to summons is also called de-arresting the person.
- [216] S/C Valleekanthan gave evidence Mr A 'was going to be de-arrested, get his details and get a consent to summons to be signed and then taken to hospital in the police vehicle'.⁹³ He says this was suggested by an Acting Sergeant on the scene after it became apparent an ambulance was going to be further delayed.
- [217] 1/C Harrison told the Commission he never told Mr A that he was released to summons and was not aware of S/C Valleekanthan doing so either.⁹⁴
- [218] The custody record states Mr A was released at the Roe Street car park.⁹⁵ This information was entered on the system by 1/C Harrison. It is consistent with the CCTV footage showing Mr A being handed a piece of paper whilst sitting in the van. It is also consistent with the arresting officer not accompanying the person in custody to the hospital.
- [219] It is likely that Mr A was released from custody with the intention of him being summonsed before he arrived at the hospital. It probably occurred at the car park. Once Mr A signed a consent to summons form, he was no longer in custody.
- [220] Subject to an ongoing threat assessment by the officers, it is at this point that handcuffs would ordinarily be removed. It is not clear when the handcuffs were removed from Mr A, but it is clear that they were removed well after when they should have been.
- [221] If an arrested person is released but that person remains detained after that point in any way, whether by handcuffs or in a police vehicle, it may amount to deprivation of liberty, which, in turn, presents a serious misconduct risk.⁹⁶

Recordkeeping

- [222] An arresting officer is to ensure the immediate recording of an arrested person into custody on the electronic Custody Management Application at the time of arrest and prior to conveyance. If the Application is unavailable, details are to be recorded in an official record and then entered

⁹³ S/C Valleekanthan transcript, private examination, 17 August 2020, p 87.

⁹⁴ 1/C Harrison transcript, private examination, 14 August 2020, pp 41-42.

⁹⁵ Custody Running Sheet.

⁹⁶ *Criminal Code* s 333.

electronically as soon as possible after the Application becomes functional.⁹⁷

- [223] The WA Police Force maintains an information technology system known as a Computer Aided Dispatch (CAD). According to 1/C Harrison, the CAD system logs all interactions on a job, which can be an interaction with an accused or any incident.⁹⁸
- [224] 1/C Harrison observed it was not essential for all persons involved in a job to be attached to it on CAD. However, the primary vehicle and any conveying vehicle would probably get attached to the job.⁹⁹
- [225] 1/C Harrison could not explain why GI119, as the conveying vehicle of Mr A, was not attached to the job.¹⁰⁰ Given that Mr A was injured and conveyed to hospital by GI119, GI119 should have been recorded on CAD.
- [226] 1/C Harrison gave evidence that the entries were made when they got back to the vehicle and there was no need to report via radio that someone had been taken into custody.¹⁰¹
- [227] Mr A was in custody from the moment of his arrest. The custody record showed Mr A as being in custody for only one minute at 3.17 am. This custody record was inaccurate. Mr A had been in custody from his arrest at about 2.00 am.
- [228] Mr A was in custody for much longer than was acceptable. Had Mr A suffered significant adverse effects from his injuries before he got to hospital, the consequence of the inaccuracy of the custody record could have been significant.
- [229] 1/C Harrison gave evidence that the officers could not record entries because they did not have access to a computer. 1/C Harrison said 'for Nightsafe¹⁰² it was very rare that any custody episodes would be generated for people who are released to summons. It was only for arrests'.¹⁰³ 1/C Harrison stated the Nightsafe Operation has 'been running for years. It runs on a Friday and Saturday night, and it's just to ensure that people are safe in the entertainment districts, because of a lot of alcohol-related violence and the associated issues with that.'¹⁰⁴

⁹⁷ Police Manual LP-04.01 - Admissions - General.

⁹⁸ 1/C Harrison transcript, private examination, 14 August 2020, p 7.

⁹⁹ Ibid 48.

¹⁰⁰ Ibid

¹⁰¹ Ibid 49.

¹⁰² Operation Nightsafe is high profile policing in entertainment districts to reduce the incidence of and deal with anti-social behaviour.

¹⁰³ 1/C Harrison transcript, private examination, 14 August 2020, p 50.

¹⁰⁴ Ibid 10.

- [230] 1/C Harrison entered the custody record on the system but could not say why he did not enter the correct custody time or why the release location was set as the Roe Street car park when he was physically released at Royal Perth Hospital.¹⁰⁵
- [231] 1/C Harrison acknowledged 'we should have updated the custody records better than we have'.¹⁰⁶
- [232] 1/C Harrison has also told the Commission that the ability for police officers to now use their work-issued 'One Force mobile phones', with relevant systems installed, is likely to minimise the risk of this issue occurring into the future.
- [233] It is understandable that officers did not have ready access to the system to record Mr A being taken into custody at the time of his arrest. However, when they got back to their police vehicle they were under an obligation to accurately record the period Mr A was in custody. The system had the capacity to record the correct entry and exit time and location. Police officers now have the ability to do so more contemporaneously on their One Force mobile phones.
- [234] Failure to enter accurate records is a serious misconduct risk.

