



**Joint Standing Committee on  
the Corruption and Crime  
Commission;**

Inquiry into CCC's oversight of  
police misconduct  
investigations, particularly  
allegations of excessive use of  
force

**14 January 2020**

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## The jurisdiction of the Corruption and Crime Commission

- [1] The Corruption and Crime Commission (the Commission) is a permanent - investigative commission, established to improve continuously the integrity of, and reduce the incidence of misconduct, in the public sector<sup>1</sup> including the WA Police Force.
- [2] The Commission's jurisdiction includes 'police misconduct', which encompasses all types of serious misconduct described in the *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 4, as well as 'reviewable police action'.
- [3] Notifications of police misconduct received by the Commission include allegations of excessive use of force by WA Police officers.
- [4] An officer may lawfully use force against another person, for example, when making an arrest.<sup>2</sup> Use of force may however be 'excessive' when the force used is more than is justified by law under the circumstances.<sup>3</sup>
- [5] Whether a use of force is excessive depends on the particular circumstances of each case. The circumstances in which force can be used, and how much force can be used, is articulated in WA Police Force policies. However, each case is assessed on its own merits.
- [6] In addition to police misconduct, the Commission also undertakes some oversight of the WA Police Force in respect to the extent of compliance with Part 2 of the *Criminal Investigation (Covert Powers) Act 2012* (CICP Act). For the most part, inspections are conducted fortnightly. Any concerns or irregularities that are observed with the records or the manner in which a controlled operation was authorised or conducted are raised with the WA Police Force.
- [7] In 2012, the Joint Standing Committee on the Corruption and Crime Commission tabled a report emphasising the need for the Commission to maintain oversight of the WA Police Force's use of human source. The Commission subsequently undertook a review into the management of human source by the WA Police Force which was completed in 2014, and more recently, in the first half of 2019, undertook a follow up periodical review of human source management.

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<sup>1</sup> CCM Act s 7A(b).

<sup>2</sup> *Criminal Code Act Compilation Act 1914* (Criminal Code) s 231.

<sup>3</sup> Criminal Code s 260.

## The nature and prevalence of allegations of excessive use of force by WA police officers

- [8] The Commission receives allegations concerning excessive use of force by members of the WA Police Force from various sources, including the WA Police Force<sup>4</sup> and members of the public.<sup>5</sup>
- [9] The nature and number of allegations received from the WA Police Force is influenced by reporting requirements under the CCM Act.<sup>6</sup> Consequently, the Commission's records of allegations received are likely to differ to the WA Police Force.
- [10] Pursuant to WA Police Force policy, there are a number of force options available to WA Police officers. The Commission receives allegations concerning all of these force options. The options include:
- Empty hand tactics;
  - Restraints;
  - Batons;
  - Oleoresin Capsicum (OC) spray;
  - Tasers;
  - Use of firearms.
- [11] Between the financial years 2016/2017 and 2018/2019, the Commission assessed a total of 980 allegations of WA Police officers using excessive force. Of those, 771 were received pursuant to the CCM Act s 28 (notifying authority), 198 pursuant to the CCM Act s 25 (any person), two pursuant to the CCM Act s 26 (Commission own proposition) and one pursuant to the CCM Act s 45M (Public Sector Commission).

*Table 1 Excessive use of force allegation source data*

Allegation Source	CCM Act	2016/17	2017/18	2018/19	Total
WA Police Force	s 28	234	272	265	771
Individuals (the public)	s 25	47	66	85	198
Public Sector Commission	s 45M(d)	1	-	-	1
Commission's own proposal	s 26	1	-	1	2
Reviewable police action	s 21A	4	2	-	6
Other information received	s 22	2	-	-	2
<b>Total</b>		<b>289</b>	<b>340</b>	<b>351</b>	<b>980</b>

- [12] The Commission continually reviews how it records and reports on allegations of serious misconduct to ensure it remains relevant and meaningful. In the financial year 2016/17 allegations originating from notifications of reviewable police action began to be processed, and reported, by the Commission as a notification of

<sup>4</sup> CCM Act s 28.

<sup>5</sup> CCM Act s 25.

<sup>6</sup> CCM Act s 28(2).

alleged serious misconduct from a public authority pursuant to s 28 of the CCM Act. The Commission's annual report for 2018/19 marked the final year in which allegations would be reported under CCM Act s 21A, in preference to reporting them under s 28.

