

Review of Police
Response to an
Incident in a Country
Town where Excessive
Force was used and
an Arrested Person's
Details not Recorded

21 March 2018



ISBN: 978-0-9943035-6-1

© 2018 Copyright in this work is held by the Corruption and Crime Commission (“the Commission”). Division 3 of the *Copyright Act 1968* (Cth) recognises that limited further use of this material can occur for the purposes of ‘fair dealing’, for example, study, research or criticism. Should you wish to make use of this material other than as permitted by the *Copyright Act 1968* please write to the Commission at the postal address below.

This report and further information about the Commission can be found on the Commission website at www.ccc.wa.gov.au.

Corruption and Crime Commission

Postal Address	PO Box 330 Northbridge Post Shop WA 6865	Email	info@ccc.wa.gov.au
		Website	www.ccc.wa.gov.au
Telephone	(08) 9215 4888 1800 809 000 (toll free for callers outside the Perth metropolitan area)	Twitter	@CCCWestAus
		Office Hours	8.30 am to 5.00 pm, Monday to Friday
Facsimile	(08) 9215 4884		

Special Needs Services

If you have a speech or hearing difficulty, contact the Commission via the National Relay Service (NRS) on 133 677 for assistance or visit the NRS website, www.relayservice.com.au. NRS is an Australia-wide telephone service available at no additional charge. The Commission’s toll-free number is 1800 809 000.

If your preferred language is a language other than English, contact the Translating and Interpreting Service (TIS) for assistance on 13 14 50. TIS provides a free, national, 24 hours a day, seven days a week telephone interpreting service. TIS also provide on-site interpreters for face-to-face interviews by contacting 1300 655 082.

TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER ONE.....	3
The role of the Commission	3
The Commission's jurisdiction in respect of the WA Police Force	3
What happens when an allegation is reported.....	3
The Commission's oversight role	5
Active monitoring and review	5
Anonymity	6
CHAPTER TWO.....	7
The Commission review	7
Scope of the review.....	7
Relevant police officers and their duties on the night.....	8
CHAPTER THREE	11
The incident in the vicinity of the licensed premises.....	11
Officer accounts	12
The licensed premises incident report.....	12
Internal Affairs Unit investigation and the action taken by the WA Police Force	13
Conclusion	13
CHAPTER FOUR.....	15
Use of force at a country town police station - the incidents in the sally port and custody area.....	15
Officer accounts	15
Injuries sustained by Mr Rhodes.....	17
WA Police Force Use of Force policy and training	17
Internal Affairs Unit investigation and the action taken by the WA Police Force	20
The decision not to charge Senior Constable Herman.....	21
Further training and development.....	21
Conclusion	22
CHAPTER FIVE.....	23
Supervisory failings in the custody area.....	23
Sergeant Sanders.....	23
Conclusion	24
Sergeant Burnage.....	25
Conclusion	25

CHAPTER SIX.....	27
Reporting use of force.....	27
Officer accounts	28
Conclusion	29
CHAPTER SEVEN	31
Failure to create a custody record	31
The role of the custody area keeper	33
Officer accounts	34
Conclusion	36
CHAPTER EIGHT	37
Recommendations	37

INTRODUCTION

- [1] Late one night, Senior Constable (S/C) Herman and First Class Constable (1/C) Taylor were conducting a patrol outside licensed premises in a country town. They approached Mr Rhodes who was yelling and swearing as he walked away from those premises. S/C Herman drove his marked police vehicle up alongside Mr Rhodes who turned and walked in the opposite direction. S/C Herman reversed the vehicle in an attempt to block his path. Mr Rhodes slapped the side of the vehicle, turned again and walked out in front of the police vehicle.
- [2] On two occasions, S/C Herman deliberately drove the vehicle in the direction of Mr Rhodes before braking heavily.
- [3] S/C Herman arrested Mr Rhodes, handcuffed him and put him in the police vehicle pod. The handcuffs were removed before Mr Rhodes was driven to the police station for the purpose of confirming his identification.
- [4] At the police station, Mr Rhodes began remonstrating and pointing his finger towards S/C Herman's face. He was restrained, and handcuffs were reapplied. He was walked from the sally port area into the custody area. He continued remonstrating and as he entered the custody area, attempted to stop and face S/C Herman. S/C Herman used a right leg sweep, collapsing Mr Rhodes' left leg and when he was off balance, S/C Herman took him to the floor.
- [5] Mr Rhodes immediately called out in pain and complained of injury to his knee. A medical specialist later confirmed that Mr Rhodes had suffered grade two medial collateral ligament damage to his left knee which required a brace to be worn for six weeks.
- [6] Other officers attended or were in the custody area, but at no time did anyone arrange medical assistance for Mr Rhodes or make any attempt to confirm that he had sustained an injury.
- [7] After a period in a holding cell, during which Mr Rhodes was spoken to by a senior officer, arrangements were made for him to be taken to his home.
- [8] Although Mr Rhodes was in police custody (and care) from the time of his arrest until the time of his release from the custody area, no record was made to show he was in police custody. S/C Herman did not issue an infringement notice for any alleged offence.
- [9] Mr Rhodes sought medical attention and three days later he contacted the WA Police Force to report allegations of unprofessional conduct and unnecessary use of force. The Internal Affairs Unit (IAU) took carriage of the

investigation. The Commission closely monitored its progress and reviewed the final report.

- [10] As a result of the investigation, the WA Police Force laid a number of charges for breach of police regulations. Most of these were sustained and appropriate penalties imposed.

CHAPTER ONE

The role of the Commission

The Commission's jurisdiction in respect of the WA Police Force

[11] The Commission was established, in part, as a response to the report of the Royal Commission published in January 2004 as to whether there had been corrupt or criminal conduct by any Western Australian police officers.

[12] The Commission has jurisdiction over allegations of serious misconduct.¹ Serious misconduct in relation to public officers is more confined than serious misconduct in relation to police officers which is defined to include reviewable police action:

reviewable police action means any action taken by a member of the Police Force, an employee of the Police Department or a person seconded to perform functions and services for, or duties in the service of, the Police Department that -

(a) is contrary to law; or

(b) is unreasonable, unjust, oppressive or improperly discriminatory; or

(c) is in accordance with a rule of law, or a provision of an enactment or a practice, that is or maybe unreasonable, unjust, oppressive or improperly discriminatory; or

(d) is taken in the exercise of a power or a discretion, and is so taken for an improper purpose or on irrelevant grounds, or on the taking into account of irrelevant considerations; or

(e) is a decision that is made in the exercise of a power or a discretion and the reasons for the decision are not, but should be, given.²

[13] Any person may report police misconduct.³ The Commissioner of Police is required to notify the Commission of an allegation of police misconduct.⁴

What happens when an allegation is reported

[14] Every allegation received by the Commission must be assessed.⁵

¹ CCM Act s 18.

² CCM Act s 3(1).

³ CCM Act s 25.

⁴ CCM Act s 21A.

⁵ CCM Act s 32(1).

