



1 May 2020

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Dear Ms Quirk,

INQUIRY INTO THE WESTERN AUSTRALIAN CCC's OVERSIGHT OF POLICE MISCONDUCT INVESTIGATIONS, PARTICULARLY ALLEGATIONS OF EXCESSIVE USE OF FORCE

Thank you for the opportunity to provide a submission into the above inquiry.

The WA Police Union acknowledges the legal right to use force carries with it the utmost responsibility and our Members, given their training, expertise and experience, respect this right and only use force once all other options have been exhausted.

Policing by its very nature is a dangerous and dynamic profession which can see incidents escalate within a matter of seconds.

Our attached submission, addresses the Inquiry's five terms of reference and should provide significant food for thought for the Committee in its deliberations.

Given the COVID-19 situation saw the postponement of our hearing, we would like the Committee to know that we are available to attend a hearing should the Committee wish to hold one, when it is appropriate to do so.

If you need any further information or to discuss the possibility of a hearing date, please do not hesitate to contact our External Media Communications Manager Steven Glover

Yours sincerely

Harry Arnott
President

An inquiry into the Western Australian
Corruption and Crime Commission's
oversight of police misconduct
investigations, particularly allegations
of excessive use of force

Prepared by the WA Police Union

May 2020

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Executive Summary

The WA Police Union (WAPU) is the registered industrial union representing WA Police Force (WAPF) officers. WAPU currently has 6,400 Members which equates to 98 per cent of all WAPF officers.

WAPU recognises that oversight is essential in preventing excessive use of force. However, it is equally important the legal rights of WAPF officers are protected as part of any oversight system.

Current operational environment of WAPU Members

Use of force incidents should not be examined in isolation. The current operational environment faced by our Members provides context into why the number of use of force incidents has increased by more than half over the last six years.

The rate of Offences Against the Person and Breach of Violence Restraining Order offences in WA has increased by **29 per cent** since 2009-10. This has coincided with increases to alcohol-related violence and methamphetamine consumption across the State. Rising levels of psychological distress and weapons proliferation in the community have also been important contributing factors.

Regression analysis indicates the number of use of force incidents having a very strong positive correlation with several family and domestic violence-related offences. Use of force incidents also strongly correlate with the level of sick leave incurred by WAPF.

The number of use of force incidents in WA have certainly increased. But this is principally due to our Members increasingly having to respond to violent and threatening situations as part of their workload.

Minimising the risk of excessive use of force requires more than oversight and policy. A 2016 report into the WAPF identified the critical role played by training. The onus is on the State Government to provide the necessary funding.

Inquiry Terms of Reference – WAPU Response

The rate of use of force inquiries for WAPF officers has declined over the last decade. This is despite WA experiencing an increase in violent crime over the same period.

The WAPF investigation process into allegations of excessive use of force can be highly stressful to our Members.

Our Members are disappointed that voluntary interviews to the Corruption and Crime Commission WA (CCC) still do not receive legal privilege. This is despite the recommendation of the Joint Standing Committee on the CCC more than five years ago.

Oversight bodies that examine use of force incidents need to have as broad a working knowledge of policing as possible. Both the CCC and the Committee should familiarise themselves with the current use of force training provided to WAPF officers.

The *Police Force Regulations 1979* identifies offences generally relating to the conduct of police officers and in particular references unnecessary force at Regulation 609 which reads:

609. Unlawful arrest and unnecessary force

A member shall not —

- a) make any unlawful arrest; or
- b) use any unnecessary force on any prisoner or other person with whom the member may be brought into contact in the performance of his or her duty.

Section 23 of the *Police Act 1892* relates to disciplinary offences and how they are dealt with. It is the position of WAPU that offences relating to excessive use of force should be dealt with via the Section 23 process and not in the court system. This will ensure that matters pertaining to excessive force are dealt with in a timely manner and ensures that aggrieved persons receive satisfaction in relation to their complaints.

Arguably, this will also be significantly less costly to the WAPF and its officers as the use of State Solicitors or other legal expertise will not be required. It is accepted that matters with an element of criminality (i.e. significant bodily harm) could not be dealt with by this process. This process is not without precedent and similar models can be found within the Australian Defence Force and the WA Department of Corrective Services.

Introduction

On 24 October 2019, the Joint Standing Committee on the Corruption and Crime Commission ("the Committee") announced the commencement of an inquiry into the Western Australian Corruption and Crime Commission's oversight of police misconduct investigations, particularly allegations of excessive use of force ("the Inquiry")

The Inquiry's terms of reference are¹:

1. The nature and prevalence of allegations of excessive use of force by WA police officers.
2. Circumstances in which allegations of excessive use of force are investigated internally by WA Police.
3. Circumstances in which allegations of excessive use of force are investigated and/or oversighted by the Corruption and Crime Commission (CCC).
4. The CCC's 'active oversight' policy and its adequacy in dealing with allegations of excessive use of force.
5. The nature of sanctions for excessive use of force allegations which are substantiated.

WAPU welcomes the opportunity to make a submission to assist the Committee.

WA Police Union

WAPU was founded in January 1912. Since then, WAPU has been at the forefront of representing the rights, interests and welfare of police officers throughout the State.

WAPU currently has more than 6,400 Members – **98 per cent** of all police officers in the WAPF. Members consist of sworn police officers, police recruits, police auxiliary officers, protective service officers, Aboriginal liaison officers and cadets employed by the Commissioner of Police.

WAPU assists Members by providing a range of services including industrial, legal and welfare support. However, WAPU will support Members involved in on duty matters and believes they are entitled to their full legal rights and be afforded the protection of due process. Particularly given that all allegations of WAPF misconduct are provided to the CCC which has extensive investigatory powers.

1

[https://www.parliament.wa.gov.au/Parliament/commit.nsf/\(EvidenceOnly\)/C79EA3ADB7955AEE4825849D0026993A?opendocument#ToR](https://www.parliament.wa.gov.au/Parliament/commit.nsf/(EvidenceOnly)/C79EA3ADB7955AEE4825849D0026993A?opendocument#ToR)

Use of force – Definition

This submission uses the WAPF definition for incidents: *“Means any circumstance in which WA Police member, including police officers, police auxiliary officers, police custody officers and Aboriginal Police Liaison Officers, uses a tactical option on a subject (or multiple subjects) and such use is identified within these guidelines as to require the submission of a Use of Force Report. This includes an unauthorised discharge of a firearm, taser or OC spray.”*²

Current WA Police Use of Force Policy

WAPF Policy FR-01.01 *Use of Force – Generally* (“the Policy”) states any use of force must be reasonably necessary in the circumstances and that officers will be individually accountable for such force.

The WAPF submission to the Committee describes the WA Police Situational Tactics Options Model (STOM) that guides officer decisions about use of force in an operational situation³. Decisions are defined as:

- **“Reasonably suspects”** when a person reasonably suspects something at a relevant time if he or she personally has grounds at the time for suspecting the thing and those grounds (even if they are subsequently found to be false or non-existent), when judged objectively, are reasonable.
- **“Reasonably believes”** where an officer has a reasonable amount of suspicion supported by circumstances which, when judged objectively, are reasonable and sufficiently strong to justify a belief that certain facts are probably true.

Apart from reasonability, officers are also required to judge the level of potential harm in a situation:

- **Bodily Injury** – Damage to bone, muscle, tendon, skin, organ or any part of which the human body is constructed (not mere sensation of pain).
- **Grievous Bodily Harm** – Bodily injury of such a nature as to endanger, or be likely to endanger life, or to cause, or be likely to cause, permanent injury to health.
- **Serious Injury** – Bodily injury of such a nature as to cause or be likely to cause any person to require medical care.

The above plays a critical role in determining what tactical option an officer can use to reduce a threat or gain control of a situation⁴.

² WAPF. (2020, 24 January). EUSE OF FORCE SUB 9, p 5.

³ Ibid: p 7.

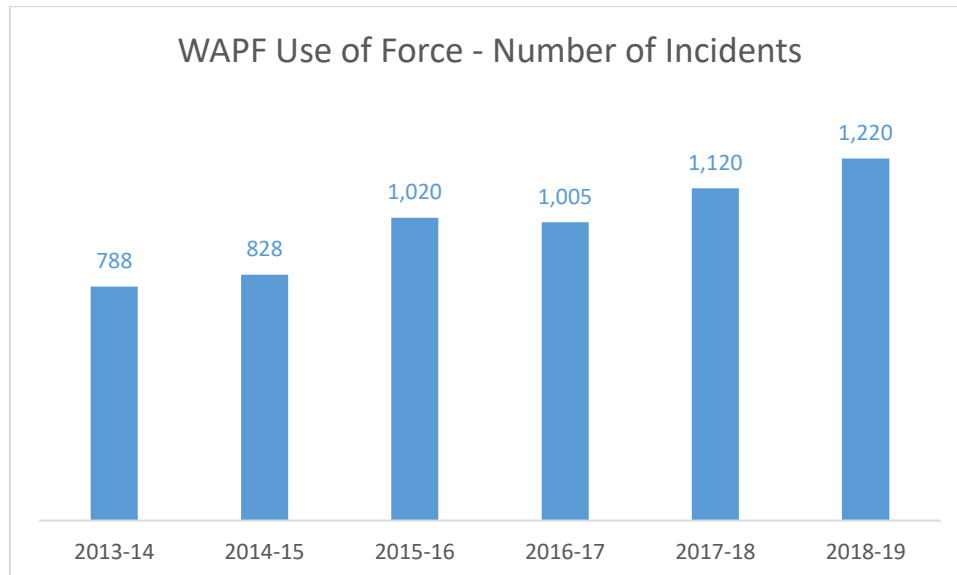
⁴ WAPF FR-01.01.1 *Reporting Use of Force – Justification for Use, Reporting Protocols, Guidelines and Procedures*

