

40TH PARLIAMENT



Joint Standing Committee on the  
Corruption and Crime Commission

## Report 8

### THE MORE THINGS CHANGE...

*Matters arising from the Corruption and Crime Commission's  
Report on Operation Aviemore: Major Crime Squad Investigation  
into the Unlawful Killing of Mr Joshua Warneke*

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Presented by  
Ms M.M. Quirk, MLA  
September 2018

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# Joint Standing Committee on the Corruption and Crime Commission

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The more things change...

**Matters arising from the Corruption and Crime  
Commission's *Report on Operation Aviemore:  
Major Crime Squad Investigation into the  
Unlawful Killing of Mr Joshua Warneke***

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Report No. 8

Presented by

**Ms M.M. Quirk, MLA and Hon J.E. Chown, MLC**

Laid on the Table of the Legislative Assembly and the Legislative Council on  
20 September 2018



## Chair's Foreword

**T**he name of this report ‘**the more things change...**’<sup>1</sup> reflects ongoing concerns around systemic issues identified with police and Aboriginal interaction.

The Corruption and Crime Commission (the Commission) findings<sup>2</sup> are some of the most significant and timely it has made. Of special note is that the Commission has followed up its earlier 2015 recommendations and makes findings that implementation measures are incomplete and dilatory.

It is readily apparent, even to those with a passing interest in criminal justice in Western Australia, that the issues highlighted by the Commission are not new. What is less apparent is why concerted efforts were not made sooner to address these fundamental flaws in the manner in which Western Australian police officers enforce the law. It is hoped this valuable work of the Commission will act as a circuit breaker.

When it is considered that *the Criminal Investigation Act* was enacted in 2006, the Commission's report not only highlights non-compliance in the Gibson case<sup>3</sup> but, even more inexplicably, a failure to adequately address this issue system-wide subsequently, more than a decade later.

The Act's requirements regarding the manner in which interviews are conducted with special categories of suspects and witnesses are unambiguous. The report highlights that Western Australia Police Force (WAPOL) training and adherence to those requirements is sporadic.

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- 1 *Plus ça change, plus c'est la même chose*—literally meaning ‘the more it changes, the more it's the same thing’ (Jean-Baptiste Alphonse Karr 1849).
  - 2 See *Report on Operation Aviemore Major Crime Squad Investigation into the Unlawful Killing of Joshua Warneke*, 5 November 2015; and *The Implementation of Recommendations Arising from the Commission's investigation into Operation Aviemore – A Further Report*, 4 April 2018.
  - 3 See *Gibson v The State of Western Australia [2017] WASCA 141*. On 30 June 2014, Gene Gibson was convicted in the WA Supreme Court on his plea of guilty of the unlawful killing of Joshua Warneke. On 12 April 2017, the WA Court of Appeal overturned the conviction on the basis that there was a miscarriage of justice; and entered a judgment of acquittal. The Court found that the integrity of the plea was impugned due to Mr Gibson's significant and pervasive cognitive impairments and that there was a real risk that the plea was not attributable to a genuine consciousness of guilt. Further, witnesses for the State were unreliable and the admissible evidence did not establish a case for Mr Gibson to answer.

The interview that was the subject of the appeal in the Gibson case (and found to be non-compliant) occurred six years after the Act came into force. This begs the question as to why more training had not occurred during this period.

The second aspect of the Commission's report is WAPOL neglect in ensuring officers have sufficient training and understanding of Aboriginal culture. Without it, the interactions of many officers in remote and regional Western Australia with the Aboriginal community are found wanting.

Some would argue that these issues remain unresolved since the 1991 findings of Royal Commission into Aboriginal Deaths in Custody.

But more recently there have been recommendations of the Community Development and Justice Standing Committee in several reports, which remain unfulfilled.