- [15] In order to assess an allegation, the Commission may conduct a preliminary investigation.⁶ The Commission may also consult about an allegation with anyone the Commission considers desirable and practicable to consult.⁷
- [16] Having made an assessment, the Commission may do a number of things:
- (a) *investigate or take action without the involvement of any other independent agency or appropriate authority; or*
 - (b) *investigate or take action in cooperation with an independent agency or appropriate authority; or*
 - (c) *refer the allegation to an independent agency or appropriate authority for action; or*
 - (d) *take no action.*⁸
- [17] In deciding whether to refer an allegation to an independent agency or appropriate authority for action, the Commission is to have regard to:
- the need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.*⁹
- [18] During the year ending 30 June 2017, the Commission assessed 4,939 allegations. Of those, 1976 were assessed as requiring further action.
- [19] Approximately 95% of the allegations received were referred back to the appropriate authority or independent agency for action.
- [20] There were 2,637 allegations of police misconduct assessed, just over half of all allegations. Of those, 1,126 were referred to police with the requirement that the Commission be notified of the outcome. Fifty four allegations of police misconduct were selected for active monitoring and review by the Commission, and 16 investigations were conducted by the Commission into police misconduct. Of those, seven were cooperative investigations with the WA Police Force.
- [21] The Assistant Commissioner of Police gave evidence to the Joint Standing Committee on the Corruption and Crime Commission that the WA Police Force 'have about 40 people who are within the internal affairs unit'.¹⁰ IAU handle the more serious allegations of misconduct but can draw upon wider resources within the WA Police Force, especially for allegations of less serious misconduct.

⁶ CCM Act s 32(2).

⁷ CCM Act s 32(3).

⁸ CCM Act s 33(1).

⁹ CCM Act s 34(2)(c).

¹⁰ Joint Standing Committee on the Corruption and Crime Commission, Hearing with Commissioner of Police, Transcript of Evidence, 14 August 2017.

- [22] The Commission has limited resources and jurisdiction spanning the entire public sector. Provided the Commission has confidence in an investigation undertaken by the WA Police Force and can review its conclusions, it is more effective in appropriate cases to allow IAU to conduct the investigation. The Commission may take over an investigation at any stage.

The Commission's oversight role

- [23] The Commission performs its oversight function in various ways. The most common way is to refer the matter back to the police for investigation and action. In more serious cases, the Commission will choose to monitor and review action.
- [24] In some cases, the Commission will investigate a matter either in cooperation with police, or independently as required.
- [25] The Commission is more likely to investigate a matter itself when an allegation or series of allegations indicate there may be either endemic misconduct or systemic failures that have led to misconduct.
- [26] The WA Police Force is not consulted about the decision the Commission ultimately makes to investigate or refer back to be monitored and reviewed by the Commission.

Active monitoring and review

- [27] Following restructure of its assessment directorate in October 2016, the Commission introduced a rejuvenated program for active monitoring and review of matters referred back to appropriate authorities including police, for action.
- [28] Since the program commenced, the Commission has focussed its oversight resources on three primary areas of serious misconduct:
- a) matters involving subject officers with an extensive history of allegations;
 - b) significant incidents or particularly serious allegations; and
 - c) matters that suggest systemic issues and/or limited agency capacity to act.
- [29] The Commission proposes to report periodically on some of the matters which it has monitored and reviewed. The reports, of which this is an example, may show that the WA Police Force have adequately and comprehensively investigated and then dealt with the allegations of misconduct. It is as important for the community to know when a police

misconduct investigation is properly dealt with, as when there may be flaws in the investigation or result.

- [30] Why then is the Commission publishing this report? There are lessons to be learnt from what went wrong on that night. There are issues as to how the WA Police Force deal with officers whose behaviour has previously been a cause for concern.

Anonymity

- [31] The Commission has very carefully considered whether those involved in the incident should be named. Generally, the Commission's practice is to name persons in a public report. But there is a discretion to protect the privacy of individuals when there is significant public interest to do so.
- [32] The principal officer in these incidents, S/C Herman, is engaging in a program of retraining and redevelopment. Early signs are encouraging. Criminal proceedings were considered but the WA Police Force elected not to prosecute, and instead, chose to proceed under police regulations and to address managerial issues. If a prosecution had commenced, the public interest would overwhelmingly be to name the officer concerned.
- [33] One of the officers was new to her position. While she failed in her responsibility to make entries onto the Police system, her supervisor admitted that he bore responsibility and did not adequately supervise her.
- [34] The story can be told and lessons can be learnt without identifying the participants in the events of the night, so names used are fictitious.

CHAPTER TWO

The Commission review

- [35] The Commission received formal notification of the incident from the WA Police Force.¹¹
- [36] Two allegations were identified by the Commission:
- S/C Herman used excessive force against Mr Rhodes.
 - The WA Police Force failed to create appropriate records of the arrest and detention of Mr Rhodes.
- [37] The first allegation was referred to police for action, with Commission oversight through active monitoring and review.¹² A decision was made that no action would be taken in relation to the second allegation.
- [38] In its referral, the Commission noted serious concerns regarding the extensive history of excessive use of force allegations against S/C Herman.
- [39] An allegation does not imply that S/C Herman was found to have used excessive force.
- [40] The Commission also noted apparent gaps in policies which may have contributed to the failure to correctly record the incidents. There was lack of clarity in the requirement to enter a person onto a custody application, or to submit use of force reports for incidents involving empty hand tactics (EHT).
- [41] During the course of the investigation, the Commission remained in regular contact with IAU. The investigation by the WA Police Force included the examination of the CCTV footage and statements taken from a number of witnesses, all of which were made available to the Commission.

Scope of the review

- [42] Initially, the scope of the review was to identify whether S/C Herman engaged in serious misconduct in the level of force used against Mr Rhodes, and whether the action taken by the WA Police Force was appropriate.

¹¹ 12 September 2016.

¹² CCM Act ss 40, 41.

[43] Following receipt of the full investigation report from the WA Police Force, which addressed the Commission's concerns as referenced in the referral letter, the scope of the review widened to:

- identifying any supervisory or management failings during the night;
- identifying any 'gaps' in the WA Police Force's policies which may have contributed to the failure to correctly record the incidents. A particular focus of the review concerned the custody application policy and the use of force policy; and
- having regard to S/C Herman's history of excessive use of force allegations, examining whether the officer had been subject to appropriate management intervention and training since joining the WA Police Force.

[44] The review examined three incidents involving use of force:

- a) in the vicinity of the licensed premises;
- b) in the sally port; and
- c) in the custody area.

Relevant police officers and their duties on the night

[45] Senior Constable Herman:

- was on patrol with 1/C Taylor; arrested Mr Rhodes and escorted him into custody at the police station; and
- provided two accounts to IAU:
 - email (reg 603 response);¹³ and
 - managerial interview under demand, after criminal investigation was finalised.

[46] First Class Constable Taylor:

- was on patrol with S/C Herman; assisted with arrest and escort to custody; and
- provided three accounts to IAU:
 - email (reg 603 response);
 - statement (reg 603 response); and

¹³ *Police Force Regulations 1979.*

- managerial interview under demand, after criminal investigation was finalised.