¹⁰⁵ 1/C Harrison transcript, private examination, 14 August 2020, p 53.

¹⁰⁶ Ibid 52.

CHAPTER SIX

Conclusion

An opinion of serious misconduct - Senior Constable Valleekanthan

- [235] The Commission accepts the arrest of Mr A by S/C Valleekanthan was lawful.
- [236] However, S/C Valleekanthan's use of a neck restraint was an excessive use of force. It was not reasonably necessary to effect the arrest or overcome Mr A's limited resistance to it.¹⁰⁷
- [237] The use of the neck restraint and the ensuing struggle lead to Mr A sustaining bodily harm.¹⁰⁸
- [238] S/C Valleekanthan may have believed he was at risk when Mr A's arm momentarily dropped on to his shoulder. However, this belief was not reasonable in circumstances where:
- Mr A was not physically threatening S/C Valleekanthan. From the time S/C Valleekanthan made the decision to arrest Mr A, Mr A was retreating or walking backwards with his arms outstretched.
 - S/C Valleekanthan took out his OC spray, but due to the lack of a threat from Mr A, returned it to his belt.
 - Mr A tried to keep his arms up while being restrained by the officer.
 - A neck restraint, such as that adopted by S/C Valleekanthan, presents a significant injury risk.
- [239] The Commission understands an arrest is a dynamic process and often, decisions must be made very quickly. The situation confronting S/C Valleekanthan and 1/C Harrison was a difficult one.
- [240] However, a neck restraint should only be used in very limited circumstances. Mr A did not try to escape. He was not resisting arrest. He was not threatening.
- [241] The Commission has formed an opinion of serious misconduct against S/C Valleekanthan.

¹⁰⁷ *Criminal Code* s 231(1); *CI Act* ss 16(1).

¹⁰⁸ *Criminal Code* s 1(1).

- [242] An opinion that serious misconduct has occurred is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.¹⁰⁹

An opinion of serious misconduct - First Class Constable Harrison

- [243] If Ms X, by remaining near Mr A, obstructed officers, that action would be a basis for 1/C Harrison to issue a move on order.¹¹⁰
- [244] However, the footage reviewed by the Commission does not support that contention. It was not recorded as the ground for the move on order.
- [245] The move on order contended that Ms X engaged in disorderly conduct. There was no proper basis for that assertion nor, therefore, for the move on order.
- [246] Issuing the order in such circumstance is reviewable police action, as it is action that is contrary to law.
- [247] The Commission has formed an opinion of reviewable police action against 1/C Harrison. Reviewable police action falls under the definition of serious misconduct.¹¹¹
- [248] As noted, an opinion that serious misconduct has occurred is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.¹¹²

Serious misconduct risks

- [249] There were significant serious misconduct risks associated with Mr A's treatment after his arrest.
- [250] S/C Valleeekanthan's Use of Force report did not fully and accurately describe the nature and extent of the force he used in connection with Mr A's arrest.
- [251] After arrest, Mr A was in the custody of the WA Police Force. However, despite falling and lacerating his forehead, Mr A was kept sitting on the ground handcuffed for a long time, without being taken for medical attention.
- [252] Mr A was released from arrest at the Roe Street car park. Mr A remained handcuffed.

¹⁰⁹ CCM Act s 217A(3).

¹¹⁰ CI Act s 27(1)(d).

¹¹¹ CCM Act s 3 defines 'serious misconduct' as including 'police misconduct', which in turn is defined to include 'reviewable police action'.

¹¹² CCM Act s 217A(3).

- [253] WA Police Force official custody records show Mr A in police custody for one minute at 3.17 am. This was wrong. Mr A had been in custody for over an hour and had sustained injuries whilst in custody. This was not recorded by the arresting officers.
- [254] Custody records maintained by the WA Police Force should provide an accurate record of the arrest, including when a person is detained and released, the reason for it, as well as any injuries they sustain. This is vital in protecting the reputation of the WA Police Force more widely.
- [255] Current WA Police Force policies and procedures in relation to custody records, the provision of medical assistance to an arrested suspect and use of force are comprehensive and sufficient. However, they appear not to have been understood or followed in this case.
- [256] This unfortunate event displays the significant serious misconduct risks that can arise in respect of medical care provided to a person in custody, the length of time for detention of an arrested person, and the accuracy of recordkeeping by police officers.