### **Circumstances in which allegations of excessive use of force are investigated internally by the WA Police Force**

- [13] The risks posed by excessive use of force by WA Police officers, the efficacy of WA Police Force internal investigations, and the subsequent disciplinary response are the responsibility of the WA Police Commissioner.
- [14] As the misconduct agency for the WA Police Force, the Commission has wide ranging oversight of WA Police Force internal investigations.
- [15] Following receipt of an allegation of excessive use of force by a WA Police officer, the Commission has a number of options to ensure the allegation is addressed appropriately by the WA Police Force.<sup>7</sup> These are outlined in 'The Assessment Process' section below.
- [16] A number of examples and case studies are described in the following chapters of this submission. These provide an illustration into the Commission's oversight of WA Police Force internal investigations of allegations of excessive use of force.
- [17] The WA Police Force, through its Professional Standards portfolio, undertakes internal investigations of allegations of excessive use of force and is best placed to provide details of the circumstances in which it undertakes such internal investigations.

### **Circumstances in which allegations of excessive force are investigated and/or oversighted by the Corruption and Crime Commission**

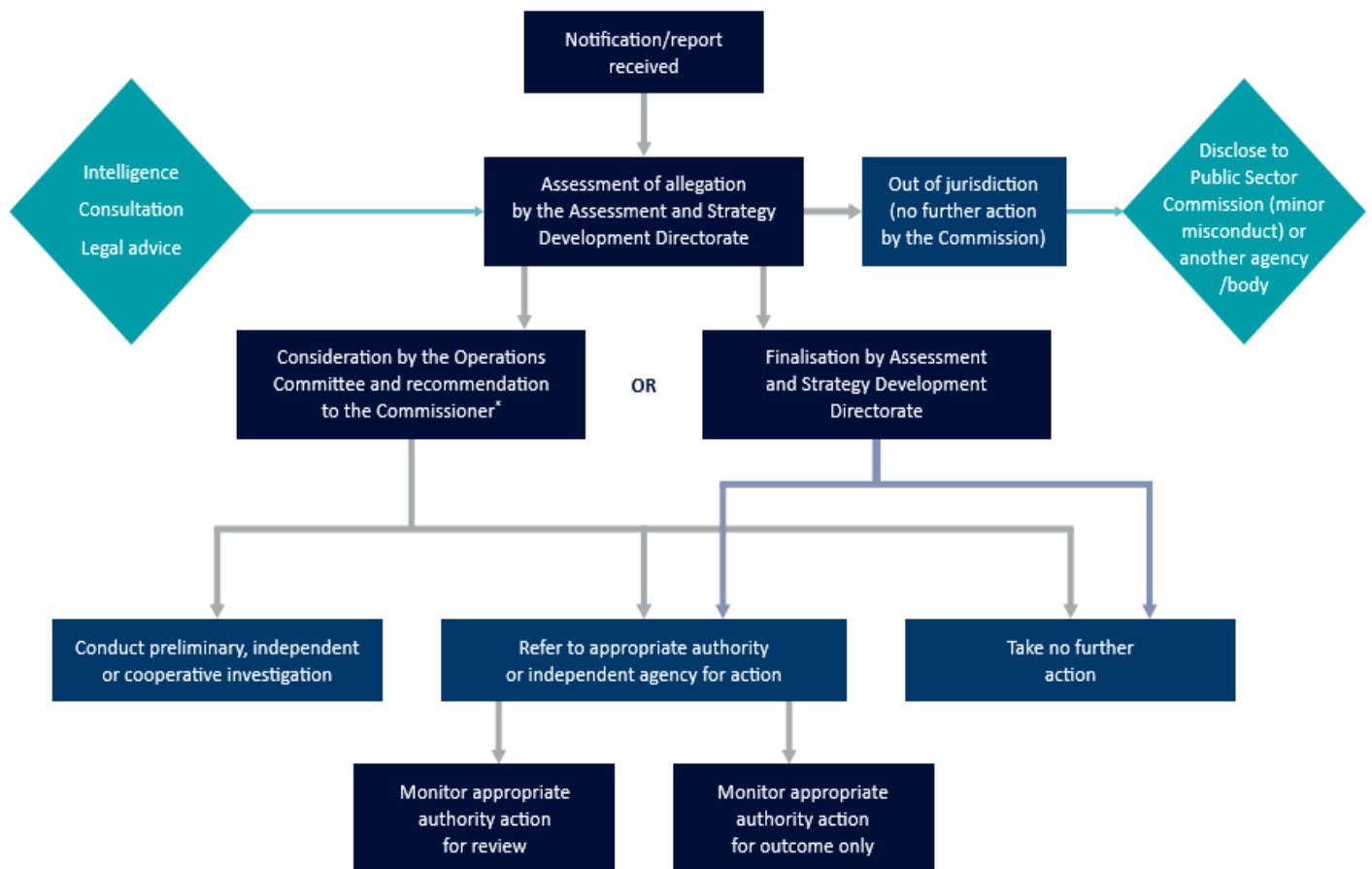
- [18] The Commission utilises the full extent of the provisions contained within the CCM Act to fulfil its legislative responsibilities. The work of the Assessment and Strategy Directorate (ASD), the Operations Directorate and the Legal Services Directorate all contribute to the Commission's role in respect of the WA Police Force and allegations of excessive use of force. This may be generally described as 'oversight'.
- [19] The term 'oversight' is specifically used in reference to the work undertaken by the Commission through its Oversight Team pursuant to the CCM Act ss 40 and 41. Their role in monitoring and reviewing the action taken by the WA Police Force to deal with misconduct is known as 'active oversight' and is discussed in greater detail in the following sections.