[47] Senior Constable Glenn:

- was on patrol with Constable Cross outside the licensed premises; was in the vicinity when Mr Rhodes was arrested; and
- provided two accounts to IAU:
 - statement (reg 603 response); and
 - managerial interview under demand, after criminal investigation was finalised.

[48] Constable Cross:

- was on patrol with S/C Glenn outside the licensed premises; was in the vicinity when Mr Rhodes was arrested; and
- provided one account to IAU:
 - managerial interview under demand, after criminal investigation was finalised.

[49] Probationary Constable Morris:

- was on custody area duties; and
- provided three accounts to IAU:
 - email (reg 603 response);
 - statement (reg 603 response); and
 - managerial interview under demand, after criminal investigation was finalised.

[50] Senior Constable Reilly:

- worked in the Computer Aided Dispatch/radio room; and
- provided two accounts to IAU:
 - statement (reg 603 response); and
 - managerial interview under demand, after criminal investigation was finalised.

[51] Sergeant Sanders:

- was the shift supervisor; had overall responsibility for the police station and oversight of out-stations in the district; and
- provided three accounts to IAU:
 - email (reg 603 response);
 - statement (reg 603 response); and
 - managerial interview under demand, after criminal investigation was finalised.

[52] Sergeant Burnage:

- was the on road supervisor with Constable Sawyer; and
- provided one account to IAU:
 - managerial interview under demand, after criminal investigation was finalised.

[53] Constable Sawyer:

- worked with Sgt Burnage; and
- provided one account to IAU:
 - managerial interview under demand, after criminal investigation was finalised.

CHAPTER THREE

The incident in the vicinity of the licensed premises

- [54] One Saturday night, S/C Herman was conducting a pro-active patrol of a licensed premises with 1/C Taylor. Mr Rhodes' behaviour caused attention and an incident concluded with Mr Rhodes' arrest. Mr Rhodes' initial allegations concerning what occurred in the vicinity of the licensed premises were in relation to being 'nudged' by the police vehicle prior to his arrest, and not being informed as to why he was under arrest. He did not make any allegations of excessive use of force during his arrest.
- [55] Subsequently, Mr Rhodes provided a witness statement which asserted that after he was physically removed by security from the grounds of the licensed premises, he felt a nudge to the back of his legs and turned around to see it was a police vehicle. He had his hands on the bullbar when the vehicle lunged forward but did not hit him. This account differs from the CCTV footage¹⁴ from the custody area where he repeatedly says he was rammed.
- [56] CCTV footage from outside the licensed premises suggests that Mr Rhodes was argumentative with security staff and quite animated. He was forcibly ejected from the grounds and appeared to be physically resistant. He can be seen to be remonstrating outside the gates of the licensed premises.
- [57] A police vehicle drove past the gates and a member of security signalled them to stop. Mr Rhodes remained for a short period at the gates and then, still animated, walked across the road as a police officer approached the gates. A second police vehicle driven by S/C Herman arrived and stopped next to Mr Rhodes who changed direction, and walked to the vehicle's rear. The police vehicle reversed, and it appears Mr Rhodes may have struck the rear nearside. He then walked in the opposite direction towards the front of the vehicle. The vehicle then moved forward and stopped abruptly.
- [58] It is unclear from the footage as to whether Mr Rhodes had hold of the front bullbar, but he does appear to lose his balance and partially fall to the ground when the vehicle abruptly stops. It is unclear whether this is due to being struck by the police vehicle; as a result of the vehicle's abrupt motion loosening his hold of the bulbar; or due to his level of intoxication.
- [59] S/C Herman drove the vehicle forward slightly and stopped. Mr Rhodes walked to the side of the vehicle and pushed the driver's door, preventing

¹⁴ An extract of the CCTV footage is attached to this report.

S/C Herman getting out. He then walked away, was pursued by S/C Herman and arrested.

Officer accounts

- [60] During managerial interview, S/C Herman stated he should not have tried to block Mr Rhodes' path with the police vehicle or move it forward while Mr Rhodes was still in front of the vehicle. He described his own conduct in driving the vehicle forward towards Mr Rhodes as "dumb". He denied ramming Mr Rhodes with the police vehicle. He accepted his actions were wrong.
- [61] 1/C Taylor's written accounts predominantly support the account provided by S/C Herman. During managerial interview, he accepted that S/C Herman's manner of driving could possibly be described as aggressive.
- [62] S/C Glenn spoke with security staff at the licensed premises and was advised Mr Rhodes had been refused entry and was refusing to leave until the police arrived. He saw S/C Herman and 1/C Taylor arrive as Mr Rhodes was yelling and they intercepted him. He saw Mr Rhodes slap the rear of their police vehicle. He saw Mr Rhodes holding onto the front 'roo bar' and stated the police vehicle appeared to 'bunny hop'. Following Mr Rhodes' arrest, he was advised by the licensed premises security that Mr Rhodes' personality would change from calm and approachable, to aggressive and 'in your face'. He broadcast a warning in relation to Mr Rhodes' conduct to other officers via the police radio.
- [63] On arrival at the licensed premises, Constable Cross had a short conversation with a female taxi driver who told him that Mr Rhodes was "running amuck".¹⁵ He spoke briefly with Mr Rhodes who said that he was going home. He described Mr Rhodes as seeming a little agitated but not angry. Whilst in conversation with security at the licensed premises, he heard yelling and saw Mr Rhodes at the front of another police vehicle shaking the bullbar or bonnet and yelling at the occupants. He ran over and saw S/C Herman on the ground holding Mr Rhodes. He assisted S/C Herman to handcuff Mr Rhodes. He described Mr Rhodes as verbally abusive. When Mr Rhodes had calmed down, he removed the handcuffs from him.

The licensed premises incident report

- [64] The incident report recorded that Mr Rhodes was refused entry to the licensed premises, became aggressive, was restrained and removed by security staff.

¹⁵ IAU interview with Constable Cross.

Internal Affairs Unit investigation and the action taken by the WA Police Force

- [65] From the Commission's review of the CCTV footage, it is not possible to say with certainty whether the vehicle did strike Mr Rhodes or that S/C Herman braked heavily to avoid hitting him. However, there is no reasonable explanation why S/C Herman would drive forward when Mr Rhodes was in front of, and in close proximity to the police vehicle.
- [66] During his managerial interview, S/C Herman was not directly asked if the vehicle struck Mr Rhodes. However, in response to the interviewing officers referring to Mr Rhodes' repeated claims in the custody area to being "rammed" by the police vehicle, S/C Herman stated that Mr Rhodes was not rammed. The investigating officers agreed, and confirmed that can be seen from the CCTV footage.
- [67] The CCTV footage shows the manner of driving engaged by S/C Herman involved a risk to the safety of Mr Rhodes.
- [68] From the CCTV footage, the Commission identified potential further witnesses to the incident involving the police vehicle. Two potential witnesses can be seen walking along the footpath of the road where the incident took place. They get into a taxi driven by a female who may also have witnessed the incident. The licensed premises security personnel are also potential witnesses.