| Tactical Option | Justification for use |
|--------------------------------|---|
| Firearm | <u>Draw</u> Reasonably suspects there is a risk of grievous bodily harm or death to any person. <u>Discharge</u> Reasonably believes there is an imminent risk of grievous bodily harm or death to any person. |
| Taser | <u>Draw</u> Reasonably suspects there is a risk of serious injury to any person. <u>Discharge</u> Reasonably believes there is an imminent risk of serious injury to any person. |
| OC Spray | <u>Draw</u> Reasonably suspects there is a risk of bodily injury to any person. <u>Discharge</u> Reasonably believes there is an imminent risk of serious injury to any person. |
| Baton | To prevent bodily injury to a person. A tool to effect arrest or use in public order incidents. |
| Empty Hand Tactics | To prevent bodily injury to any person. A technique to effect arrest. Prevent damage to property or escape from arrest. |
| Handcuffs and Other Restraints | Reasonably suspects there is a risk of bodily injury to a person; escape from arrest or detention; or damage to property. |
| Dogs and Horses | To prevent bodily injury to a person. To assist in effecting arrest. Prevent damage to property or escape from arrest. Use in public order incidents. |

FR-01.01 exists to guide officers about use of force. However, policy does not operate in a vacuum. Use of force justification is highly dependent on the type of crime being committed. Examining the nature of crime in the WA community is therefore essential.

Current operational environment of WAPU Members

As noted by the WAPF in its submission to the Committee⁵: *“Situational factors influence a police officer’s situational appreciation and threat assessment.”* This is supported by Australian and overseas research that found a police officer’s decision to use force, and the level used, is heavily dependent on the officer’s interpretation and assessment of the situation⁶.



Feedback from WAPU Members indicate that violent offences form an increasingly large part of their workload. Further, it is a situation exacerbated by levels of alcohol and illicit drug use as well as mental illness within the WA community. Official statistics demonstrate this feedback is well-founded. WAPU argues this operational environment has a critical influence on the level of use of force incidents.

Impact of alcohol and amphetamine-type stimulants

Some **77.8 per cent** of Members who responded to the WAPU 2017 Resourcing, Safety and Workload Survey (“2017 Resourcing Survey”) indicated that alcohol, illicit or prescription drugs had been a factor in most jobs they attended. It is a perception supported by a number of independent surveys.

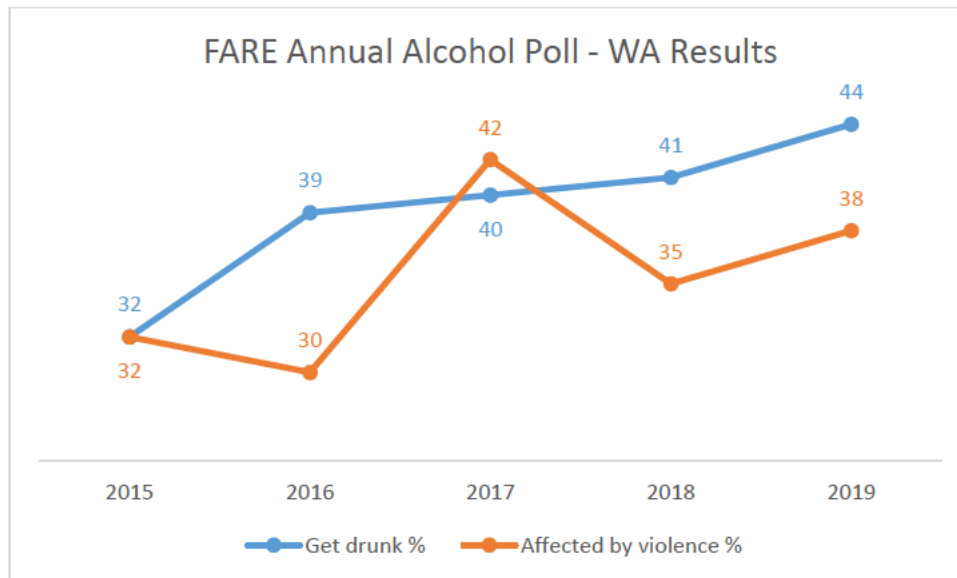
Alcohol abuse

The latest National Drug Strategy Household Survey found the proportion of West Australians drinking alcohol on a daily or weekly basis declined from **50.9 per cent** in 2010 to **43.2 per cent** in 2016. While pleasing, other research better captures the impact of alcohol abuse has on the operational environment of our Members.

⁵ WAPF. (2020, 24 January). EUSE OF FORCE SUB 9, p 29.

⁶ Hine, K 2018, *Understanding police use of force encounters in context: What encounters look like, circumstances when officers get injured, and the decision factors and processes involved*, p 61.

The Foundation for Alcohol Research and Education (FARE) has been conducting its Annual Alcohol Poll for almost a decade. The 2019 poll reported some **82 per cent** of WA respondents consumed alcohol⁷. Some **49 per cent** of respondents typically drank more than three standard drinks per occasion which was the highest of the five states surveyed. More troubling for WA though is the increasing trend in respondents who drink to get drunk or who have been affected by alcohol-related violence:



The link between alcohol abuse and criminal behaviour has been well-established both in Australia⁸ and overseas⁹. But the resulting impact on Member workloads has been further exacerbated by the WA community's growing use of amphetamine-type stimulants.

Amphetamine-type stimulants

Amphetamine-type stimulants (ATS) refer to a group of drugs including amphetamine, methamphetamine and ecstasy. ATS quicken messages from the central nervous system by increasing the levels of dopamine and serotonin in the brain. ATS can be swallowed, injected, smoked or snorted.

ATS abuse carries significant physical and psychological health risks to users. As recently as November 2019, an article published in *The Lancet* found any use of amphetamines was associated with higher odds of psychosis, violence, suicidal tendencies and depression¹⁰. ATS abuse also poses enormous law enforcement challenges including organised crime, illicit drug markets, clandestine drug laboratories, violence associated with its use, illegal importation and precursor drug access¹¹.

⁷ FARE (2019) *Annual Alcohol Poll – Attitudes and Behaviours*: p 45.

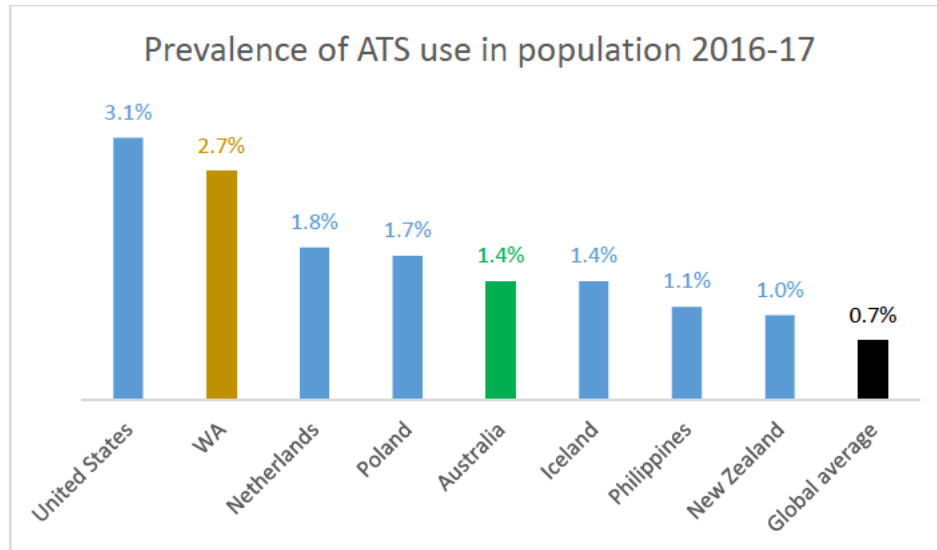
⁸ <https://aic.gov.au/publications/proceedings/01>