For example, the Committee notes recommendations made as far back as 2013, in a comprehensive report tabled by the Community Development and Justice Standing Committee, regarding training of both recruits and sworn officers:

*Recommendation 19*

*That Western Australia Police expands the diversity training module for recruits which deals with Aboriginal culture, and ensures that Aboriginal people are involved in its delivery. Recruits should be able to demonstrate cultural competency – that is, a well-developed understanding of Aboriginal issues and the skills to deal effectively with Aboriginal communities.*

*Recommendation 20*

*That Western Australia Police ensures: (1) that sworn police officers receive ongoing cultural competency training; and (2) that it is standard procedure for officers transferred to a location with a significant Aboriginal population to receive a comprehensive induction program, tailored to reflect the issues and challenges of the location, and involving members of the local Aboriginal community.<sup>4</sup>*

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<sup>4</sup> Community Development and Justice Standing Committee, *In Safe Custody: Inquiry into Custodial Arrangements in Police Lock-ups*, Parliament of Western Australia, Perth, November 2013, p106.

Similar findings were made in another report where it was found, in the context of family violence, that:

*The Aboriginal cultural awareness training provided to WA Police recruits and officers is ad hoc, inconsistent and insufficient.*<sup>5</sup>

While some training is currently delivered, it concerns the Committee that, mid-2018, it remains that cultural diversity training for police officers in Western Australia appears to be neither appropriate nor sufficient. This is evidenced by the fact that the Commission has not yet been able to sign off on the Operation Aviemore recommendation on the matter.

The Committee takes notice that many police officers stationed in remote and regional Western Australia interact well with communities and learn on the job about Aboriginal culture, particularly if the officer-in-charge (OIC) is culturally competent. However, this is often a matter of accident rather than design. The Committee considers that this inconsistent approach is not sufficient.

The Commission makes no finding that the inadequacies in practice which it identified were attributable to targeted racism. However a lack of experience and training lead to the perceptions of systemic racism. In this regard, on the job training for officers posted to remote and regional Western Australia is essential. In that context, the leadership of the OIC in ensuring this training is occurring is vital. The OIC sets the tone and culture in a small policing community.

The Committee regards addressing and resolving these matters, and the implementation of the reforms identified by the Commission, as being of paramount importance. This will evidence a sincere determination on behalf of WAPOL to improve their interactions with Aboriginal Western Australians.

An initial proposal for the development and delivery of Aboriginal Cultural Security Education was provided to WAPOL in September 2016. It appears to the Committee that the current proposal is a review of existing training and not the implementation of any enhanced cultural diversity training.

WAPOL advised that recommendations arising from the audit<sup>6</sup> were received by WAPOL in March 2018. The Committee is concerned that this work appears to only

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5 Community Development and Justice Standing Committee, *A measure of trust: How WAPOL evaluates the effectiveness of its response to family and domestic violence* Parliament of Western Australia, Perth, October 2015, Finding 15 at p69.

6 This refers to a review of 'cultural security' within the agency curriculum held by the Training Education Design and Development division of the WAPOL Force, including related agency policies and procedures. See p26.

have been recently commenced and it is unclear as to when these reforms are anticipated to filter through to the front line.

The Committee will watch with interest as to what practical measures are implemented from this audit.

The inevitable questions remain unanswered. Namely, why the slow pace of appraisal of the cultural awareness training delivered to recruits? Is WAPOL taking this matter as seriously as they should be?

A corollary of understanding the issues confronting Aboriginal communities is an appreciation of the prevalence of foetal alcohol spectrum disorder (FASD) and its impact on cognitive impairment.

In its 2018 report, the Commission touches on how the presence of FASD may influence interview requirements under the *the Criminal Investigation Act 2006*.

The effect of FASD in the Gene Gibson case was only raised on appeal. However, the Commission nevertheless considered whether interviewing police made due inquiry of cognitive capacity.

Identifying cognitive impairment is particularly difficult, and WAPOL admitted in evidence to the Committee that training needs to address the aspects that a police officer is able to understand and apply without having to diagnose the person in question.

The Committee considers that WAPOL are, however, required to make sufficient inquiry to ensure that a suspect is aware of the nature of the caution given to them.

A consequence of this is that cognitive impairment, through FASD or otherwise, may render understanding limited. So while police officers are not expected to possess the expertise to make a firm diagnosis of a condition, they should be equipped with the tools to be able to form a view about the level of understanding of the subject regarding the interview process and the right to silence.