Conclusion

- [69] Although potential lines of enquiry in relation to tracing possible witnesses remain, the overall standard of the investigation and the disciplinary outcomes have sufficiently dealt with S/C Herman's driving behaviour.
- [70] An allegation of Conduct Unbecoming¹⁶ against S/C Herman, for driving a police vehicle in a manner that was unbecoming of a police officer and brought discredit to both the WA Police Force and himself, was sustained. The WA Police Force served S/C Herman with the WA Police Force Code of Conduct, provided verbal guidance and a Management Action Plan.
- [71] An allegation of Failure to Report Unlawful/Unethical Behaviour¹⁷ against 1/C Taylor, for failing to report unethical behaviour when he observed S/C Herman deliberately drive a police vehicle at Mr Rhodes before braking heavily to avoid hitting him, was sustained. The WA Police Force served 1/C Taylor with a letter of corrective advice and provided verbal guidance.

¹⁶ *Police Force Regulations 1979* reg 601(2).

¹⁷ *Police Force Regulations 1979* reg 605(1)(j).

CHAPTER FOUR

Use of force at a country town police station - the incidents in the sally port and custody area

- [72] CCTV footage of the sally port shows Mr Rhodes raising his finger and pointing at S/C Herman as he steps out of the vehicle pod. He appears to be remonstrating with him. S/C Herman grabs Mr Rhodes by his right arm and a brief struggle ensues. 1/C Taylor then provides assistance, and the officers push Mr Rhodes against the wall and handcuff him.
- [73] The actions of the officers and the level of force used in the sally port appear reasonable and proportionate.
- [74] CCTV footage in the custody area shows that whilst being escorted into the custody area, Mr Rhodes accuses S/C Herman of ramming him with a four wheel drive. Mr Rhodes starts to turn towards S/C Herman whilst sliding his right foot forward. It appears to be this movement that causes S/C Herman to sweep Mr Rhodes to the floor. Mr Rhodes immediately screams out in pain, and repeatedly complains of an injury and discomfort to his left knee.

Officer accounts

- [75] The following is a summary of S/C Herman's accounts to the WA Police Force:
- He walked Mr Rhodes into the custody area and directed him towards the holding cell. Mr Rhodes was handcuffed to the rear but still uncooperative and physically resistant by pushing back and trying to turn and face him.
 - He decided the safest option was to put Mr Rhodes to the floor where he could be controlled. He was the only officer holding Mr Rhodes, and as Mr Rhodes was twisting himself to the left, he used Mr Rhodes' own momentum to twist him to the ground, making sure his head did not strike the ground. During interview, he stated he took hold of Mr Rhodes' upper body or "maybe around his neck" during this manoeuvre.
 - Mr Rhodes immediately complained of an injury to his left knee.
 - During interview, S/C Herman stated one of the reasons that he "took Mr Rhodes down", was due to a previous prisoner breaking his nose, when handcuffed to the rear. He accepted he could have taken a step

back and disengaged, but his actions were calculated when he took Mr Rhodes to the floor and he didn't "snap".

- He made reference to having received information from his colleague warning of Mr Rhodes' unpredictable behaviour which was on his mind at the time of the use of force.

[76] S/C Herman's accounts state that Mr Rhodes was twisting himself to his left. This is not evident in the CCTV footage as Mr Rhodes was turning to the right.

[77] Both 1/C Taylor and P/C Morris were present in the custody area during the incident.

[78] 1/C Taylor stated that when Mr Rhodes was in the rear of the vehicle at the police station, he could hear him yelling obscenities and making threats towards the officers' wellbeing. As they entered the custody area, he was walking behind S/C Herman and could see Mr Rhodes twisting his body from side to side in an aggressive manner. His written accounts state that he observed Mr Rhodes 'twist his body' and S/C Herman manoeuvred Mr Rhodes to the ground by what appeared to be a leg sweeping take down. He heard S/C Herman say "I won't let you assault me". When asked about the actions of S/C Herman in the custody area, 1/C Taylor said he would have reacted differently.

[79] P/C Morris stated in her written accounts that she was sitting at the desk when she witnessed Mr Rhodes being placed on the ground by S/C Herman. Mr Rhodes was continuing to be verbally aggressive and physically resistant. The CCTV footage shows that P/C Morris was not at the desk when Mr Rhodes was initially taken to the ground; she was walking behind the desk to the computer. P/C Morris clarified in her managerial interview that her location was moving towards the computer.

[80] P/C Morris stated in her managerial interview that as she was behind the desk, she could only see from about the waist up. She heard S/C Herman say something to the effect of "stop turning around to face me". Mr Rhodes was then taken to the ground, but she did not see how. She described Mr Rhodes as agitated, speaking aggressively and unpredictable.

[81] P/C Morris' written response states 'It took a number of minutes for me to be able to confirm the male's identity as he was still being abusive and aggressive whilst I was asking for his details, refusing to answer my questions'. This statement is unsupported by the CCTV footage which does not show P/C Morris questioning Mr Rhodes, and was corrected by P/C Morris during her managerial interview when she stated that she did not think she spoke to Mr Rhodes at all. The reason for the different

accounts between her written reports and her managerial interview is unexplained.

[82] S/C Reilly attended the custody area with Sgt Sanders when Mr Rhodes was lying on the ground. Both officers provided assistance to Mr Rhodes to stand. He described Mr Rhodes as yelling out loud and aggressively, and heard him complaining about his leg being hurt. He thought that Mr Rhodes walked "okay"¹⁸ to the observation cell and then later out to the sally port. He formed the opinion that Mr Rhodes was intoxicated, agitated, rude, up and down in his demeanour and aggressive towards police.

Injuries sustained by Mr Rhodes

[83] The next day, Mr Rhodes attended a regional hospital where, following an X-ray, he was referred to the fracture clinic. Subsequently, he attended an appointment with an orthopaedic specialist who diagnosed grade two medial collateral ligament damage.

WA Police Force Use of Force policy and training

[84] The following documents were considered by the Commission:

- The WA Police Situational Tactical Options Model (STOM);
- Empty Hand Tactics (EHT) manual;
- Reporting Use of Force: Changes to Policy Governing Use of Force Reporting New Protocols and Guidelines Implementation July 2015; and
- Operational Safety and Tactics Training Unit: Use of Force manual.¹⁹

[85] STOM sets out the process by which a measured and appropriate response can be made to any situation involving conflict. The phases of STOM are one way of ensuring that conflict is dealt with in a logical and progressive manner. Information and intelligence received leads to situational appreciation then, following consideration of the relevant powers and policy, the appropriate tactical option(s) can be selected to manage the threat and resolve the conflict.

[86] The Commission recognises that police officers must often make split second judgments in situations of heightened arousal for all concerned. The choice made by an officer may prove to be unwise, but the officer does

¹⁸ IAU interview with Senior Constable Reilly.

¹⁹ Version 1.0, amended 6 October 2015.

not have the benefit of time or hindsight at the moment of choice. This is why proper training and clear procedures are important to assist officers in the immediate decisions they must make from time to time.