⁹ <https://www.alcoholrehabguide.org/alcohol/crimes/>

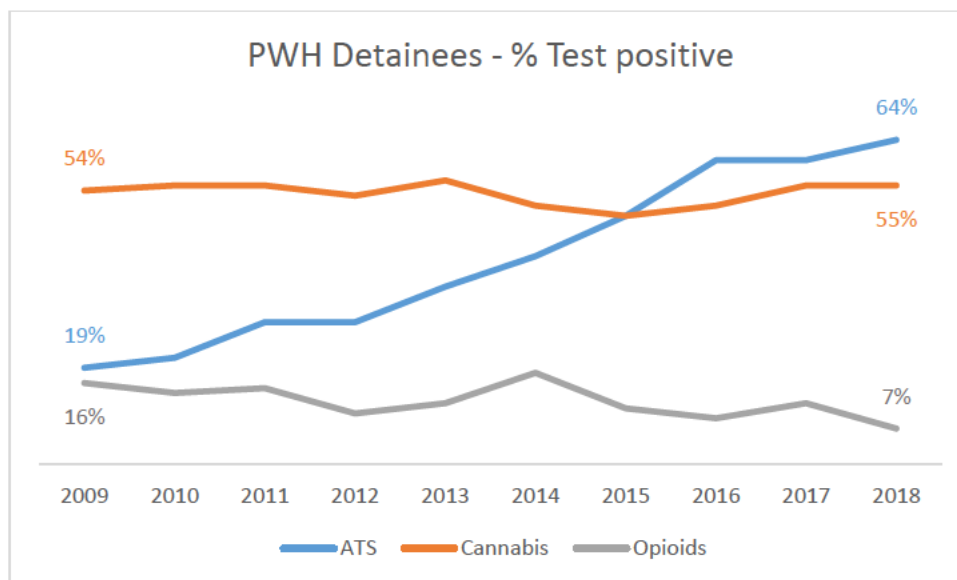
¹⁰ [https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370\(19\)30177-4/fulltext](https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370(19)30177-4/fulltext)

¹¹ <https://www.aic.gov.au/publications/tandi/tandi437>

WA has experienced a massive increase in illegal ATS use – particularly methamphetamine – over the last decade. The most recent data shows ATS use in WA not only being almost double the national average. It also indicates WA's methamphetamine use being equivalent to the second-highest nation in the world¹².



The impact on WAPU Members cannot be underestimated. Since 2009, the proportion of detainees in Perth Watch House testing positive to cannabis or opioids has either fallen or remained stable. By contrast, those testing positive to ATS have more than tripled¹³:



In 2018, methamphetamine accounted for some **97 per cent** of ATS detections among detainees¹⁴. This has significant health and safety ramifications for our Members, including police auxiliary officers. Rising levels of methamphetamine use increases our Members'

¹² AIHW *National Drug Strategy 2016*; UNODC *World Drug Report 2019*.

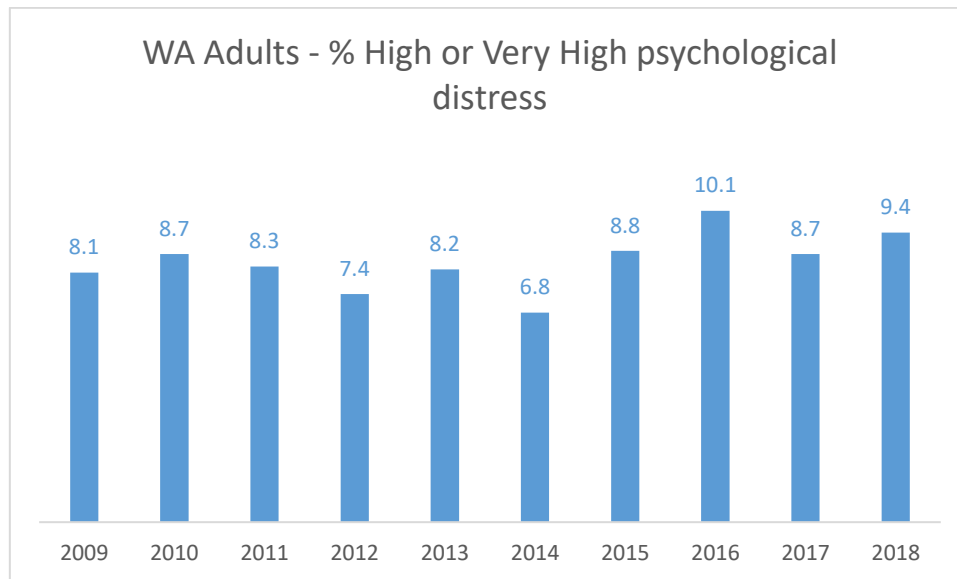
¹³ AIC. (2019). *Drug use monitoring in Australia: Drug use among police detainees, 2018*, p 25.

¹⁴ Ibid, p 17.

likelihood of being confronted by aggressive or violent offenders. In this environment, WAPU would view further curbs on use of force options as compromising the safety of our Members and the wider community.

Prevalence of mental illness

Estimates from the WA Department of Health¹⁵ indicate that the annual percentage of WA's adult population who experience high or very high levels of psychological distress (mental illness requiring professional help) continues to increase.



WAPF officers are on the frontline of WA's mental health crisis. No less than 23 of our Members are currently deployed in the Mental Health Co-Response (MHCR) teams. WAPU commends the \$200,000 expansion of the MHCR in May 2019¹⁶. However, the demand on WAPF resources is still much greater than what the MHCR can provide.

WAPF officers conducted some 4,295 mental health presentations to WA emergency departments in 2017-18, compared to 4,063 in 2016-17¹⁷. With a median waiting time of 30 minutes, WAPU estimates an average of 41 hours per week of WAPF time is spent ramping at emergency departments. This is the equivalent of 205 Priority 1 and 2 tasks not being answered in the target timeframe.

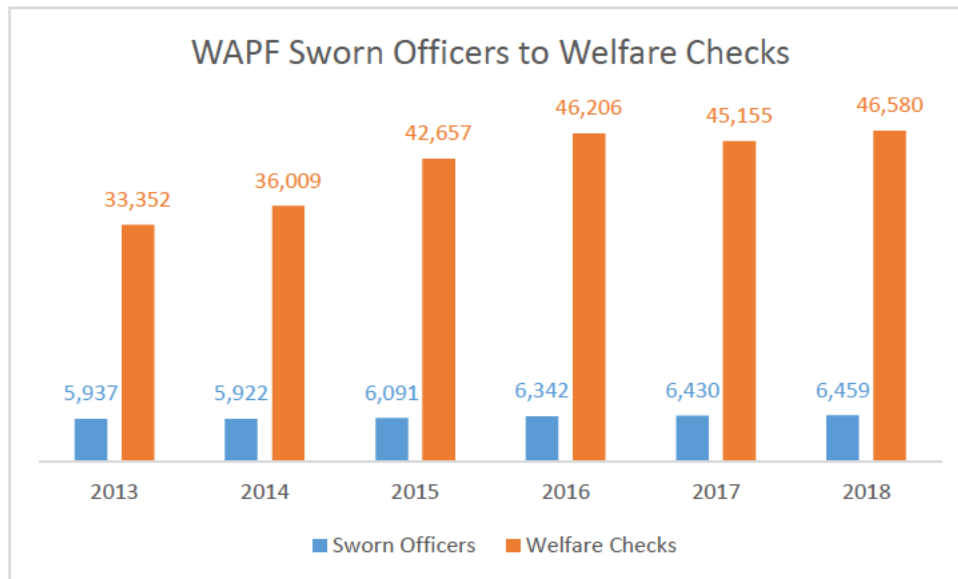
Another notable trend is the increasing number of welfare checks carried out by WAPF officers. The latest data indicates the number of checks increased by **39.7 per cent** from 2013

¹⁵ WA Department of Health. (2019). *Health and Wellbeing of Adults in Western Australia 2018*, p 79.

¹⁶ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/05/McGowan-Government-takes-action-on-methamphetamine-issues.aspx>

¹⁷ <https://www.aihw.gov.au/reports-data/health-welfare-services/mental-health-services/data>

to 2018 years despite the number of sworn officers increasing by 8.8 per cent over the same period¹⁸.



Mental illness is not a direct cause of crime. But if left untreated, sufferers risk engaging in behaviours potentially harmful to themselves and others. A recent draft discussion paper released by the Chief Psychiatrist of WA stated some of those outcomes include substance abuse, homelessness, poor physical health and social outcomes, increased risk of self-harm, increased risk of violence and increased contact with the criminal justice system¹⁹. They are outcomes that many of our Members encounter on a daily basis.

Results from the last four National Drug Strategy Household Surveys show an increasing number of WA methamphetamine users suffering from mental illness with high or very high levels of psychological distress.

| WA methamphetamine users | % Mental illness | % High – Very High psychological distress |
|--------------------------|------------------|---|
| 2007 | 20.3% | 23.6% |
| 2010 | 25.6% | 20.8% |
| 2013 | 29.0% | 26.6% |
| 2016 | 42.3% | 37.2% |

As noted in the State Government's policy framework, an individual suffering from a combination of substance abuse and serious mental illness has an elevated risk of violent

¹⁸ WA Legislative Assembly, Question on Notice No. 5442 answered on 15 October 2019.

¹⁹ <https://www.chiefpsychiatrist.wa.gov.au/wp-content/uploads/2019/10/Final-Draft-Discussion-Paper-People-with-SMI-and-Challenging-Behaviours-....pdf>

behaviour²⁰. But the policy also notes that this risk can occur even in the absence of substance abuse. Some specific examples include²¹:

- Psychosis alone is a statistically significant factor in the likelihood of violence, particularly where there are issues of threat or control;
- For people experiencing paranoid psychosis, violent acts are more likely to be well planned;
- Delusions related to threat or control (imagined persecution or manipulation) present a risk and the combination of delusion and fear presents a high risk for violence; and
- For schizophrenia, positive symptoms are associated with a greater risk for violence.