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<sup>7</sup> CCM Act s 33.

## The Assessment Process

- [20] The factors that influence the Commission's decision to take action in relation to an allegation of excessive use of force are considered during the Commission's assessment process. The assessment process is outlined below.



\* Allegations that meet certain criteria may be escalated to the Operations Committee for consideration.

- [21] ASD assesses all allegations of serious misconduct received by the Commission. The purpose of the assessment is to form an opinion as to whether there is a reasonable suspicion that a matter involves serious misconduct,<sup>8</sup> and to make a decision on what action (if any) should be taken.<sup>9</sup> It is open to the Commission to decide to take no action.<sup>10</sup>
- [22] ASD's assessment of use of force allegations marks the point at which the available evidence in relation to the incident is obtained and considered by the Commission. From this point the Commission gains a level of visibility over the management of the alleged incident by WA Police Force.
- [23] To inform the Commission's decision on further action, the ASD assessment considers the allegation(s) which have been notified to the Commission and obtains information as to the WA Police Force response to date. The Commission also obtains and considers a range of other evidence including; the subject officer's

<sup>8</sup> CCM Act s 32.

<sup>9</sup> CCM Act s 33(1).

<sup>10</sup> CCM Act s 33(1)(d).

misconduct history, any CCTV footage, associated medical records, statements, and WA Police Force use of force reports.

- [24] During the initial phase of the assessment process, referred to as triage, matters requiring urgent consideration by the Commission are prioritised to ensure timely action is taken.
- [25] In a recent example, the Commission received a s 28 notification from the WA Police Force, and a s 25 report from a member of the public in relation to a use of force incident in November 2019. It was alleged a WA Police officer used 'empty hand' tactics (allegedly a choke-hold) to restrain a person, who as a result, lost consciousness and sustained facial injuries.
- [26] Due to the seriousness of the allegation, the matter progressed to a further assessment report for the consideration of the Commission's Operations Committee.
- [27] The Operations Committee oversees the Commission's assessment and operational activities and recommends to the Commissioner what actions (if any) should be taken in response to allegations. ASD refers allegations to the Operations Committee for consideration when one or more of the following seriousness thresholds are met:
- involvement of senior public officers or elected officials;
  - collusion;
  - significant financial loss;
  - serious injury;
  - threat to public safety;
  - threat to government or public authority integrity;
  - areas of strategic importance (i.e. people at risk, use of force and the WA Police Force); and
  - systemic issues.
- [28] ASD provides detailed assessment reports for consideration by the Operations Committee. These identify the seriousness of the allegation, noting any relevant Commission strategic themes and provides a recommended course of action.
- [29] Six strategic themes guide the work of the Commission in fulfilling its functions:<sup>11</sup>
- people at risk;
  - procurement and financial management;
  - data and information;
  - policy, regulation and licensing;
  - use of force; and
  - the WA Police Force.

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<sup>11</sup> A description of the strategic themes can be found in the Commission's 2018/2019 Annual Report (<https://www.ccc.wa.gov.au/sites/default/files/Corruption%20and%20Crime%20Commission%20Annual%20Report%202018-19.pdf>)