[87] The Commission considers that the following factors may have contributed to the level of force used by S/C Herman in the custody area:

- Mr Rhodes' behaviour in the vicinity of the licensed premises;
- Information received by S/C Herman from S/C Glenn (Mr Rhodes' personality would change from calm and approachable to extremely aggressive and "in your face");
- Mr Rhodes having consumed alcohol;
- Mr Rhodes' behaviour in the sally port;
- Mr Rhodes' words going into the custody area;
- Mr Rhodes' actions in the custody area immediately before the take down (appears to slide his right foot forward and turns his body towards S/C Herman); and
- S/C Herman's previous experiences:
 - In a conversation with IAU officers and during managerial interview, S/C Herman referred to an incident where he sustained a broken nose when a handcuffed prisoner head-butted him. IAU enquiries have not located this incident. S/C Herman explained that he took Mr Rhodes 'down' because he was turning to face him and the previous incident contributed to why he did not like Mr Rhodes turning. He stated Mr Rhodes was being hostile and aggressive.
 - A document reviewed by the Commission stated that S/C Herman has been the victim of 'assault public officer' charges on at least 11 separate occasions, and has been injured at work on three occasions which resulted in him taking sick leave.

[88] The EHT manual policy states that EHT are operational defensive tactics available to members as a tactical option. In appropriate circumstances, members can elect to use EHT as a tactical option to reduce a threat and gain control of a subject. EHT means any self-defence or control technique executed without the use of a weapon. Such techniques include but are not restricted to blocks, strikes, punches, kicks, compliance holds, restraints or similar operational defensive tactics. EHT can be utilised by members for the following uses:

- to prevent bodily injury to any person;
- as a technique to effect arrest;
- to prevent escape from arrest; and
- to prevent damage to property.

[89] Although S/C Herman did not actually state that he feared bodily injury being caused to himself or another, such a fear can be inferred from what he stated in his interview.

[90] The Use of Force manual states that once the conflict situation has been managed and the subject is under control, the member's priority will be to administer aftercare and welfare as required by legislation and specific WA Police Force manual policy.

[91] A WA Police Force Use of Force Operational Safety and Tactics Training Unit (OSTTU) capability advisor told investigators:

*In terms of the use of a leg sweep as a technique to reduce the threat and gain control of a subject, it matters not whether this is a technique taught by OSTTU as the policy defines Empty Hand Tactics (EHT) as any self-defence or control technique executed without the use of a weapon. **Such techniques include but are not restricted to blocks, strikes, punches, kicks, compliance holds, restraints or similar operational defensive tactics.** The current EHT training package delivered by OSTTU does not specifically include 'leg sweeps' however it does include 'leg kicks' and various 'take down' techniques. The training package undertaken by the subject member in 2008 would not specifically include 'Leg Sweeps' as techniques ...*

The EHT policy specifically makes no mention of the training provided by OSTTU since EHT is only delivered during Foundation or initial training and since this member undertook his Transitional training in 2008 he will not have received any continuation training or requalification in EHT since this date.

The overarching policy statement for Use of Force directs 'Any Use of Force MUST be reasonably necessary in the circumstances and members will be individually accountable for such Force'. Therefore the EHT utilised by the member in the circumstances must be justified in consideration of relevant legislation (Criminal Code 231 and Section 16 Criminal Investigation Act) and WA Police Force policy and guidelines. The justification is aligned to the threat assessment and situational appreciation of the member premised on information and intelligence comprising situational factors which influence decision making and selection of an appropriate tactical option. ...²⁰

²⁰ Email from capability advisor to IAU.

Internal Affairs Unit investigation and the action taken by the WA Police Force

[92] Mr Rhodes' wrists were handcuffed behind his back when S/C Herman put his arm around his neck/upper body area and swept his leg, taking him to the floor. Although it is recognised there were likely factors that led to S/C Herman using force against Mr Rhodes to prevent himself being assaulted, there were other less forceful options open to the officer to use that are unlikely to have resulted in the bodily injury sustained by Mr Rhodes. For example S/C Herman could have:

- demonstrated the use of tactical communications with Mr Rhodes in an effort to calm him. Mr Rhodes was clearly upset with S/C Herman in relation to his allegation concerning the vehicle;
- disengaged and established a reactionary gap between himself and Mr Rhodes. He could have sought the assistance of 1/C Taylor as it was clear Mr Rhodes was directing his anger and upset towards S/C Herman;
- pushed Mr Rhodes away to a safe distance and then resecured a hold of him; or
- reaffirmed his hold of Mr Rhodes using both hands and could have sought the assistance of the other two officers present.

[93] The CCTV footage does not indicate that S/C Herman lost control of his temper. The level of force was excessive because Mr Rhodes was handcuffed and there were other less forceful tactics that could have been used.

[94] S/C Herman advised that his automatic response was to utilise a leg sweep as this is how he had been trained. He stated he was taught that you always put someone to the floor to control them. The IAU investigation report concluded this is not in line with STOM, where continual assessment and reassessment is required, and tactical communication should always be considered and attempted throughout each confrontation.

[95] The IAU investigation also concluded that the level of force used by S/C Herman in using the leg sweep in these circumstances was excessive, unnecessary, and not justified or excused by law.

[96] Two allegations against S/C Herman in relation to use of force in the custody area were sustained, being that S/C Herman:

- assaulted Mr Rhodes in a police custody area, causing him bodily harm; and
- used unnecessary force to restrain Mr Rhodes in a police custody area.

The decision not to charge Senior Constable Herman

- [97] The decision not to charge was proposed in writing by a Detective Sergeant attached to IAU. The report states that a prima facie case exists to prosecute S/C Herman in that the force was excessive in the circumstances and therefore unlawful. It suggested that the exercise of discretionary powers to prosecute be considered and that no criminal charges be preferred.
- [98] This decision was endorsed by a Superintendent and an Assistant Commissioner who noted: 'An alternate to criminal prosecution (managerial) is more likely to secure an outcome that will see the subject officer receive an appropriate admonishment'.
- [99] Where an act engaged in by a police member is assessed as reaching the threshold for a prima facie case of criminal conduct and a decision is taken not to prosecute by the officer's own agency, the public may perceive the decision as being potentially biased towards the officer due to a lack of independence.
- [100] That is one reason for the Commission conducting this review.

Further training and development

- [101] S/C Herman graduated from the WA Police Force Academy in early 2008. He had previously worked as a police officer overseas. His roles in the WA Police Force have predominantly been in general duties with postings in the metropolitan area and in a country town.
- [102] He has a significant conduct history with the WA Police Force. Two previous sustained outcomes for unnecessary use of force resulted in Managerial Action Plans (2012 and 2013). Interventions included verbal guidance and retraining in use of force and arrest techniques, with an emphasis on communication and decision making. One of these allegations involved a trip or leg sweeping method with the complainant being taken to the ground.
- [103] The interventions appear to have been ineffective. There have been continued unnecessary use of force allegations against S/C Herman.
- [104] There may be training issues for the WA Police Force that require further examination and consideration. During the course of this review,

Commission officers met with officers from the operational skills faculty who indicated a willingness to consider providing 'bespoke training' to officers who demonstrate a propensity to making errors of judgment in the level of force used in some situations. The requirement for such training would be a matter to be considered in individual cases along with other relevant factors including: resource levels; financial implications; geographical considerations, etc. Staff from the operational skills faculty are keen to continue to work closely with IAU and the Commission to support such issues in the future.