The vast majority of the WA community who suffer from mental illness do not engage in criminal behaviour. But rising levels of psychological distress increase the risk of harmful behaviour occurring. Use of force by our Members is sometimes their only option to prevent such behaviours from escalating.

Increasing number of criminal charges

Over two-thirds of respondents to the 2017 Resourcing Survey indicated their workloads had increased or significantly increased over the previous three to four years. The response of our Members in large part reflects changes in the number and types of criminal charges being lodged within WA.

The total number of charges lodged in the WA Magistrates and Children's Courts increased by more than a fifth over the period 2013-14 to 2017-18²². However, the trend across the 16 major offence categories was far from uniform.

²⁰ WA Department of Health MP0101/18. *Clinical Care of People With Mental Health Problems Who May Be At Risk of Becoming Violent or Aggressive Policy*, p 7.

²¹ Ibid pp 6-7.

²² WA Department of Justice. (2019). *Report on Criminal Cases in the Magistrates Court 2013/14 to 2017/18 of Western Australia and Report on Criminal Cases in the Children's Court of Western Australia 2013/14 to 2017/18*.

| WA Charges Lodged - Offences | 2013-14 | 2017-18 | Change |
|-------------------------------|----------------|----------------|--------------|
| Homicide and related | 114 | 76 | -33.3% |
| Acts intended to cause injury | 8,188 | 10,267 | 25.4% |
| Sexual assault and related | 2,585 | 3,625 | 40.2% |
| Dangerous or negligent acts | 6,279 | 5,525 | -12.0% |
| Abduction and harassment | 1,236 | 2,192 | 77.3% |
| Robbery and related | 850 | 879 | 3.4% |
| Unlawful entry with intent | 5,477 | 6,217 | 13.5% |
| Theft and related | 19,528 | 25,583 | 31.0% |
| Fraud and related | 9,446 | 12,394 | 31.2% |
| Illicit drug | 16,849 | 28,323 | 68.1% |
| Weapons and explosives | 2,923 | 3,959 | 35.4% |
| Property damage | 5,647 | 6,587 | 16.6% |
| Public order | 12,716 | 11,816 | -7.1% |
| Traffic and vehicle | 50,378 | 55,285 | 9.7% |
| Offences against justice | 33,504 | 40,125 | 19.8% |
| Miscellaneous | 2,499 | 2,251 | -9.9% |
| Total | 178,219 | 215,104 | 20.7% |

The total number of charges increased in 12 categories over the five-year period. Regression analysis by WAPU also finds a very strong positive correlation between the number of charges relating to illicit drugs and those for seven other types of offences.

| Correlation with illicit drug charges | R Square | P-Value |
|---------------------------------------|----------|---------|
| Sexual assault and related | 0.939 | 0.006 |
| Theft and related | 0.922 | 0.009 |
| Abduction and harassment | 0.894 | 0.015 |
| Offences against justice | 0.884 | 0.017 |
| Acts intended to cause injury | 0.822 | 0.033 |
| Property damage | 0.812 | 0.037 |
| Unlawful entry with intent | 0.809 | 0.037 |

Combined with community levels of substance abuse and psychological distress; some of the more important operational ramifications for WAPU Members have been²³:

1. Methamphetamine intoxication and withdrawal can impede an individual's ability to follow police directions.
2. Offender behavioural and psychological disturbances, including aggression, which can increase the risk of harm for police officers and members of the community.
3. The corollary being police officers attending more incidents where use of force might be required to apprehend offenders and/or protect themselves or others.
4. Detainees at an increased risk of self-harm when in custody due to the effects of intoxication or withdrawal.

These ramifications are not merely speculative. A sample of CAD reports²⁴ since December 2019 highlights the operational challenge faced by our Members on a daily basis.

Carnarvon – 8 December 2019

Incident: Residence / Disturbance

Upon approaching the police vehicle, the suspect began to struggle against police restraint. She suddenly she kicked out at Senior Constable S, striking the left thigh. The suspect displayed signs of drug psychosis. Suspect spoke of self-harm and suicidal tendencies.

Rivervale – 4 January 2020

Incident: Roadway / Traffic stop

Constable D reached inside the pod and took hold of the offender's upper body. The offender immediately used his mouth to clamp down upon Constable D's right hand, which caused both layers of the skin to break on his right ring finger, causing it to bleed.

Kenwick – 12 January 2020

Incident: Commercial Premises / Mental Health Act

Patient estimated to have consumed 40 to 50 dexamphetamine tablets over three days. While being detained to be taken to hospital for assessment, patient struck First Class Constable B to the left side of his face near the eye. The impact immediately caused swelling and an abrasion.

²³ <https://www.wapu.org.au/wapu-news/414-methamphetamine-in-perth-perspectives-from-duma-police-detainees.html>

²⁴ Personal details of individuals involved withheld.

South Lake – 2 February 2020

Incident: Residence / Family and Domestic Violence

Suspect was immediately hostile towards attending officers; picking up a metal bike wheel and raised it over his head in an intimidating manner. Suspect dropped the wheel after being challenged by officers. While being restrained, suspect punched Senior Constable J's face leaving a small cut below the eye.

South Hedland – 10 February 2020

Incident: Residence / Family and Domestic Violence

Police were called to an FDV incident and were met by hostile family. Suspect became angry at the attending officers and took hold of a shovel and threatened to assault the officers with it. Police officers drew their Tasers and directed the accused to put down the shovel to which he eventually complied. The accused was handcuffed and lashed out at the officers.

Scarborough – 17 February 2020

Incident: Residence / Mental Health Act

Patient was being detained for mental health assessment and secured into an ambulance stretcher. Patient became aggressive and managed to get one arm loose, striking Senior Constable H to the top of the head three to four times, causing pain and headache.

Fremantle – 23 February 2020

Incident: Roadway / Threatening Behaviour

Suspect was a car passenger who became verbally abusive to Constable G who was walking to work. The vehicle halted and suspect approached Constable G in a threatening manner. While Constable G was restraining the suspect, the driver got out of the vehicle and attacked Constable G from behind. A search of the suspect found BTB Diazepam tablets and a knife.

Rockingham – 3 March 2020

Incident: Police Station / Detainee

Station officers were dealing with the victim and suspect of a rape at the station, a sudden death, and stealing arrest also at the station. There was a juvenile in the lock-up as well, being dealt with by detectives. There was no custody PAO on duty. A suspect for a high priority family violent arrest file also attended to be arrested. A further person was required to be arrested at the front counter (two in total). This was further exacerbated by several outstanding priority 2 and 3 jobs.

While attempting to escort one of the detainees for a court appearance, the detainee assaulted Constable W by punching him to the face. The detainee was restrained on the floor, cuffed and placed back in the cell. The detainee shouted abuse at officers, made derogatory comments and then proceeded to urinate on the floor.

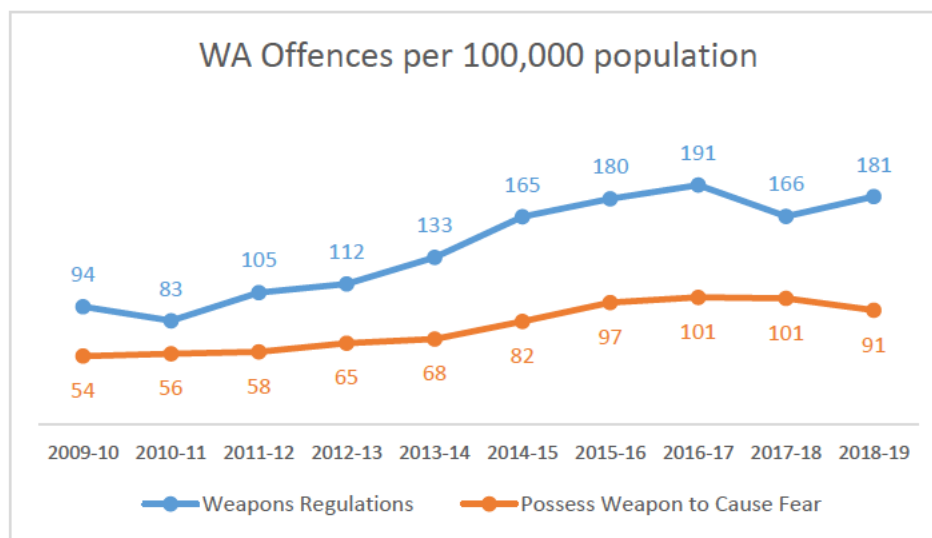
Murdoch – 5 March 2020

Incident: Hospital / Mental Health Act

Patient was finally taken to the Mental Health ward still in handcuffs and put in another secure room. Staff directed officers to take the handcuffs off. As Senior Constable S went to take the handcuffs off, the patient stated: “When the cuffs come off, I’m going to punch you in your face.” Patient punched Senior Constable S to his left shin immediately after cuffs were removed.