- [30] The strategic themes inform the Commission's decision making following an assessment of an allegation of excessive use of force. This is demonstrated through an incident in regional Western Australia in 2018, involving the WA Police Force, use of force and people at risk. The incident occurred after a number of WA Police officers attended an assault at a local park. Upon arrival the officers commenced making enquiries with the involved parties. Meanwhile, two females who were affected by alcohol started fighting, resulting in one woman being punched and falling to the ground. In response an officer approached the females and deployed OC spray.
- [31] The Commission's assessment of this matter raised concerns over whether the use of OC spray was appropriate in the circumstances. The Commission analysed relevant evidence including CCTV and statements. The Commission's assessment noted that although the females had engaged in a physical altercation, they were separated when the OC spray was deployed, and were no longer in physical contact or an immediate position to resume the fight. Based on the assessment report recommendations, the Operations Committee endorsed this matter for active oversight by the Commission.<sup>12</sup>
- [32] Recommendations contained within assessment reports are also informed by other considerations such as relevant background or contextual information, an analysis of the subject officer's history and any evidence that the conduct may be systemic in nature. Consideration is also given to any anomalies between officer statements, injuries sustained and CCTV footage.
- [33] The Operations Committee takes into account a number of considerations when making decisions about assessments of allegations of excessive use of force by the WA Police Force. These include, but are not limited to, the Commission's confidence in the WA Police Force to adequately investigate the matter, and whether the use of Commission resources is in the public interest.
- [34] The Commissioner must endorse the allocation of Commission resources whether to independently or cooperatively investigate, actively oversight, or review a matter.
- [35] The Commission's resources are limited and must be deployed effectively as investigations are resource intensive.
- [36] When deciding if the Commission should investigate a matter, the Operations Committee considers a range of factors including, whether or not there are likely to be sufficient lines of enquiry for the Commission to pursue to reach a reasonable outcome, and whether the matter is already effectively being managed by another appropriate agency.
- [37] As an example, in March 2018, ASD presented an assessment report to the Operations Committee for consideration in relation to allegations of excessive force when a female's hip was dislocated during her interaction with WA Police officers.<sup>13</sup>

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<sup>12</sup> The WA Police Force's final investigation report regarding this matter has been received and is currently subject to the Commission's s 41 review process.

<sup>13</sup> *Report on an incident in the Fremantle Offender Management Area 1 January 2017 (2019).*

- [38] The assessment report recommended consideration be given to a Commission investigation if resources and other interests permitted. In the alternative, the allegations to be referred to the WA Police Force for action pursuant to the CCM Act s 33(1)(c), subject to active oversight pursuant to ss 40 and 41.
- [39] The Operations Committee decided to commence a cooperative investigation with the WA Police Force, noting that an independent investigation may cause unnecessary delays and duplicate work already completed by the assigned WA Police Force Internal Affairs Unit (IAU) investigators.
- [40] The Commission identified significant public interest in the issues arising from the investigation and released both the CCTV footage and a parliamentary report, to inform the public and as part of the Commission's function to help prevent police misconduct.<sup>14</sup>
- [41] The following table summarises the Commission's assessment outcomes of allegations of excessive use of force by WA Police Force during the financial years of 2016/2017 through to 2018/2019.

*Table 2 Excessive use of force allegation assessment decisions*

Allegation Assessment Decision	2016/17	2017/18	2018/19	Total
s 33(1)(a) - CCC to investigate	-	1	5	6
s 33(1)(b) - CCC to investigate in cooperation with independent agency or appropriate authority	-	5	1	6
s 33(1)(c) - Refer to appropriate authority (monitor for outcome)	173	208	164	545
s 33(1)(c) - Refer to appropriate authority (monitor for review)	11	15	15	41
s 33(1)(d) - Take no action	72	75	76	223
s 33(1)(d) - take no action (record authority outcome)	33	36	90	159
<b>Total</b>	<b>289</b>	<b>340</b>	<b>351</b>	<b>980</b>

## Oversight

- [42] As mentioned, the Commission uses the terms 'oversight' and 'active oversight' to describe the work undertaken by the Commission's Oversight Team in fulfilling the Commission's monitor and review functions.<sup>15</sup> If the Commission decides to refer an allegation to an appropriate authority or independent agency for action, the monitor and review functions provide the Commission with visibility of the way an authority or agency deals with the matter.
- [43] The monitor and review functions also provide the Commission with an alternative to undertaking an independent investigation; a response which can be time and resource intensive. An independent Commission investigation typically requires a team of highly qualified investigators, analysts and other specialist support officers who undertake investigative actions. By way of comparison, a Commission

<sup>14</sup> CCM Act s 21AA.

<sup>15</sup> CCM Act ss 40 and 41.

oversight review team, comprised of two officers, is able to thoroughly monitor and review an authority's response to an allegation of serious misconduct and provide the public with a level of confidence that the response is appropriate.

- [44] For matters which are subject to monitor and review, the responsibility for taking action, and the associated costs, are borne by the appropriate authority. In the case of an independent Commission investigation, typically the appropriate authority is required to cease all action in relation to the matter and the costs associated with the response are borne by the Commission.
- [45] The efficiencies provided by the oversight functions mean the Commission is afforded a greater visibility of serious misconduct across the wider WA public sector, by utilising its resources to monitor and review more allegations of serious misconduct than could be addressed via Commission independent investigation. This is illustrated by the statistics produced in Table 2 above.
- [46] Over the course of time the Commission's oversight function has evolved to also include the consideration of agency responses to formal recommendations, the publication of reports, and commentary or feedback in closure reports for the consideration of a notifying authority. This evolution has proven beneficial as it has identified strengths and weaknesses in WA Police Force investigations, and provided various platforms to expose a number of use of force risks to the WA Police Force, Parliament and the public.

