

Report on oversight of a police investigation into an arrest for disorderly conduct

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CHAPTER ONE

Overview

- [1] Appropriate authorities,¹ including the WA Police Force, are responsible for preventing, identifying and responding to misconduct risks within their agencies.
- [2] It is a function of the Corruption and Crime Commission to ensure allegations of serious misconduct are dealt with in an appropriate way.² One way the Commission achieves this is through its monitoring and review function.³
- [3] This report details how the Commission monitored and reviewed the way WA Police dealt with an allegation of misconduct. The review identified various deficiencies.
- [4] In May 2020, Mr X⁴ was arrested and charged with Disorderly Behaviour in Public and Assault Public Officer. He made a complaint to the WA Police and the Commission. After an initial investigation, the charges against Mr X were discontinued by WA Police.
- [5] The Commission and the Commission's oversight body, the Office of the Parliamentary Inspector (PI), identified concerns with WA Police's investigation into this matter.
- [6] WA Police reopened their file. However, it took over two years to finalise the investigation into Mr X's complaint. After multiple investigations and reviews, WA Police concluded Mr X's arrest was lawful; the charges were appropriate; and the force used was not excessive.
- [7] In its response to the draft report, WA Police acknowledged that as a result of the complaint made by Mr X, 'the prosecution against him was discontinued and the officer involved in his arrest received managerial guidance'.
- [8] The Commission reviewed the WA Police investigation⁵ and determined it was inadequate. The time taken to finalise this matter was unacceptable. Deficiencies were identified in WA Police processes and their quality

¹ As defined by *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 3.

² CCM Act s 18(1).

³ CCM Act ss 40 and 41.

⁴ This report does not contain the true names of the persons involved. The Commission has determined there is no public interest in identifying the involved individuals.

⁵ CCM Act ss 40 and 41.

assurance processes neglected to ensure transparent and accountable investigation management.

- [9] WA Police determined Mr X's arrest was lawful.⁶ The Commission agrees. Given the minor nature of the incident, the Commission considers the arrest and subsequent Assault Public Officer charge were oppressive in the circumstances.⁷
- [10] Police officers have powers beyond those available to ordinary citizens. When exercising the power of arrest,⁸ they must consider not only whether it is lawful, but also whether it is reasonably necessary and appropriate in the circumstances.
- [11] The Commission is not empowered to substitute its own view for that of an appropriate authority where a matter has been referred for action. The Commission's role is limited to reviewing the way in which an appropriate authority has dealt with an allegation of serious misconduct. The conclusions reached by WA Police were open to be made on the evidence.
- [12] WA Police conceded their investigation management was deficient. It is acknowledged they have recommended actions to address this issue.
- [13] The Commission recommends that WA Police:
- a. Review and amend policies and procedures to clearly articulate acceptable timeframes for investigation and review, including internal reviews of such investigations.
- [14] In its response to the draft report, WA Police advised:
- The WA Police Force commits to review the deficiencies identified in the Commission's report against the application to the WA Police Integrity Framework Manual...to improve any deficiencies, ensuring investigations are completed to the highest standard and in a timelier manner.*
- ...
- The Integrity Framework includes direction to officers on the expected timeframes to complete investigations. This will be reviewed and enhancements made where possible.*
- [15] The Commission will review WA Police's response to the recommendation in 12 months' time.

⁶ Final Investigation Report received from WA Police, dated 4 August 2022.

⁷ CCM Act s 3 - Reviewable Police Action.

⁸ *Criminal Investigation Act 2006* s 128.

CHAPTER TWO

The Incident

- [16] On 8 May 2020, Mr X approached two police officers, Officer A and Officer B, in a shopping centre. Mr X was being followed by two security guards. The interaction and subsequent events were captured on the officers' body worn cameras (BWC).
- [17] Mr X was subject to a Banning Notice that restricted his attendance at the shopping centre.⁹ On the morning of the incident, Officers A and B had been made aware of this notice and Mr X's previous dealings with WA Police.
- [18] After a brief interaction, Officer A asked Mr X whether he was allowed to be in the shopping centre. Mr X appeared agitated, explaining he still had time before he was required to leave. He showed the officers a copy of his Banning Notice, reiterated he had time left and pointed to the conditions.
- [19] Mr X walked away. In doing so he pushed past Officer A, making slight contact with his arm.
- [20] Both officers immediately followed Mr X.
- [21] Officer A grabbed Mr X's arm to stop him and said words to the effect of, "don't push me off you while we are trying to talk...if you act like a fool, I will treat you like a fool..."
- [22] Mr X stopped and challenged Officer A as to why he was touching him. Officer A referred to Mr X "barging past" him, to which Mr X responded, "yes I am that's right" and added that he was allowed to be in the shopping centre.
- [23] The officers, with the assistance of the security guards, restrained Mr X on the ground. He was handcuffed and arrested on suspicion of Disorderly Behaviour.¹⁰
- [24] While on the ground Mr X continued to question the officers' authority. Officer A advised that Mr X's actions of pushing past him was behaviour that could result in a Move on Notice and constituted an assault.