Proliferation of weapons and terrorism

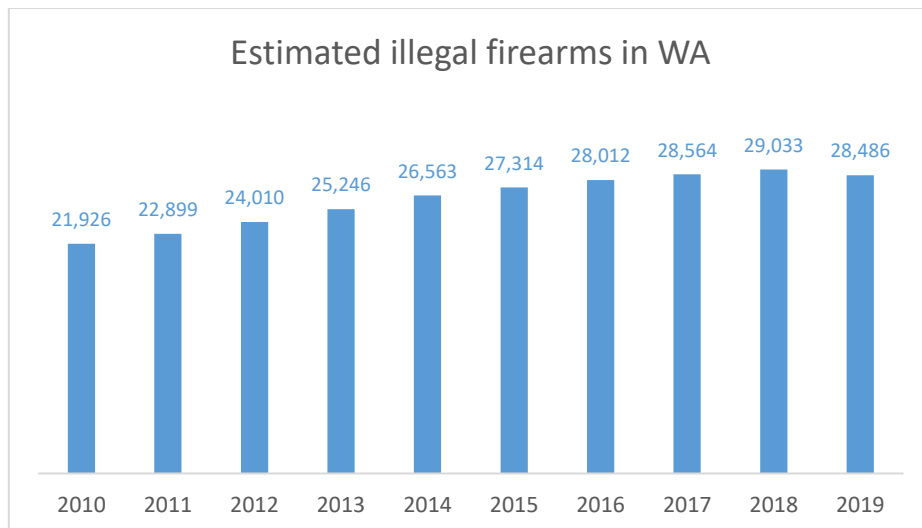
The danger to our Members is further heightened by the increasing rate of weapon-specific offences. Offence rates for both breaches of weapons regulations and possessing a weapon to cause fear have almost doubled over the past decade.



Regression analysis indicates a **91.3 per cent** correlation (P-value <0.001) between the two offences. WAPU argues failing to secure licenced weapons increases the risk they will be stolen and used in the commissioning of other offences. Recent WAPF operations indicate the danger is particularly acute in relation to firearms²⁵. Indeed, latest estimates have the number of unregistered and illegal firearms in WA has increased by almost **30 per cent** since 2010²⁶:

²⁵ <https://www.abc.net.au/news/2019-01-03/gun-storage-warning-after-firearms-found-under-mattresses/10683316>

²⁶ <https://www.gunpolicy.org/firearms/region/western-australia>



Similar to offences involving weapons regulations, regression analysis reveals a **92.3 per cent correlation** (P-value <0.001) between the estimated number of illegal firearms and the number of possessing a weapon to cause fear offences.

Related to this is the potential risk of terrorist attacks against our Members. Australia's current National Terrorism Threat level is "Probable"²⁷. As noted by the recent Legislative Council inquiry into terrorist attacks on crowded places, WAPF is the hazard management agency for terrorist acts in WA²⁸. Use of force options are vital to our Members in the current situation given:

- The risk that police officers will be directly attacked similar to the Endeavour Hills incident in September 2014²⁹;
- Terrorist groups including police stations and buildings among potential targets³⁰; and
- If a crowded place is attacked, WAPF officers will be the first responders responsible for crowd safety and threat containment.

²⁷ <https://www.nationalsecurity.gov.au/Securityandyourcommunity/Pages/National-Terrorism-Threat-Advisory-System.aspx>

²⁸ [https://www.parliament.wa.gov.au/parliament/commit.nsf/331d081207b127e1c82575c9002281e7/b224e741a12515474825823300123a54/\\$FILE/Further%20information%20about%20the%20inquiry.PDF](https://www.parliament.wa.gov.au/parliament/commit.nsf/331d081207b127e1c82575c9002281e7/b224e741a12515474825823300123a54/$FILE/Further%20information%20about%20the%20inquiry.PDF)

²⁹ [https://www.parliament.wa.gov.au/parliament/commit.nsf/331d081207b127e1c82575c9002281e7/b224e741a12515474825823300123a54/\\$FILE/Further%20information%20about%20the%20inquiry.PDF](https://www.parliament.wa.gov.au/parliament/commit.nsf/331d081207b127e1c82575c9002281e7/b224e741a12515474825823300123a54/$FILE/Further%20information%20about%20the%20inquiry.PDF)

³⁰ [https://www.parliament.wa.gov.au/parliament/commit.nsf/331d081207b127e1c82575c9002281e7/b224e741a12515474825823300123a54/\\$FILE/Further%20information%20about%20the%20inquiry.PDF](https://www.parliament.wa.gov.au/parliament/commit.nsf/331d081207b127e1c82575c9002281e7/b224e741a12515474825823300123a54/$FILE/Further%20information%20about%20the%20inquiry.PDF)

Use of force incidents and the operational environment

The number of use of force incidents provided by WAPF should not be looked at in isolation. It is vital those incidents are considered within the context of the operational environment faced by our Members.

Changing workload of Members

Increasing levels of violent crime has had significant ramifications on the workload of our Members.

The WAPF submission does not describe the type of offences associated with the use of force incidents recorded over 2013-14 to 2018-19³¹. WAPU has instead used regression analysis³² to compare use of force incidents with WAPF Recorded Offence data over the period. Specifically, the number of use of force incidents with the number of Offences Against the Person³³ and Breach of Violence Restraining Order (VRO) offences.

The total number of Offences Against the Person and Breach VRO offences are comprised of some 22 individual offences (see *Appendix 1*). Regression analysis reveals use of force incidents having a very strong relationship with eight offences, called “risk offences”, in particular:

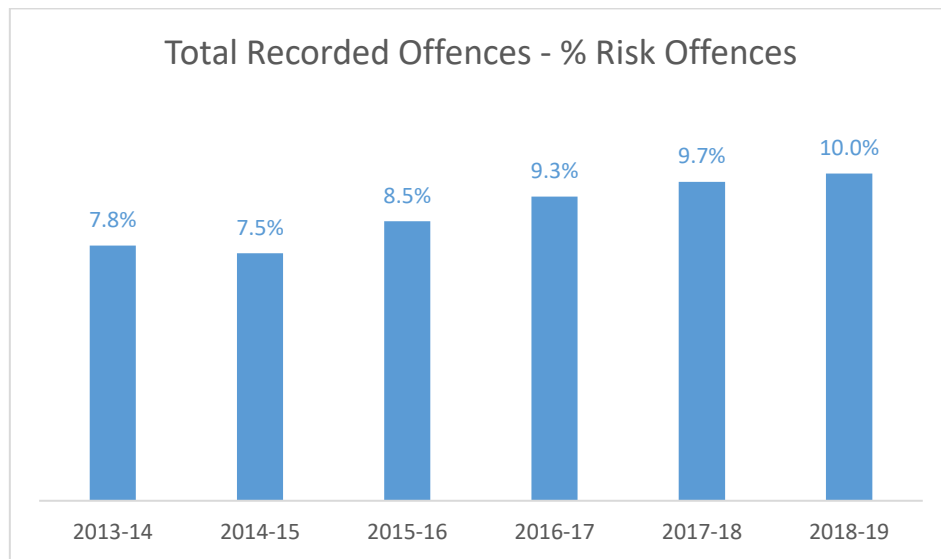
| Correlation with number of use of force incidents | R Square | P-value |
|---|--------------|--------------|
| Recent Sexual Assault | 0.746 | 0.027 |
| Serious Assault (Family) | 0.817 | 0.013 |
| Serious Assault (Non-Family) | 0.833 | 0.011 |
| Threatening Behaviour (Family) | 0.621 | 0.061 |
| Possess Weapon to Cause Fear (Family) | 0.649 | 0.053 |
| Deprivation of Liberty | 0.651 | 0.052 |
| Breach Family VRO | 0.909 | 0.003 |
| Breach Police Order | 0.682 | 0.043 |
| Total Risk Offences | 0.840 | 0.010 |

³¹ WAPF. (2020, 24 January). EUSE OF FORCE SUB 9, Attachment p 1.

³² P-Value of 0.07 considered optimum to reduce the likelihood of both Type I and Type II errors:
<https://www.statisticssolutions.com/to-err-is-human-what-are-type-i-and-ii-errors/>

³³ Historical Sexual Offences excluded given offences could have occurred decades beforehand.

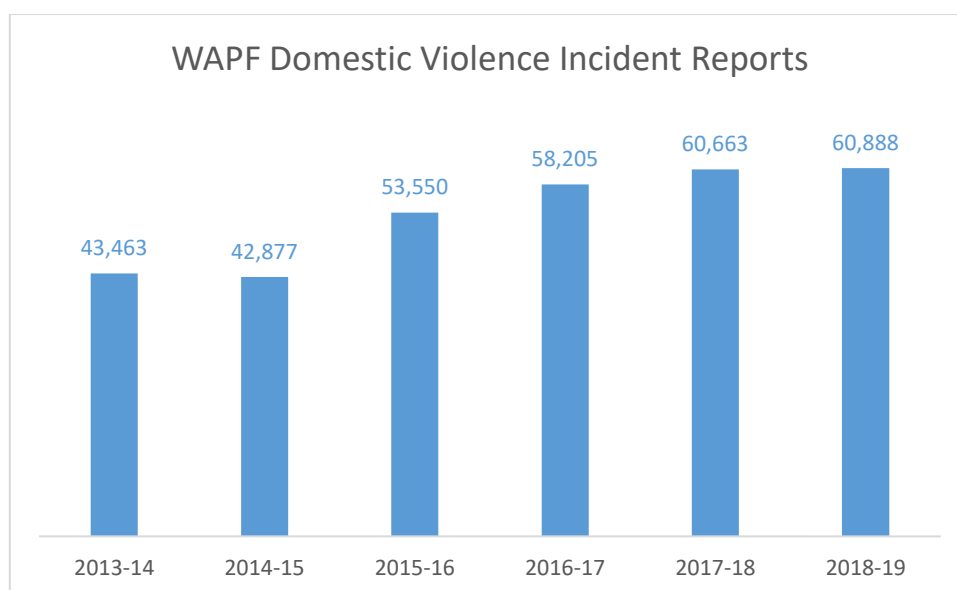
There was an **84 per cent** relationship between use of force incidents and risk offences over the period. Further, risk offences have kept growing as a proportion of total offences:



A **2.2 per cent** increase might appear small at face value. But it equates to an additional 7,000 offences that are strongly correlated to use of force incidents. As risk offences grow as a proportion of total offences, it is likely that more of our Members will be required to use force in the jobs they attend. It is an assumption supported by regression analysis with an **89.9 per cent** positive correlation (P-value 0.004) between the proportion of risk offences and the number of use of force incidents.