### **Commission Investigations**

- [47] The Commission can conduct investigations independently or in cooperation with the WA Police Force. When a decision is made to investigate allegations of excessive use of force independently or in cooperation with the WA Police Force, the matter is referred to the Operations Directorate.
- [48] Between the 2016/2017 and 2018/2019 financial years, the Commission conducted four investigations (three independent and one cooperative)<sup>16</sup> that arose out of excessive use of force allegations against WA Police officers. Collectively the four investigations contained 12 allegations. Three of these investigations were the subject of reports tabled in Parliament addressing and exposing use of force risks and concerns.<sup>17</sup>
- [49] The Commission has a wide range of powers available to it to conduct its investigations. Investigations into allegations of excessive use of force generally involve the use of the following powers:
- Issuing of notices to produce to the WA Police Force to obtain material such as use of force reports, internal investigation reports and CCTV footage from lock ups and other WA Police Force premises;
  - Issuing of notices to produce to witnesses and subject officers to obtain documents and other things relevant to the investigation;

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<sup>16</sup> The cooperative investigation was initiated by the Commission pursuant to the CCM Act s 26.

<sup>17</sup> *A report into a tasing incident on 31 March 2017 at Fremantle (2018); Review of police response to an incident in High Street Mall Fremantle on 3 September 2017 (2019); Report on an incident in the Fremantle Offender Management Area 1 January 2017 (2019).*

- Interviews and/or examinations of witnesses and subject officers; and
- A report on the outcome of the investigation. Generally, a report will be tabled in parliament if it contains opinions of serious misconduct and/or recommendations under the CCM Act s 43.

[50] Between the 2016/2017 and 2018/2019 financial years the Commission has also conducted a number of proactive investigations, both independently and in cooperation with the WA Police Force, into allegations of inappropriate associations and the unauthorised use of confidential information by WA Police officers. In these cases, the Commission has also deployed its full range of covert capabilities including physical surveillance and technical surveillance, digital forensics and telephone intercepts.

### **The Corruption and Crime Commission's 'active oversight' in dealing with allegations of excessive use of force**

[51] The Commission uses the phrase 'active oversight' to reflect a response that combines both monitor and review functions pursuant to the CCM Act ss 40 and 41.

[52] The Commission may refer an allegation of serious misconduct to a public authority, most often the agency that employs the subject officer, for action. In these instances, the Commission's primary responsibility is to ensure that the public authority deals with the matter adequately.

[53] The Commission's Oversight Team is responsible for actively monitoring and reviewing these matters. The monitor and review functions are fulfilled in three ways:

- Through monitoring appropriate actions for the outcome only pursuant to the CCM Act s 40;
- Through a review of the action taken by an appropriate authority pursuant to the CCM Act s 41; or
- Through active oversight, pursuant to the CCM Act ss 40 and 41.

### **The Commission's monitor and review functions and capability**

[54] Under CCM Act ss 33(1)(c) and 40 the Commission may refer an allegation to a public authority for action, with an obligation that the agency provides the Commission with a detailed report of the action taken, usually on completion. These matters are generally less serious, or are referred back to an appropriate authority that the Commission is confident will respond appropriately.

[55] Once the Commission receives the closure report from the public authority, the information provided is analysed by the Oversight Team. A variety of factors are considered, including: timeliness; planning and preparation; whether the agency's outcome was open to be made; and, the agency's commitment to ongoing training and risk mitigation.