- [105] As a result of the investigation, positive pro-active measures have been taken in respect of S/C Herman's training and development, and monitoring in the future. S/C Herman has also been subject to a fitness for duty/psychological risk assessment. He has been selected as the inaugural subject officer for IAU's early intervention case management initiative and is to be intensively managed for the next two years.

Conclusion

- [106] The Commission has concerns regarding S/C Herman's conduct history. The requirement for training and managerial intervention are appropriate decisions. The WA Police Force properly considered the evidence regarding S/C Herman's use of force, and the matter has been dealt with adequately.
- [107] The Commission acknowledges that the WA Police Force has now adopted a pro-active approach to the management of S/C Herman. This should continue and its effectiveness assessed in due course.
- [108] In the Commission's opinion, the decision to proceed with managerial rather than prosecution action was fairly open to be made on the facts. There are potential difficulties with a criminal charge negating, beyond reasonable doubt, an excuse of self-defence.
- [109] There is no evidence that the discretion against prosecution was wrongly exercised or took into account irrelevant considerations.
- [110] S/C Herman duly faced a defaulter parade. He received a \$2,000 global fine and is required to undertake further training.
- [111] S/C Herman had fully cooperated with the investigation and readily admitted his failings. The penalties appear reasonable in the circumstances.
- [112] In the Commission's opinion, the WA Police Force has handled the matter involving S/C Herman appropriately.

CHAPTER FIVE

Supervisory failings in the custody area

[113] The Commission's review examined the failure to record Mr Rhodes being taken into custody and lack of adequate response to his repeated complaints of pain.

Sergeant Sanders

[114] Sgt Sanders was the shift supervisor. That role included the management and oversight of all Computer Aided Dispatch tasks for the entire district. He was in the supervisors' office when Sgt Burnage drew his attention to the CCTV screens of the custody area where he observed Mr Rhodes laying on the ground. He entered the custody area with S/C Reilly and heard Mr Rhodes complaining of an injury to his leg. He described Mr Rhodes as aggressive and shouting abuse at the officers, particularly S/C Herman. Mr Rhodes kept referring to his left knee being out of joint. Sgt Sanders formed the opinion on looking at the positioning and movement of Mr Rhodes' legs, that he did not appear to be injured in the manner he was describing.

[115] Sgt Sanders and S/C Reilly assisted Mr Rhodes to his feet and walked him back to the observation cell. In his email account, Sgt Sanders described Mr Rhodes as appearing to walk fine. However, his statement asserted that Mr Rhodes appeared to be walking with a slight limp, favouring his right leg which he thought was odd, as Mr Rhodes had referred to his left leg.

[116] Sgt Sanders asked Mr Rhodes whether he was going to behave and Mr Rhodes responded telling him that he got rammed by a car with a bullbar on it. S/C Herman and 1/C Taylor advised Sgt Sanders why Mr Rhodes had been brought into custody. Sgt Sanders explained to Mr Rhodes why he had been brought to the police station and what would be happening. He conducted a risk assessment and made the decision to remove the handcuffs. He stated that once Mr Rhodes' identity was confirmed,²¹ he walked unaided to the police vehicle and was transported home by S/C Herman and 1/C Taylor.

[117] The following points from Sgt Sanders' managerial interview are relevant:

- Supervisory responsibility at the time of this incident was shared between he and Sgt Burnage. Sgt Sanders was responsible for

²¹ Mr Rhodes had an unusually spelled first name which seemed to cause some confusion to police officers searching the database.

managing P/C Morris. He should have checked to see that she had correctly entered the custody records.

- Sgt Sanders acknowledged that failure to provide medical assistance was a big omission.
- Sgt Sanders did not ensure a use of force report was submitted. When asked about the policy during his managerial interview, he referred to himself as being "sort of aware" of the policy.
- He accepted responsibility for the lack of a use of force report.
- He accepted it was his responsibility to ensure Mr Rhodes was put on the Custodial Management Application (CMA) and stated "this is a lot of stuff that I missed and shouldn't have been missed and I'm more than happy to stick my hand up and say as a supervisor that night, I dropped the ball".²²

[118] Sgt Sanders did not properly recognise the seriousness of Mr Rhodes' allegation that he had been rammed with a bullbar and did not offer him the opportunity to make a complaint.

[119] Sgt Sanders failed to identify the misconduct by S/C Herman that occurred in the custody area.

[120] The WA Police Force sustained an allegation of Neglect of Duty²³ against Sgt Sanders for failing to provide adequate supervision/management in the custody area ensuring:

- a) medical assistance was offered/provided to Mr Rhodes;
- b) a custody record was created for Mr Rhodes;
- c) a use of force report was submitted after EHT was used causing Mr Rhodes bodily injury requiring medical care; and
- d) a police conduct report was submitted.

[121] The WA Police Force served Sgt Sanders with a managerial notice.

Conclusion

[122] The outcome of the investigation and the action taken in relation to Sgt Sanders appears reasonable and appropriate.

²² IAU interview with Sergeant Sanders.

²³ *Police Force Regulations 1979* reg 605(1).

[123] As reported in the Commission's Broome incident report dated 23 December 2013,²⁴ supervision is linked to the issue of accountability, including responsibility to report and record incidents. Supervision remains a critical part of ensuring professional accountability in preventing misconduct. In failing to recognise that there were two potential incidents in which Mr Rhodes may have been dissatisfied, and failing to explore these incidents further, Sgt Sanders failed in his duty as a supervisor.

Sergeant Burnage

[124] Sgt Burnage has approximately 18 years' experience as a police sergeant. Much of that time has been spent in crime and traffic postings. His return to general police duties was relatively recent. He was a shift supervisor and on the night of the incident, was performing the role of the 'on road supervisor'.

[125] Sgt Burnage brought the incident in the custody area to the attention of Sgt Sanders.

[126] During managerial interview, Sgt Burnage explained that when he returned from alternative duties to general duties at the police station, he was not given any induction to general duties. He spoke to Health and Welfare and still felt that general duties were a bit foreign to him. He tried to familiarise himself with the business, for example, by trying to read the custody area manual.

[127] Sgt Burnage agreed he should have spoken to Sgt Sanders about the incident. He presumed P/C Morris knew the role of custody area keeper. He stated he had learned from this incident and that next time, he would check the CMA.

[128] IAU recommended that Sgt Burnage be subject to a formal induction to properly examine the role of shift supervisor, and that he be appropriately trained in the areas he claimed to be deficient.