Incidents of family and domestic violence

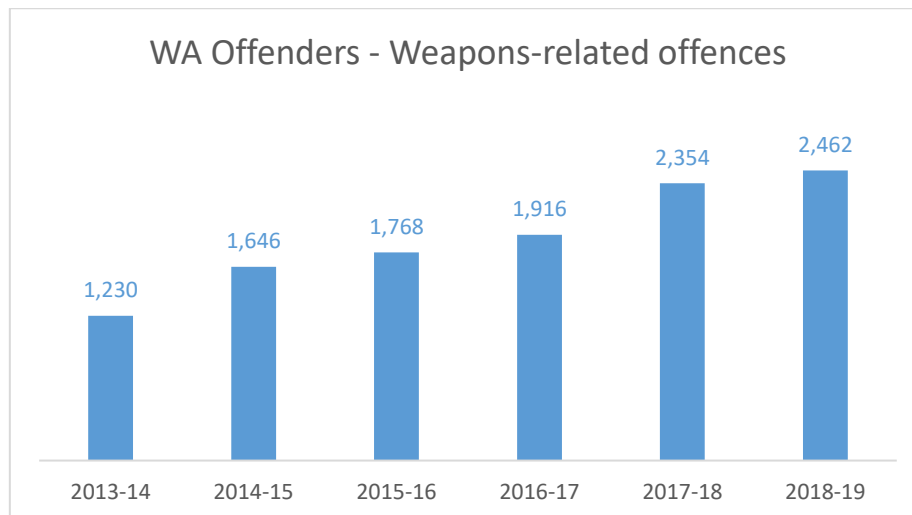
Two thirds of total risk offences specifically relate to family and domestic violence. It reflects the trend in Domestic Violence Incident Reports (DVIR) that grew **40.1 per cent** over the period.



Similar to risk offences, regression analysis indicates the number of DVIRs having a very strong positive correlation of **88.8 per cent** (P-value 0.0049) with the number of use of force incidents. Both sets of analysis indicate use of force incidents are likely to keep increasing without a substantial reduction in WA's level of family and domestic violence.

More offenders charged with weapons-related offences

This submission earlier noted the increasing level of weapons-related offences. However, equally concerning to WAPU Members is number of people charged with such offences has more than doubled over the last six years³⁴.



Caution should be taken in making any direct connection between the two. Regression analysis nonetheless reveals a **90 per cent** correlation (P-value 0.003) between the number of these offenders and use of force incidents.

Such offenders are not just lawful owners failing to comply with the relevant weapons regulations. Despite Australia having stringent regulations, the possibility of illegal firearms and explosives being used in acts of domestic terrorism remains an ongoing concern³⁵.

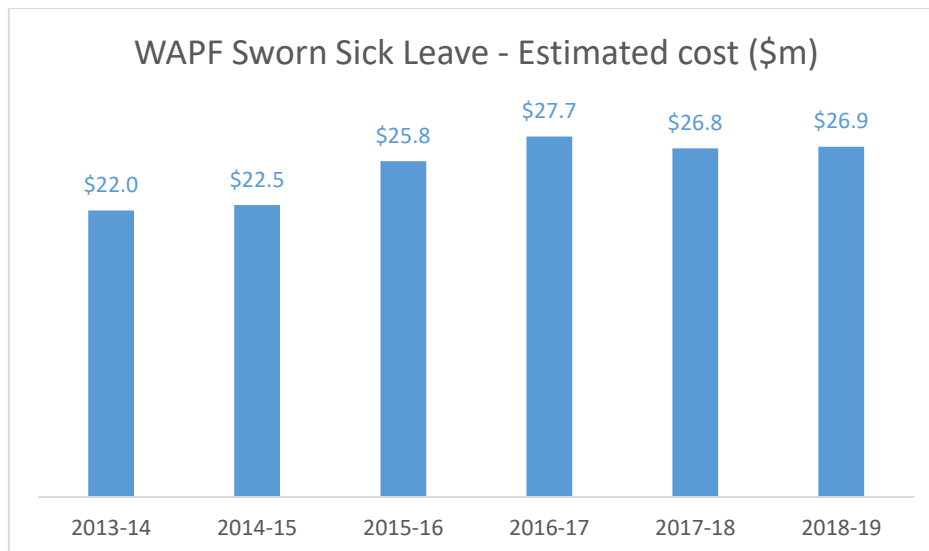
Level of illness and injury

Violent offences continue to form an increasing proportion of our Members' workloads. WAPU argues this has significantly contributed to rising levels of sick leave over the period³⁶.

³⁴ ABS 4519.0 *Recorded Crime, Australia – Offenders*

³⁵ <https://www.aspistrategist.org.au/lessons-from-the-christchurch-attack-firearms-organised-crime-and-terrorism/>

³⁶ Directly supplied by WAPF Human Resources Branch. Data only available for FTE Sworn Officers.



FR-01.01 clearly implies force is intended to be used in situations that entail a reasonable risk of death and/or injury. As described in the CAD samples on pages 14 to 16, using force to apprehend offenders can still result in our Members being injured. Regression analysis confirms a strong positive correlation of **73.9 per cent** (P-value 0.028) between the number of use of force incidents and the annual cost of sick leave for WAPF sworn officers.

Impact of Body Worn Cameras

In March 2019, the State Government announced 4,200 Body Worn Cameras (BWC) would be rolled out to frontline WAPF officers over the next two years³⁷. The announcement expressed the hope that BWCs would help reduce the level of assaults on police officers. Empirical evidence suggests this outcome is uncertain at best.

In December 2019, WAPF and the University of Western Australia released the results of a controlled trial of BWCs involving 498 officers in Perth and Bunbury³⁸. The trial was conducted across June to December 2016. The trial found use of force incidents and citizen complaints of excessive force to be marginally higher on the days BWCs were used³⁹. Further, BWCs had no impact at all on the rates of assault against WAPF officers⁴⁰.

WAPU strongly supports the rollout of BWCs for the purposes of evidence and accountability. However, trial results indicate they are unlikely to improve Member safety or deter violent behaviour by offenders. Any assumption that BWCs reduce the need to use force is not supported by the experience of frontline officers.

³⁷ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2019/03/Body-worn-cameras-to-be-deployed-to-frontline-officers.aspx>

³⁸ <https://link.springer.com/article/10.1007%2Fs11292-019-09387-w>

³⁹ Ibid.

⁴⁰ Ibid.

Summary

The factors behind use of force incidents in WA cannot be identified by statistics alone. Every incident invariably entails a number of unique circumstances that must be considered in determining if use of force was appropriate. But nor should use of force incidents be examined in isolation.

WAPU argues that the available data indicates the growth in use of force incidents over the past six years has significantly been due to:

- An increase in the number of violent offences fuelled by a corresponding increase in the level of substance abuse within the WA community;
- Violent offences forming more a proportion of Member workloads;
- Rising levels of family and domestic violence in the WA community;
- A growing percentage of the population suffering high or very high levels of psychological distress and going untreated;
- The proliferation of dangerous weapons and their potential use in the commissioning of violent crimes;
- A greater risk of injury to WAPF officers working on the frontline; and
- BWCs having no impact on offender behaviour nor assaults on WAPF officers.

In 2016, WAPF and Edith Cowan University released the results of a joint study into use of force training for officers⁴¹. The study found use of force training too narrowly focused on policy and the use of Tasers and firearms⁴². It advocated that WAPF broaden use of force training to include the management of situations where force may be required. Such training would include communication and de-escalation skills, preparing for an encounter, and how use of force incidents should be reported⁴³. It also aligns closely with a number of the organisation responsibilities identified by Australian New Zealand Policy Advisory Agency (ANZPAA).

The above study is now more than three years old. However, much of the WAPF's training still revolves around the STOM. WAPU also has little doubt expanding use of force training along the lines proposed by the study would require a significant investment in resources.

Concerns might be expressed about the level and nature of excessive force. But research suggests that excessive force cannot be prevented by external oversight alone. Use of force

⁴¹ Nikki Rajakaruna, Pamela J. Henry, Amy Cutler & Gordon Fairman (2016): *Ensuring the validity of police use of force training*, Police Practice and Research, DOI: [10.1080/15614263.2016.1268959](https://doi.org/10.1080/15614263.2016.1268959)

⁴² Ibid: p 10.