- [56] Between the 2016/2017 and 2018/2019 financial years, the Commission referred 545 allegations concerning excessive force to the WA Police Force for outcome only (see table 2 at paragraph 40).
- [57] The CCM Act s 41 empowers the Commission to conduct a full review of the way an appropriate authority has dealt with allegations of serious misconduct. The review considers whether the actions undertaken by the authority were adequate and whether the conclusions reached by the authority, and the disciplinary response (where applicable), were open to be made on the available evidence. The full review provides the Commission with a level of visibility and confidence in the way serious misconduct is addressed across the public sector.
- [58] While ss 40 and 41 may be used independently of each other, when the Commission determines to utilise both for the purposes of engaging in the 'active oversight' of a matter, the process involves greater levels of engagement, visibility and continual assessment.
- [59] The Commission's s 41 active oversight function is demonstrated through the thorough processes undertaken (active engagement, constant analysis) and the public reports to Parliament or non-public reports to responsible authorities containing feedback and, if appropriate, recommendations<sup>18</sup> as outlined below.
- [60] Following the referral of an allegation of excessive use of force by a WA Police officer for active oversight, Commission officers from the Oversight Team engage with representatives from the WA Police Force. The Commission will explain the basis for its interest in the matter, raise any concerns it may have and detail the activities and schedule associated with the active oversight process.
- [61] In addition to incident-specific engagement, representatives from the Oversight Team engage with the WA Police Force on a monthly basis to obtain progress reports for each matter that is currently subject to active oversight. The Commission may also seek or be provided with updates during engagement between members of the Operations Directorate and the WA Police Force. These regular progress reports allow the Commission to track the progress and direction of the WA Police Force response to each matter.
- [62] Through its engagement program, the Oversight Team can share observations and identify areas of concern in relation to the WA Police Force response, but cannot interfere with, or instruct the WA Police Force on how it should conduct its investigation.
- [63] In the event the response by the WA Police Force continues to concern the Commission, the Commission may at any time reconsider its level of involvement in a matter. In instances such as this, the Oversight Team will prepare a written submission, known as a Recommendation Amendment Review, to the Operations Committee partway through the process. This may recommend that the Commission step in and undertake an independent or cooperative investigation of the matter (see case study one below).

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<sup>18</sup> *Review of Police Response to an incident in a Country Town where Excessive Force was used and an Arrested Person's Details not Recorded (2018).*

- [64] Conversely, the Oversight Team may also make a submission to the Operations Committee recommending that active oversight is no longer required. For example, a matter is not as serious as initially reported, and therefore does not require active oversight.
- [65] In 2018/2019 the Commission began producing more detailed closure reports to record the results of each review conducted pursuant to the CCM Act s 41. The reports, produced to support the Commission's serious misconduct function pursuant to the CCM Act ss 18(4)(c)(d)(e), are sent to the relevant heads of the agency. These reports are endorsed by the Commissioner and articulate the Commission's review conclusions and observations in relation to whether or not the agency's actions and conclusions were considered appropriate.
- [66] In respect of the WA Police Force, these reports are sent to the Commissioner of Police. The Commission's review conclusion is not a finding, opinion or recommendation regarding the conduct of any person.<sup>19</sup>
- [67] Between the 2016/2017 and 2018/2019 financial years, the Commission actively monitored and reviewed the WA Police Force's management of 28 matters involving 41 allegations of excessive use of force. Of these;
- 12 allegations are currently subject to ongoing active oversight by the Oversight Team;
  - 27 allegations were deemed to have been adequately investigated by the WA Police Force (see case study two);
  - One allegation was deemed to have been inadequately investigated by the WA Police Force (see case study three); and
  - Due to concerns relating to how the WA Police Force was dealing with the matter, one allegation was proactively changed from active oversight to an investigation conducted by the Commission (see case study one).
- [68] These are a true reflection of the Commission's commitment and ability to adequately address allegations of excessive use of force concerning police officers through its oversight function.
- [69] The Commission concluded the majority of the WA Police Force use of force investigations subject to active oversight by the Commission were conducted adequately.
- [70] Where the Commission concludes that a matter has been adequately investigated by the WA Police Force, the Commission may also include comments in its closure reports for the WA Police Force's consideration. For example, in 2018 the WA Police Force sustained an allegation of excessive force against one of its members. The officer was dealt with pursuant to the *Police Act 1982* s 23, pleaded guilty and was issued a fine. Although the Commission deemed the investigation adequate, the Commission's closure report suggested that the WA Police Force consider bespoke refresher use of force training for the subject officer as part of the long term management of the officer's conduct.

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<sup>19</sup> CCM Act s 217A.