Conclusion

[129] The WA Police Force sufficiently identified, and are addressing Sgt Burnage's training and development needs. Although not determined to be in breach of the *Police Force Regulations*, the WA Police Force served Sgt Burnage with a letter of advice to highlight and emphasise the expectations on him as a supervisor.

²⁴ Report on the Investigation of Alleged Public Sector Misconduct by Western Australian Police Officers in Relation to Incidents that Occurred at Broome Police Station on 29 March and 19 April 2013.

CHAPTER SIX

Reporting use of force

[130] The following documents were considered by the Commission:

- Empty Hand Tactics manual;
- Reporting Use of Force: Changes to Police Governing Use of Force Reporting New Protocols and Guidelines Implementation July 2015; and
- Operational Safety and Tactics Training Unit: Use of Force manual.²⁵

[131] The Use of Force manual is a 24 page document. A use of force report is required in a number of circumstances including:

- where a member using Empty Hand Tactics uses Empty Hand Tactics on a subject and causes 'bodily injury' requiring '**Medical Care**' (emphasis added).²⁶

[132] The Use of Force manual provides the following relevant definitions:

- 'Bodily Injury' means something in the nature of damage to bone, muscle, tendon, skin, organ or any part of which the human body is constructed. The word relates to more than merely a sensation of pain.
- 'Medical Care' means any professional treatment for injury or illness.
- 'Requiring Medical Care' means, subsequent to the use of a tactical option, the subject sustained 'Bodily Injury' requiring 'Medical Care'. In such circumstances, requiring 'Medical Care' means:
 - 'Bodily Injury' identified by a member and 'Medical Care' provided to the subject;
 - 'Bodily Injury' identified by a member and 'Medical Care' refused by the subject; and
 - 'Bodily Injury' identified by a subject and 'Medical Care' requested by the subject whilst detained or in police custody.

[133] The Use of Force manual states members have a responsibility to report use of force incidents as directed by police policy. The purpose and intent of recording use of force incidents is to enable police to ensure member

²⁵ Version 1.0, amended 6 October 2015.

²⁶ Police Manual FR-01.4 Empty Hand Tactics.

and supervisor accountability, ensure appropriate member behaviour in the best interests of the public and operational police, and identify training needs for operational safety purposes.

Officer accounts

- [134] S/C Herman did not submit a use of force report. He believed that a use of force report was only required if medical attention was actually provided. During managerial interview, S/C Herman did not understand the Use of Force policy and made reference to there being previous occasions when "we've not done use of force".²⁷
- [135] 1/C Taylor did not submit a use of force report as the force was used by S/C Herman. He acknowledged during managerial interview that one should have been done.
- [136] P/C Morris explained her understanding was that if there is an injury, a use of force report should be submitted.
- [137] S/C Reilly's understanding of EHT and use of force reports was that a use of force report was required if the person ends up requiring medical treatment.
- [138] Sgt Sanders did not ensure a use of force report was submitted. At the time, he did not believe Mr Rhodes had suffered bodily injury. He confirmed they should have done a use of force report to cover off on the issue, and he took full responsibility for it not being done.
- [139] Sgt Burnage did not think that a use of force report was required.
- [140] All officers failed to recognise Mr Rhodes had sustained a bodily injury and required medical care. Despite his obvious discomfort and pain, and repeated references to his knee being injured, no medical care was offered to him.
- [141] Allegations of neglect of duty were sustained against S/C Herman and Sgt Sanders for failing to offer or arrange medical assistance and failing to submit a use of force report. Allegations of neglect of duty were sustained against 1/C Taylor and S/C Reilly for failing to offer or arrange medical assistance.
- [142] The WA Police Force has:
- served S/C Herman with the WA Police Force Code of Conduct, provided verbal guidance and a Management Action Plan;

²⁷ IAU interview with Senior Constable Herman.

- served Sgt Sanders with a managerial notice; and
- served 1/C Taylor and S/C Reilly with a letter of corrective advice and provided verbal guidance.

Conclusion

- [143] The outcome of the investigation and the action taken by the WA Police Force against the officers appears reasonable and appropriate. However, there is a potential gap in the policy. The definitions of 'requiring medical care' do not account for a scenario where the subject is clearly expressing that an injury/severe discomfort (more than a sensation of pain) has been sustained, but does not specifically request 'medical care'.
- [144] There are potential wider training and education needs with regards to the policy. This is supported by statements made by IAU supervisory officers who advised S/C Herman that he is not alone in his view in respect of reporting use of force. One of the IAU officers was also of the same view as S/C Herman, and was only corrected after contact had been made with the use of force coordinator.

CHAPTER SEVEN

Failure to create a custody record

[145] The following documents were considered by the Commission:

- Police manual - Duty of Care;
- Police manual - Definitions;
- Police manual - Responsibilities;
- Police manual - Record Keeping;
- Police manual - Admissions-General; and
- Police manual - Welfare Screening.

[146] A custody record was not created for Mr Rhodes. IAU concluded that S/C Herman, 1/C Taylor, P/C Morris, S/C Reilly and Sgt Sanders failed in this regard.

[147] The following information is identified as relevant to the Commission's review:

- Custodial care begins from the moment a person is taken into police custody as a detainee or arrested person.²⁸
- The CMA will be used to record all details of the custody management process.²⁹
- The member in charge shall ensure that all detainees admitted into custody are adequately screened to assess their needs.³⁰
- Complete custody area admission details must be entered on CMA for every detainee received at a police custody area.³¹
- Officers (definition includes a police officer, police auxiliary officer, police staff employee and any other person employed by the WA Police Force) are to ensure that any person admitted into custody is lawfully detained.³²

²⁸ Police manual DC-01.00 Duty of Care.

²⁹ Police manual LP-01.06 Record Keeping.

³⁰ Police manual LP-04.14 Welfare Screening.

³¹ Ibid.

³² Police manual LP-04.01 Admissions-General.

- Officers are to consider the appropriateness of the arrest and whether continued detention is justified.³³
- During the admission process, the officer completing the process will establish whether medical attention is required as a result of injury, medical condition or use of force.³⁴

[148] Although the requirement to enter every detainee received at a police custody area on CMA is clearly articulated in the WA Police Force policy under the heading 'Welfare Screening', the location of this information within the policy does not adequately emphasise its importance. This may have been a contributory factor to failures in record keeping as reflected in this case.

[149] Subsequent to this incident, WA Police Gazette number 28 published amendments to the WA Police Force manual:

*The arresting officer is to ensure the immediate recording of the detainee details is made on the Custody Management Application (CMA), this should occur at time of arrest and prior to conveyance to the lock-up.*³⁵

[150] The WA Police Force manual describes the role and responsibilities of the custody area keeper, the shift supervisor and the officer in charge.³⁶

[151] The custody area keeper is the officer with allocated responsibility to run the custody area during a particular shift. The primary focus is the custodial care of detainees in accordance with the WA Police Force's policies and detainees' rights.

[152] For each new admission, the custody area keeper will:

- speak to the detainee and arresting officers to establish whether the detainee requires medical attention. This may be as a result of injuries, medical conditions or having been the subject of use of force;
- ensure that appropriate records are made of medical conditions and use of force; and
- ensure that the detainee is informed of their rights and why they are being held.