⁴³ Ibid.

incidents are strongly predicated on the training provided to officers⁴⁴. If excessive force levels in WA are to be reduced, our Members need to be provided with the full gamut of training that allows officers to understand and maintain control of a situation. The onus is on the State Government to provide the necessary funding.

⁴⁴ <https://www.policchiefmagazine.org/education-offers-best-solution-for-police-misconduct/>

Inquiry Terms of Reference – WAPU Response

WAPU acknowledges the legal right to use force carries with it the utmost responsibility. It supports WAPF policy continuing to be based on the key principles established by ANZPAA. Equally critical is what ANZPAA identifies to be the responsibility of police organisations⁴⁵:

- Use a situational model to guide police in the use of force;
- Provide police with regular skill, knowledge development and equipment to safely and effectively respond to potential use of force incidents;
- Make support services available to police involved in use of force incidents;
- Emphasise the importance of effective communication and conflict resolution skills;
- Provide guidance to police to manage risks associated with the use of force; and
- Maintain governance structures to report, record, monitor, and evaluate the use of force to improve public and police safety.

WAPU argues that the existing use of force framework is still not fully meeting these objectives.

TOR 1: The nature and prevalence of allegations of excessive use of force by WA police officers

WAPU argues that use of force options by our Members have never been subject to greater scrutiny. Further, WAPF and the CCC are not the only sources of scrutiny. The rapid growth in digital technology and communications has also increased the likelihood of Members being recorded on the job. All mobile phones and tablets now have video cameras installed as standard, such devices can be used to quickly upload recordings across a variety of social media platforms.

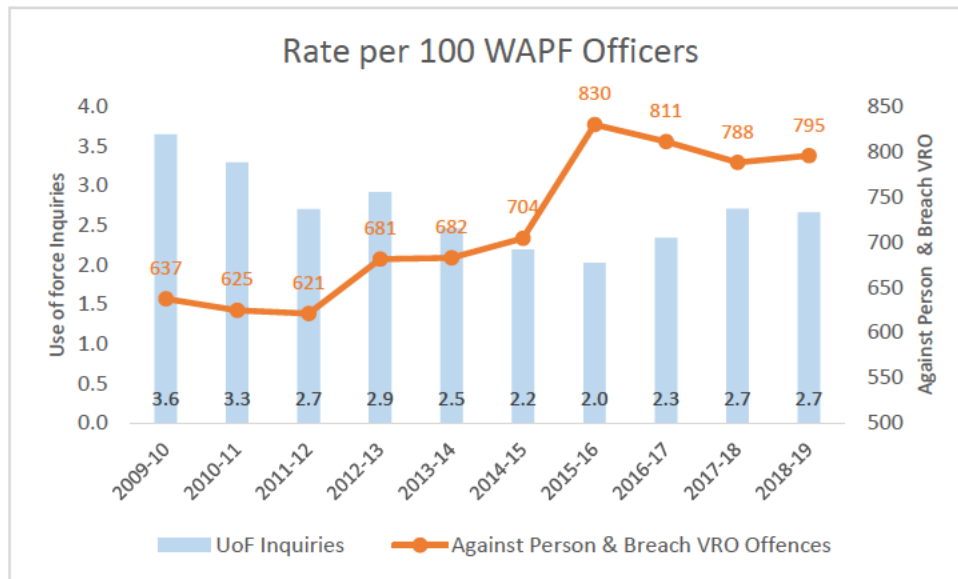
WAPU can find no data about the number of private recordings of WAPF officers on the job. There nonetheless exists a number of Australian websites with detailed advice about making such recordings, one has even developed an app to assist users⁴⁶. However, WAPU would argue the prevalence of excessive force has been declining well before recording technology became widespread.

The WAPF submission stated less than **5 per cent** of excessive force allegations against officers were sustained⁴⁷. This reflects a general trend in use of force inquiries over the last decade (see *Appendix 2*).

⁴⁵ ANZPAA. (2018). *Use of Force Principles*

⁴⁶ <https://www.copwatch.org.au/>

⁴⁷ WAPF. (2020, 24 January). EUSE OF FORCE SUB 9, Attachment p 16.



The number of use of force inquiries fell from 3.6 per 100 officers (sworn & auxiliary) in 2009-10 to 2.7 in 2018-19. By contrast, the rate of Offences Against the Person and Breach VRO offences per 100 officers increased by more than **24.8 per cent**.

On average, the rate of use of force inquiries have been declining for more than a decade. This is despite WAPF officers facing greater forms of scrutiny and higher levels of violent crime. WAPU believes the reduction in the rate of use of force inquiries is a credit to our Members given the circumstances.

TOR 2: Circumstances in which allegations of excessive use of force are investigated internally by WA Police

The *Police Act 1892* (“the Police Act”) and *Police Force Regulations 1979* gives WAPF the power to investigate complaints of excessive force made against police officers. This legislation is used in conjunction with the Managerial Intervention Model (MIM) described in WAPF Policy HR-31.01.

Police officers who are subject to complaint may be compelled to participate in what is referred to as a “managerial interview” under the provisions of the regulations. Police officers will be ordered to participate and to report what they know concerning the incident under investigation.

WAPU strongly advises all Members to contact our office immediately to seek advice if they are given notification to attend any compelled managerial interview or to participate in a criminal interview before responding to the request. It is illegal for an investigator to use the power of compulsion during a managerial interview as a means of acquiring evidence in support of a criminal investigation. WAPU nonetheless advises its Members to preface any managerial interview the following caveat:

“I have been directed to attend here today for the purpose of being interviewed pursuant to Regulation 603 of the Police Force Regulations. This is not a voluntary

interview, but one conducted in the knowledge that should I decline to provide answers without reasonable excuse I may be subject to disciplinary action, which may include my removal.

"I do not consider I have any other option but to answer the questions put to me. I do not give permission for any record of this interview to be disclosed to any third party outside the WA Police.

"I have been advised that the WA Police considers itself legally obliged to disclose my interview to a third party for consideration of criminal matters.

If this record of interview is disclosed to a third party without my permission this is not to be taken as a waiver of my common law right to invoke my privilege against self-incrimination."

WAPU believes it appropriate that investigations into excessive force are primarily conducted by WAPF. However, despite the level of excessive force incidents being generally low, Members have expressed the view that WAPF investigations can sometimes border on the overzealous. Some common complaints include:

- The feeling of being "presumed guilty until proven innocent";
- Member explanation of events not being recorded in the delegated officer's final report;
- The MIM process taking months to complete;
- The resulting stress while waiting on the outcomes of an investigation;
- Inconsistencies in how the MIM is applied depending on who is the Delegated Officer;
- A prolonged investigation reducing opportunities for promotion, higher duties allowance, shift penalties, and other entitlements; and
- Not being informed they can ask for an MIM outcome to be reviewed.

[TOR 3: Circumstances in which allegations of excessive use of force are investigated and/or oversighted by the Corruption and Crime Commission \(CCC\)](#)

WAPU reiterates its position that the CCC remains solely an investigative body in relation to criminal offences. Our Members would strongly oppose any amendment to the *Corruption, Crime and Misconduct Act 2003* ("CCM Act") granting the CCC power to conduct criminal prosecutions.

The landmark decision *A v Maughan* [2016] WACSA 128 originated from the attempted CCC prosecution of a Member a CCC inquiry found to have used excessive force. The Supreme

Court of WA found the prosecution was not lawfully instituted because the CCC had no authority to prosecute offences under the WA Criminal Code.

In the 10 years leading up to the Supreme Court's decision, a number of Members compulsorily examined by the CCC were subsequently prosecuted by the CCC for criminal offences. The whole process could often exceed more than 12 months in duration. Prosecuted Members endured a number of stresses over the period including public humiliation and a lack of fundamental legal rights.

The CCC continues to hold extensive powers including the ability to hold examinations in private and the use of voluntary interviews. Section 145(1) of the CCM Act still does not provide any legal privilege to police officers who participate in voluntary interviews. Any statement made by an officer during a voluntary interview can be used against that officer in any subsequent criminal, civil or disciplinary proceedings. This is despite the Committee recommending in August 2014 that the CCM Act be amended to create a new class of voluntary interviews which creates a privilege on evidence provided when police officers answer questions during interviews with the CCC⁴⁸. It is very disappointing to our Members that this recommendation has still not been implemented more than five years later.

TOR 4: The CCC's 'active oversight' policy and its adequacy in dealing with allegations of excessive use of force

WAPU is not regularly briefed on the level of interface between the CCC and WAPF in relation to investigations about excessive use of force. Though WAPU reiterates its position that the CCC is strictly kept to an oversight role rather than being the primary investigator.

WAPU also advocates that oversight bodies are educated on use of force training undertaken by our Members. Such knowledge is essential if allegations of excessive force are to be investigated in their total context. To that end, it is recommended that both the Committee and CCC should familiarise themselves with current use of force training provided to WAPF Officers. WAPU is prepared to assist with making the necessary arrangements.