### Case study one: police taser deployed in a vehicle

- [71] In March 2017 Senior Constable (S/C) Keenan deployed his police issued taser against the driver of a vehicle following a routine vehicle stop during which the driver was issued a work order.<sup>20</sup> S/C Keenan reported that he utilised the force option after the driver of the vehicle obstructed his attempts to remove the keys from the vehicle. The incident was captured via mobile phone footage.
- [72] This matter was initially notified to the Commission by the WA Police Force pursuant to the CCM Act s 28. The Commission's assessment of the matter raised concerns about the level of force used by S/C Keenan as depicted in the footage. During the Commission's assessment of the incident the WA Police Force advised it was considering a criminal investigation into the matter. The Commissioner endorsed this matter for 'active oversight'.
- [73] During the active oversight process, the Oversight Team engaged and met with members from the Police Conduct Investigation Unit (PCIU) and the Investigating officer (I/O) from the Traffic Enforcement Group. This early engagement provided the Commission with an opportunity to reiterate the intent of the oversight process and to identify the areas of concern to the Commission. During the meeting, the I/O explained that the investigation was almost complete, and both criminal and managerial investigations had been conducted. Neither investigation found evidence of excessive force or assault by S/C Keenan. The Commission was advised that the use of the taser was justified and lawful.
- [74] Prior to the finalisation of an internal WA Police Force review of this investigation, the Commission raised concerns in relation to the progress of the WA Police Force response and the proposed outcome.
- [75] The WA Police Force reviewing officer however found that the investigation conducted by the I/O was appropriate and S/C Keenan's actions were justified by law. These findings were reported to the Commission.
- [76] The Commission, via the Oversight Team, reviewed the WA Police Force response and identified that its concerns remained in relation to the initial incident, and that further concerns had emerged in relation to the WA Police Force investigation and the subsequent review of that investigation. The Oversight Team submitted a Recommendation Amendment Report to the Commission's Operations Committee. The report recommended the Commission amend its original decision to refer the matter to the WA Police Force, and instead conduct an independent investigation into the use of force by S/C Keenan pursuant to the CCM Act s 33(1)(a). This recommendation was endorsed.
- [77] As part of the investigation, the Commission:
- obtained further material from the WA Police Force not obtained during the oversight process, including witness statements, the statement of material facts, use of force training records and call charge records for some of the officers involved;
  - conducted enquiries to determine if there was further evidence in relation to the incident, including door to door enquiries in the immediate area and

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<sup>20</sup> A report into a tasering incident on 31 March 2017 at Fremantle (2018).

contacting the City of Fremantle and premises surrounding the incident location to determine if CCTV was available; and

- conducted interviews and a series of private examinations with the subject officers and witnesses.

- [78] On 21 March 2018 the Commission tabled its report titled 'Report into a Tasing Incident on 31 March 2017 at Fremantle'. The Commission concluded that there was no lawful jurisdiction for the driver of the vehicle to be tasered; the tasing was unreasonable and oppressive. Contrary to the WA Police Force's findings, the Commission formed an opinion of serious misconduct by S/C Keenan.
- [79] Subsequent to the Commission's report, S/C Keenan was charged and convicted with two counts of common assault by the WA Police Force.

### **Case study two: taser incident after verbal altercation with police**

- [80] In 2017, two WA Police officers (Officer A and Officer B) attended the home of a male to conduct enquiries and to serve him with a Police Order. The interaction resulted in the male being tasered after a verbal altercation with the officers. Parts of the interaction were captured on mobile phone footage.
- [81] In 2017 a complaint about the incident was made to the WA Police Force, who subsequently reported the matter to the Commission. It was alleged that Officer A used excessive force by tasing the male when he no longer posed a threat. The Commission referred the allegation to the WA Police Force for action and decided to actively oversight the way in which the allegation was dealt with.
- [82] At the time of the referral, the Commission was reviewing a number of other matters where officers had engaged their taser prior to actual engagement with the subject. The Commission was concerned that WA Police Force responses in some matters were escalated too quickly to use of force options.
- [83] The WA Police Force investigation was conducted locally and later reviewed by the PCIU. The WA Police Force investigation considered the use of force allegation and identified other issues such as the officer's unprofessional conduct. Through its internal review process, PCIU identified a further conduct issue which was included in the final investigation report. A number of allegations were sustained.
- [84] The Commission, through the Oversight Team, reviewed the WA Police Force investigation, concluding that a thorough investigation had been undertaken and the conclusions reached were open to the WA Police Force to make on the available evidence. In the Commission's closure report it was noted that while the disciplinary penalty of a reprimand was open to the WA Police Force to impose, in the context of Officer A's use of force, it was at the lower end of the outcomes available.

### **Case study three: police vehicle struck a member of the public**

- [85] In 2018 an aboriginal male was struck by a police vehicle and force was used against his sister who witnessed the collision. WA Police Force Officer A and Officer B were dispatched to attend a disturbance. After observing what was believed to be an assault while enroute to the location, Officer A pursued a male person who fled on foot.
- [86] During the short pursuit, the vehicle, being driven by Officer A, crossed to the wrong side of the road and onto the footpath where the male was running. Shortly after the male was struck by the front driver's side of the vehicle.
- [87] After the collision both the male and his sister, who was in the area and responded to the incident, were detained by the officers. Officers deployed OC spray against the sister.
- [88] In March 2018, the WA Police Force notified the Commission. Due to the nature of the incident (collision and use of force), its regional location and vulnerable victims, the Commission endorsed this matter for active oversight.
- [89] The WA Police Force's final investigation determined that Officer A's actions were careless and contrary to the *Road Traffic Act 1974* s 62. WA Police Force also found that Officer A's actions were contrary to the *Police Force Regulations 1979* r 601(2). WA Police subsequently issued Officer A with a traffic infringement notice for careless driving.
- [90] On completion of its review, the Commission concluded that while the WA Police Force conducted a thorough and appropriate investigation in relation to the collision, it failed to adequately investigate all concerns identified in this matter. In its closure report to the Commissioner of Police, the Commission noted that delays in the investigative response and the failure to address all of the allegations relating to the incident, hindered any opportunity to redress the deficiencies identified.