[153] For all detainees, the custody area keeper will:

³³ Ibid.

³⁴ Ibid.

³⁵ Police Gazette Western Australia, No. 28, p 281.

³⁶ Police manual LP-01.03 Responsibilities.

- ensure that every detainee is treated in a humane and dignified manner having due regard to the need for security;
- ensure that lawful grounds exist for continued detention;
- ensure that the CMA and appropriate records are completed; and
- ensure that prisoners' assigned works (trusties) are adequately supervised and that their work is performed in a satisfactory manner.

[154] The shift supervisor is the senior officer on duty whose responsibilities include the supervision of officers and the management of a custody area or watch house. The policy states the shift supervisor will:

- on commencing duty, acquaint themselves with the number and profile of detainees, and deploy appropriate resources to the lock-up;
- take a close personal interest in the management of detainees who present a heightened risk to themselves or others; and
- ensure that the lock-up keeper is aware of their responsibilities.

[155] Policy states that the officer in charge will ensure local induction procedures define custody rules and responsibilities, in addition to other responsibilities.

The role of the custody area keeper

[156] P/C Morris graduated from the Academy and was posted to a country town. On the date of the incident, she was allocated custody area keeper duties, less than six months since she had graduated from the Academy.

[157] As part of the Commission's review, further enquiries were made with the WA Police Force Academy with regards to custody training. The Commission has been advised that all recruits are subject to in-class training in CMA police custody refresher, which equates to approximately four hours training. The learning outcomes are to:

- recognise the role of the CMA as a recordkeeping application and risk management tool; and
- recognise and follow duty of care policies and practices:
 - continuous risk assessment of all persons detained in police custody;
 - outline in what circumstances officers must record persons in custody;

- outline what officers are required to record on the custody system in regard to the detainee and their period of detainment;
- emphasise how the CMA is a complete record (A-Z) of a detainee's time spent in police custody; and
- discuss the importance of recording times persons are taken into custody along with rights issued and their responses to these rights.³⁷

[158] Additionally (except for transitional officers), all recruits undertake a six hour evening shift deployment to Perth Watch House, where the learning outcome is to successfully complete a custody record and identify and mitigate risks presented by various detainees.

[159] A police custody refresher course is also available on 'Blackboard' to police at all ranks and can be completed at any stage as a refresher.

[160] Although P/C Morris received training at the Academy, the information she provided to investigating officers and her inadequate actions in the custody area, suggest the training did not fully equip her to competently perform the role of custody area keeper.

[161] The listed duties of the custody area keeper and the responsibilities listed under 'Admissions-General', are duties that one would expect to be undertaken by a supervisor or experienced officer who has received appropriate training. It appears that the custody area keeper may be required to make decisions that may be contrary to the opinions of more experienced colleagues.³⁸ This would be challenging for an inexperienced officer to do.

[162] It is unreasonable to expect an officer of P/C Morris' limited experience to undertake these duties with minimal training and practical experience. S/C Reilly also expressed his concern in allowing probationary constables to work alone in the custody area.

Officer accounts

[163] Sgt Sanders accepted that it was his responsibility for ensuring Mr Rhodes was put on CMA.

[164] During managerial interview, S/C Herman accepted responsibility for not having entered Mr Rhodes on the custody system and stated he had not given much thought to whether P/C Morris had done it. He acknowledged

³⁷ Email from a senior sergeant in the foundation training unit.

³⁸ Police manual LP-04.01 Admissions-General.

that P/C Morris had not "done lock-up very much" and part of the role of a senior constable is "keeping an eye"³⁹ on probationary constables and making sure they are doing the right thing. He admitted that he had previously escorted people to the police station for identification purposes and not put them on CMA.

- [165] During managerial interview, 1/C Taylor advised that had he found Mr Rhodes on the Tardis system, he would have put him on CMA then. Again, the unusual spelling of Mr Rhodes' first name caused difficulties. Although he did not receive any formal induction for custody area duties, 1/C Taylor had been performing this role for a while so he was aware of what to do when people come into the custody area.
- [166] During managerial interview, P/C Morris indicated that her duties as the custody area keeper on the night in question were to enter people on CMA, and to manage the people that were in custody. She advised that she had an induction when she commenced working at the police station which included a tour of the station and some paper work. On her first shift in the custody area, and as she had never worked in the custody area before, an auxiliary officer showed her how to enter someone on CMA. P/C Morris did not recall being told when somebody should be entered on CMA, but stated she knows that Mr Rhodes should have been entered on CMA. P/C Morris confirmed she had his details up on the screen and all she needed to do was to click save. Instead she decided not to record him on CMA as they were leaving the station. P/C Morris is now aware she made the wrong decision.
- [167] The Commission recognises that P/C Morris only graduated from the WA Police Force Academy a few months earlier.
- [168] S/C Reilly stated that he has a bone of contention with the practice of allowing probationary constables to work alone in the custody area. He agreed that somebody should check a probationary constable's work, and senior constables have a mentoring responsibility.
- [169] Sgt Burnage stated he did not know how to put someone on CMA and he had not been told how to deal with people in the custody area.
- [170] Sgt Burnage expressed his lack of knowledge in relation to the custody area. It is questionable how he is expected to supervise officers and ensure policy is complied with, if he has not been sufficiently trained in this area.

³⁹ IAU interview with Senior Constable Herman.

Conclusion

- [171] Failure to record Mr Rhodes' custody status at any stage was a serious omission.
- [172] Allegations of neglect of duty were sustained against S/C Herman, 1/C Taylor, P/C Morris, S/C Reilly and Sgt Sanders for the failure to create a custody record for Mr Rhodes.
- [173] The WA Police Force has:
- served S/C Herman with the WA Police Force Code of Conduct, provided verbal guidance and a Management Action Plan;
 - served 1/C Taylor and S/C Reilly with a letter of corrective advice and provided verbal guidance;
 - provided verbal guidance to P/C Morris; and
 - served Sgt Sanders with a managerial notice.
- [174] The outcome of the investigation and the action taken by the WA Police Force against the officers appears reasonable and appropriate.

CHAPTER EIGHT

Recommendations

- [175] The Commission recommends that consideration be given to 'bespoke training' being provided to individuals who demonstrate a pattern of behaviour in excessive use of force, along with close monitoring and management.
- [176] The WA Police Force should consider whether the deficiencies in custody records and management, including use of force reporting and after care, are isolated to this incident or reflect a more general lack of understanding within the force.
- [177] Consideration should be given to ensuring that custody officers have sufficient training and experience to carry out their duties. In particular, consideration should be given as to whether probationary constables should carry out the duties of a custody officer without direction from a more experienced senior officer.
- [178] In scenarios where officers do not identify 'bodily injury', but the subject is clearly in severe discomfort following a use of force incident, it is recommended that such a scenario is reflected within the purpose and intent of the policy to record the incident in a use of force report.
- [179] The extract of the CCTV footage can be found at <https://www.ccc.wa.gov.au>.