TOR 5: The nature of sanctions for excessive use of force allegations which are substantiated

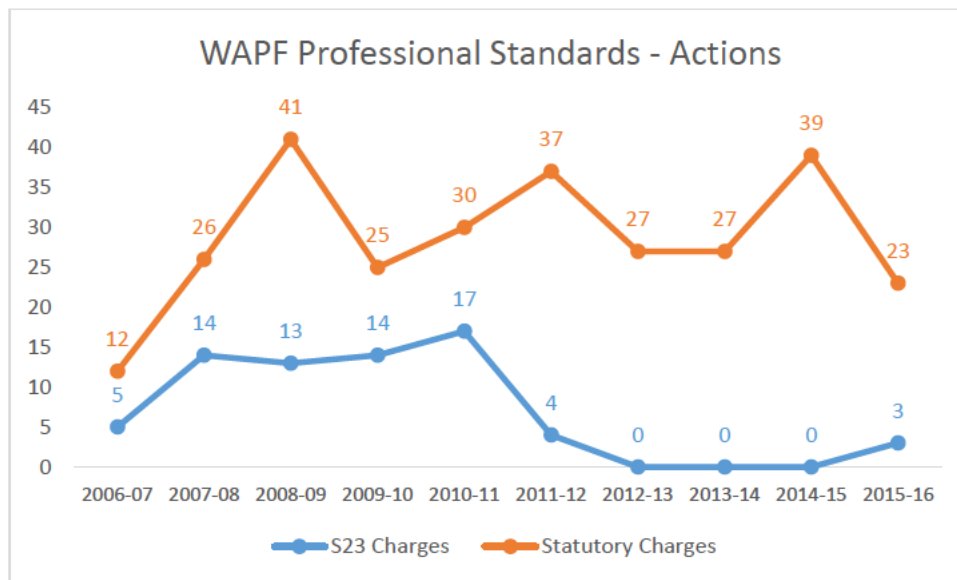
WAPF submission provides a breakdown of the sanctions for excessive force allegations that were sustained over the 2013-14 to 2018-19 period⁴⁹. The MIM accounted for more than **61.7 per cent** of sanctions followed by criminal charges at **19.1 per cent**. By contrast, the Section 23 disciplinary process under the Police Act had only **12.8 per cent**.

⁴⁸ Recommendation No 1 from the Joint Standing Committee on the Corruption and Crime Commission's recommendations in its report, *Corruption and Crime Commission voluntary interviews with WA police officers* (Report No 16, August 2014).

⁴⁹ WAPF. (2020, 24 January). EUSE OF FORCE SUB 9, Attachment p 30

The Section 23 disciplinary process affords the Commissioner (or whoever acts in his delegated authority) the power to investigate any disciplinary offences. If any member of the police force is found to have committed a disciplinary offence, then that officer may be cautioned or may have imposed upon them a punishment, such as a reprimand, monetary fine, demotion, reduction in salary and suspension from duty or discharge/dismissal from duty.

WAPU made a submission to the Community Development and Justice Standing Committee inquiry into the management of WAPF personnel in December 2015. Our submission stated the Section 23 disciplinary process was highly under-utilised for disciplinary matters compared to the MIM which lacked procedural fairness, including no appeal provisions. This observation is supported by WAPF Professional Standards data which revealed that statutory charges were a far more common sanction than disciplinary charges under Section 23⁵⁰.



WAPU believes that many issues raised in its 2015 submission are still current. The *Police Force Regulations 1979* identifies offences generally relating to the conduct of police officers and, in particular, references unnecessary force at Regulation 609 which reads:

609. Unlawful arrest and unnecessary force

A member shall not —

- a) make any unlawful arrest; or
- b) use any unnecessary force on any prisoner or other person with whom the member may be brought into contact in the performance of his or her duty.

⁵⁰ Compiled using WAPF Annual Reports and WAPF Professional Standards Statistical Summary 2015-16

Section 23 of the Police Act relates to disciplinary offences and how they are dealt with. It is the position of WAPU that offences relating to excessive use of force should be dealt with via the Section 23 process and not in the court system. This will ensure that matters pertaining to excessive force are dealt with in a timely manner and ensures that aggrieved persons receive satisfaction in relation to their complaints.

Arguably, this will also be significantly less costly to the WAPF and its officers as the use of State Solicitors or other legal expertise will not be required. It is accepted that matters with an element of criminality (i.e. significant bodily harm) could not be dealt with by this process. This process is not without precedent and similar models can be found within the Australian Defence Force and the WA Department of Corrective Services.

Appendix 1 – Regression Analysis of use of force Incidents & Recorded Offences in WA

| WAPF Recorded Offences | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 | R Square | P-value |
|---|---------------|---------------|---------------|---------------|---------------|---------------|--------------|--------------|
| Murder* | 30 | 28 | 29 | 31 | 30 | 32 | 0.429 | 0.158 |
| Attempted / Conspiracy to Murder* | 8 | 9 | 18 | 18 | 16 | 12 | 0.299 | 0.262 |
| Manslaughter* | 4 | 7 | 7 | 16 | 8 | 10 | 0.194 | 0.382 |
| Driving Causing Death* | 56 | 46 | 39 | 40 | 39 | 39 | -0.690 | 0.041 |
| Recent Sexual Assault† | 1,813 | 1,997 | 2,294 | 2,469 | 2,821 | 2,493 | 0.746 | 0.027 |
| Recent Non-Assaultive Sexual Offences | 846 | 1,333 | 1,115 | 958 | 1,009 | 1,131 | 0.004 | 0.908 |
| Serious Assault (Family)† | 2,680 | 2,946 | 3,541 | 3,606 | 3,485 | 3,702 | 0.817 | 0.013 |
| Common Assault (Family) | 12,115 | 13,131 | 17,167 | 16,155 | 15,439 | 15,588 | 0.535 | 0.098 |
| Serious Assault (Non-Family)† | 3,809 | 3,791 | 3,951 | 4,109 | 4,095 | 4,141 | 0.833 | 0.011 |
| Common Assault (Non-Family) | 6,323 | 6,362 | 7,101 | 7,143 | 7,050 | 6,696 | 0.379 | 0.193 |
| Assault Police Officer | 815 | 808 | 894 | 1,064 | 941 | 975 | 0.476 | 0.130 |
| Threatening Behaviour (Family)† | 1,174 | 1,327 | 2,119 | 2,286 | 1,971 | 2,056 | 0.626 | 0.061 |
| Possess Weapon to Cause Fear (Family)† | 401 | 454 | 641 | 702 | 671 | 628 | 0.649 | 0.053 |
| Threatening Behaviour (Non-Family) | 1,168 | 1,349 | 1,492 | 1,659 | 1,590 | 1,490 | 0.511 | 0.110 |
| Possess Weapon to Cause Fear (Non-Family) | 1,310 | 1,631 | 1,846 | 1,905 | 1,938 | 1,760 | 0.525 | 0.103 |
| Kidnapping / Child Stealing* | 19 | 29 | 28 | 23 | 16 | 15 | 0.297 | 0.263 |
| Deprivation of Liberty† | 209 | 223 | 252 | 269 | 244 | 264 | 0.651 | 0.052 |
| Robbery | 1,438 | 1,342 | 1,369 | 1,345 | 1,253 | 1,373 | 0.221 | 0.347 |
| Breach Family VRO† | 5,164 | 5,279 | 7,271 | 7,564 | 7,658 | 8,135 | 0.909 | 0.003 |
| Breach Non-Family VRO | 1,150 | 1,116 | 1,251 | 1,159 | 959 | 781 | -0.478 | 0.128 |
| Breach Police Order† | 1,705 | 1,824 | 2,600 | 2,581 | 2,415 | 2,507 | 0.682 | 0.043 |
| Risk Offences | 16,955 | 17,841 | 22,669 | 23,586 | 23,360 | 23,926 | 0.840 | 0.010 |

†: Risk Offence

*: Sample size too small to conclude what correlation exists with Use of force incidents.

Offences considered statistically significant with a P-value of 0.07 or less. Value considered optimum to reduce the likelihood of both Type I and Type II errors.

Offence statistics from WAPF Crime Time Series Data: <https://www.police.wa.gov.au/Crime/CrimeStatistics#/>

Appendix 2 – Rate of use of force Inquiries to WAPF Officers

| Year | WAPF Officers | Use of force Inquiries | | Against Person & Breach VRO | |
|---------|---------------|------------------------|-----------------------|-----------------------------|-----------------------|
| | | Number | Rate per 100 officers | Offences | Rate per 100 officers |
| 2009-10 | 5,733 | 209 | 3.6 | 36,529 | 637 |
| 2010-11 | 5,988 | 197 | 3.3 | 37,398 | 625 |
| 2011-12 | 5,999 | 162 | 2.7 | 37,249 | 621 |
| 2012-13 | 6,109 | 178 | 2.9 | 41,599 | 681 |
| 2013-14 | 6,189 | 152 | 2.5 | 42,237 | 682 |
| 2014-15 | 6,395 | 140 | 2.2 | 45,032 | 704 |
| 2015-16 | 6,632 | 134 | 2.0 | 55,025 | 830 |
| 2016-17 | 6,793 | 159 | 2.3 | 55,102 | 811 |
| 2017-18 | 6,808 | 184 | 2.7 | 53,648 | 788 |
| 2018-19 | 6,768 | 180 | 2.7 | 53,828 | 795 |

Sources

WAPF. (2020, 24 January). EUSE OF FORCE SUB 9, Attachment p 4

WAPF. 2014 Annual Report. Supplementary information: Professional Standards Statistical Overview.

<https://www.police.wa.gov.au/Crime/CrimeStatistics#/>