### **Case study four: fatal use of force**

- [91] All fatal use of force incidents meet the Commission's seriousness threshold for involvement. When deciding the level of involvement the Commission considers a number of factors, including the role of the Coroner in investigating deaths "caused, or contributed to, by any action of a member of the Police Force"<sup>21</sup> and the prescribed WA Police Force response to incidents of this nature.
- [92] Fatal use of force incidents trigger an early, often verbal, notification to the Commission. The Commission's oversight is facilitated through engagement between members of the Commission's Executive, Commissioned WA Police officers, and established points of contact between the Commission and the WA Police Force Homicide Squad, who are responsible for the initial criminal investigation.
- [93] The Commission generally decides to actively oversight these incidents, enabling the Commission to have good visibility of the way it is investigated by the

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<sup>21</sup> The *Coroners Act 1996* s 22(1)(b).

WA Police Force and any emerging issues. However, the Commission can also determine to investigate a fatal use of force incident, either independently or in cooperation with the WA Police Force. Further, the Commission may at any time reconsider its decision to actively oversight a fatal use of force matter and elect to commence its own investigation, or a cooperative investigation.

- [94] In 2017, the Commission received a notification from the WA Police Force concerning a fatal shooting incident. The incident involved the WA Police Force Tactical Response Group (TRG) and a suspect in a number of serious crimes. The TRG planned to conduct an arrest, however, the arrest became problematic and resulted in the suspect producing a shotgun. The officers discharged their firearms at the suspect who received a number of gunshot wounds. The suspect was conveyed to hospital and was declared deceased.
- [95] After the incident Commission officers received a verbal briefing from members of IAU. The information provided by the WA Police Force at the briefing did not adequately address concerns held by the Commission in relation to the incident. As a result the Commission referred this matter back to the WA Police Force for investigation subject to active oversight by the Commission.
- [96] Early in the WA Police Force investigation, the Commission's Oversight Team engaged with IAU to discuss and monitor the progress of the investigation and to reiterate the Commission's concerns. Throughout the active oversight process, the Oversight Team received 15 formal progress updates from IAU, delivered via briefings, scheduled monthly meetings or in writing. During the course of the WA Police Force investigation the Commission was informed of any critical decisions made in relation to the investigation, it updated on the evidence collected and considered, and it was advised of the final investigation outcome prior to the matter being finalised.
- [97] The Oversight Team also reviewed IAU's final investigation report. In 2019, the Commission's oversight closure report was disclosed to IAU and the WA Police Force Commissioner for the purpose of providing formal feedback in relation to the WA Police Force investigation of the incident.
- [98] The Commission's report concluded that both the criminal and disciplinary investigations by the WA Police Force were conducted to an appropriate standard and had considered relevant evidence. The Commission considered the outcomes were appropriate and open to the WA Police Force to make.
- [99] The Commission report also detailed the Commission's initial concerns which related to the risk assessment conducted prior to engagement by the TRG officers, and included comments capturing the Commission's concerns around the level of risk posed to members of the public who were in the immediate vicinity of the shooting.

### **The nature of sanctions for excessive use of force allegations which are substantiated**

- [100] The WA Police Force may impose on its officers a number of different sanctions. The responsibility for imposing sanctions on WA Police Force members rests with the WA Police Force Commissioner.
- [101] At the completion of an internal investigation (through PCIU or IAU), the WA Police Force have a number of sanctions available when an allegation of excessive force has been sustained:
- Managerial intervention (verbal guidance, Managerial Notice or Assistant Commissioner Warning Notice);
  - Disciplinary charges under the *Police Act 1982* s 23 determined by the Commissioner of Police or delegate; and
  - Criminal charges.
- [102] The Commission has oversight of the WA Police Force's response to allegations of serious misconduct, and can consider whether their conclusions reached, and disciplinary response, were open to be made on the available evidence.
- [103] If the Commission identifies a matter where the sanction is not deemed appropriate, a number of actions are available. The Commission may provide informal feedback during engagement with the WA Police Force. It may provide formal commentary in a review closure report, or it may amend its original decision and have more active involvement in the matter, such as commencing its own investigation.