⁹ Shopping centre management, staff and security guards can issue banning notices that may stop persons from being in certain places and/or restrict their access to certain days and times. Failing to comply with a Banning Notice can lead to a person being charged by the Police with Trespass.

¹⁰ Criminal Code s 74A.

[25] Mr X was taken back to the police station, charged with the offence of Disorderly Behaviour and released. Three days later, Mr X was charged with an additional offence, Assault Public Officer¹¹ from the incident.

¹¹ Criminal Code s 318(1).

CHAPTER THREE

Mr X's complaint

Commission's initial actions

- [26] On 18 May 2020, Mr X lodged a complaint with WA Police about his arrest at the shopping centre. WA Police notified the Commission on 19 May 2020.¹²
- [27] The Commission assessed the information and initially identified concerns with the lawfulness of Mr X's arrest.
- [28] On 8 June 2020, the Commission referred the matter back to WA Police for action with the requirement they provide their final investigation report to the Commission once the matter was finalised.¹³
- [29] In October 2020, Mr X made a report directly to the Commission.¹⁴

WA Police initial investigation

- [30] WA Police Professional Standards Division (PSD) is responsible for allocating investigations, monitoring the progress, granting extensions where required and reviewing files upon completion.
- [31] PSD allocated the matter as a Minor Conduct Report (MCR)¹⁵ and assigned Mr X's complaint to the District Office, where Officer A and Officer B were stationed, for investigation.
- [32] The district investigation reviewed the charges against Mr X. On 9 June 2020, the charges were discontinued.¹⁶
- [33] The investigation considered evidence including Mr X's complaint, interviews conducted with Officer A and B, and BWC footage.
- [34] The investigation concluded Officer A had used unprofessional language towards Mr X. A developmental discussion was held with Officer A.
- [35] An outcome of 'not accepted'¹⁷ was recorded for the investigation.

¹² CCM Act s 28.

¹³ CCM Act ss 33(1)(c) and 40.

¹⁴ CCM Act s 25.

¹⁵ The WA Police Integrity Manual Framework describes the MCR process "Allegations of police misconduct triaged as 'minor' can be resolved at a local level...low risk investigations".

¹⁶ *Criminal Procedure Act 2004* s 25.

¹⁷ Defined in the WA Police Force MCR Guide as "The allegations are not supported".

- [36] In June 2020, the district investigation was finalised, endorsed by PSD and WA Police informed the Commission the investigation was complete.
- [37] The WA Police outcome was receipted, recorded and the Commission closed its file.

The Parliamentary Inspector

- [38] Dissatisfied with the outcome of his complaint to the Commission and WA Police, Mr X contacted the PI.
- [39] Relevantly, the PI's functions include to assess the effectiveness and appropriateness of the Commission's procedures.¹⁸
- [40] Upon reviewing the Commission's records, the PI raised issues with the WA Police investigation and requested the Commission reconsider the matter.¹⁹

¹⁸ CCM Act s 195.

¹⁹ [Parliamentary Inspector of the Corruption and Crime Commission Annual Report 2021-2022 \(www.wa.gov.au\)](https://www.wa.gov.au), page 7.

CHAPTER FOUR

Subsequent investigations by WA Police

- [41] In February 2021, following a request for further information from the Commission, WA Police advised they were reinvestigating the matter.²⁰ WA Police were advised the matter would be subject to Commission review.²¹
- [42] PSD took carriage of the reinvestigation and allocated the matter back to the same District Office that conducted the initial investigation.
- [43] Between March 2021 and August 2022, the initial investigation was reviewed at least five times by different officers from the District Office and PSD. Following these reviews, a sixth and final action was taken by the District Office in the form of an investigation, with PSD conducting a final review.
- [44] Collectively the various desktop reviews and final investigation considered the following issues:
- a. Was Mr X's arrest lawful?
 - b. Were the charges appropriate?
 - c. Did the officers use unnecessary force during Mr X's arrest?
 - d. Was Officer A unprofessional towards Mr X?
- [45] The multiple desktop reviews considered the same evidence as the initial investigation. Although no new lines of enquiry were explored, each review reached differing opinions regarding the lawfulness of Mr X's arrest. The disparity was around whether Mr X's conduct met the elements of the offence of Disorderly Behaviour and therefore, whether his arrest was lawful.
- [46] The final investigation considered the evidence gathered in the initial investigation, as well as further information from Officer A who was reinterviewed in December 2021. It also identified record keeping issues, specifically that some original witness evidence was not saved on the initial investigation case file. The final investigation questioned whether the previous reviews were aware of this issue.

²⁰ Email to Manager Oversight from Assistant Divisional Officer, Police Conduct Investigation Unit, 12 February 2021.

²¹ CCM Act s 41.

WA Police conclusion

- [47] In December 2021 the District Office finalised its investigation. The investigation was sent to PSD for review.
- [48] The Commission requested monthly updates from PSD. Between February and June 2022, WA Police advised the matter was in their Quality Assurance Process. In June 2022, the Commission formally wrote to the Commissioner of Police, as at that date the investigation had not been formalised.
- [49] In August 2022, PSD provided its finalised review of the District Office investigation to the Commission, endorsing the following conclusions:
- a. Mr X's arrest was lawful. The officers reasonably suspected he had committed the offence of Disorderly Behaviour and may continue to commit the offence.
 - b. The charges preferred were appropriate, a case existed for both Disorderly Behaviour and Assault Public Officer.
 - c. The force used by the officers was an appropriate response to Mr X's behaviour.
 - d. Officer A used unprofessional language and unnecessarily escalated the situation with Mr X, which did not reflect well on WA Police.
- [50] Officer A was reprimanded for a second time for a breach of conduct and professionalism. In this instance, in the form of a formal Managerial Notice.²²
- [51] In its final report to the Commission, WA Police acknowledged the poor time management of this matter. They recognised that a review of PSD processes and procedures was required to ensure timeframes for the completion of investigations and reviews are clear and followed.

²² A Managerial Notice is a formal communication provided to the subject officer outlining the significance of the unprofessional conduct alleged and reinforces the expectations of the WA Police Force and community.

CHAPTER FIVE

Commission's review

- [52] A Commission review is not an investigation. It focuses on the quality of an investigation undertaken by an appropriate authority, and whether the conclusions reached were open on the evidence.
- [53] The Commission reviewed the actions taken by WA Police from 2020 to 2022 and all available evidence.
- [54] The following significant failings were identified in the actions taken by WA Police:
- a. There was an unreasonable delay in the time it took WA Police to finalise the matter. The issues that required investigation were not complex. Despite this, it took over two years for the investigation to be finalised.
 - b. Various actions taken by WA Police between 2020 and 2022 were not transparent. The Commission's review was unable to identify how WA Police reached its initial conclusions nor the rationale for the numerous reviews that followed.
 - c. The final investigation report noted poor quality record-keeping. This raised concerns of mismanagement in the WA Police investigation.
- [55] PSD has an oversight and quality assurance role. It is unclear what actions, if any, were taken by PSD to monitor the district actions/investigations.
- [56] After two years WA Police reached a final conclusion that the arrest of Mr X was lawful.
- [57] The Commission agrees. On the evidence available, the conclusions reached by WA Police were open to be made.
- [58] However, while the exercise of a power may be lawful, it does not automatically follow that it is the most appropriate action to take in the circumstances.
- [59] WA Police concluded that the charges for both offences were appropriate. Mr X was originally arrested for Disorderly Behaviour, the penalty being a fine of up to \$6,000.²³ He was later charged with a further offence, Assault Public Officer. This carries a penalty of seven years' imprisonment.²⁴

²³ Criminal Code s 74A.

²⁴ Criminal Code s 318.

- [60] In considering the circumstances, the Commission questions WA Police's decision to pursue the charge of Assault Public Officer. The contact made by Mr X was minor in nature. The Commission considers the arrest, and the subsequent charge of Assault Public Officer, were oppressive in the circumstances.
- [61] However, the Commission considers that the conclusions reached by WA Police were open on the evidence. The Commission's function is not to conduct a merits review of the conclusions reached by an appropriate authority. While the Commission may have a different view, it is not the Commission's role to substitute its view as to how a discretion should be exercised for that of WA Police.

CHAPTER SIX

Conclusion

- [62] It is important that appropriate authorities, including WA Police, manage investigations of serious misconduct in a time efficient, transparent and thorough manner. This strengthens public confidence and accountability and ensures a fair process for all persons involved.
- [63] The Commission has reviewed the investigations undertaken by WA Police.
- [64] While the Commission considers the arrest of Mr X and subsequent Assault Public Officer charge were oppressive, the conclusions reached in the final investigation were open to be made on the evidence.
- [65] However, the actions taken by WA Police to investigate Mr X's complaint were deficient in various respects. The Commission considers the investigation inadequate.
- [66] The time taken to finalise this matter was unacceptable. Deficiencies in WA Police processes, such as the quality assurance process, were exposed by the lack of transparency. The reasons behind the various actions and decisions remain unknown and are incapable of review.
- [67] The Commission recommends WA Police:
- a. Review and amend policies and procedures to clearly articulate acceptable timeframes for investigation and review, including internal reviews of such investigations.
- [68] The Commission acknowledges that WA Police have suggested actions to address the wider issue of time management for investigations. WA Police have committed to reviewing their Integrity Framework Manual to improve any deficiencies and to regularly engage with the Commission to refine and enhance investigation and review processes.
- [69] The Commission will review WA Police's response to the recommendation in 12 months' time.