The Committee does consider that there are positive signs that WAPOL are entering a new era. An era where there is a sincere resolve to do better in its dealings with Aboriginal Western Australians. We are heartened by the recent speech given by Police Commissioner Dawson to commemorate NAIDOC week, where he states:

*I am committed to working with Aboriginal people to improve our relationships and foster meaningful and positive change for future generations.*

We look forward to prompt attention and action by WAPOL to address the issues raised by the Commission. After all, with meaningful and positive change things won't remain the same, but rather lead to a vast improvement in criminal justice for the most vulnerable in this State.

A handwritten signature in black ink, appearing to read 'M.M. Quirk', written in a cursive style.

MS M.M. QUIRK, MLA  
CHAIR



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## **Ministerial Response**

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Minister for Police report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.



## Findings and Recommendations

### Finding 1

Page 3

The Corruption and Crime Commission's 2015 *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* exposed systemic issues in the manner in which Western Australian police officers interact with indigenous people, and aspects of the investigative policies utilised by the Major Crime Squad.

### Finding 2

Page 4

As a result of its investigation into Operation Aviemore, the Corruption and Crime Commission made a range of recommendations to the Western Australia Police Force in order to address the issues identified with the way in which Western Australian police officers interact with indigenous people.

### Finding 3

Page 4

Two recommendations from the Corruption and Crime Commission's 2015 *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* have not been adequately addressed by the Western Australia Police Force.

### Finding 4

Page 10

Not enough time is currently dedicated to cultural diversity training for recruits during the 28-week program at the WA Police Academy.

### Recommendation 1

Page 10

The Western Australia Police Force should routinely work with local groups and Aboriginal elders when inducting regionally and remotely stationed officers.

### Finding 5

Page 14

The Committee welcomes the increased focus by the Western Australia Police Force on cognitive impairment and its implications for compliance with the *Criminal Investigation Act 2006*.

### Recommendation 2

Page 14

Cognitive impairment and foetal alcohol spectrum disorder are areas of emerging challenges and there is growing expertise around these issues. Given this, the Western Australia Police Force need to prioritise internal policies and increase training of frontline officers in order to keep in step with ongoing developments.

**Finding 6****Page 15**

The Western Australia Police Force have progressed a range of initiatives to improve the delivery of cultural awareness training to police officers, for both recruits and officers being sent to regional areas. However, more needs to be done in the area of dealing with vulnerable people.

**Finding 7****Page 16**

Progress can be made in addressing the systemic issues identified by the Commission provided that the Western Australia Police Force are prepared to commit the time and resources necessary to the ongoing education and training of police officers in cultural awareness. Failure to expedite concerns clearly identified in the past, but not acted upon, has led to a number of tragic incidents and situations, which could have been avoided.

**Recommendation 3****Page 16**

That the Western Australia Police Force commit the time and resources necessary to the ongoing education and training of police officers in cultural awareness.

**Finding 8****Page 18**

The number and diversity of Aboriginal language groups remains an issue for the Western Australia Police Force, particularly where they are cautioning or issuing serious charges to people whose first language is not English.

**Finding 9****Page 19**

The Western Australia Police Force are progressing the implementation of pre-recorded cautions in 20 Aboriginal languages in spite of delays and difficulties inherent in identifying the right dialects and obtaining adequate services to progress this initiative. No time frame for completion of this work have been given.

**Finding 10****Page 20**

The administration of a caution for a person unfamiliar with their right to silence when English is not that person's first language, and the ability of the interviewee to properly understand that caution, remains an ongoing concern for the Corruption and Crime Commission and the Western Australia Police Force.

**Finding 11****Page 20**

The Committee notes that the Corruption and Crime Commission is committed to ongoing monitoring of these matters and accordingly no formal recommendation will be made by the Committee at this time in relation to findings 8, 9 and 10.

**Finding 12****Page 20**

The Western Australia Police Force are progressing the implementation of an IT solution known as the Automated Interview Plan (AIP), to allow an interviewing officer to fill in minimal information and identify potential vulnerabilities of a witness or suspect. The AIP generates an interview plan with specific attention to the needs and vulnerabilities of the person being interviewed.



# Chapter 1

## The Corruption and Crime Commission's investigation into Operation Aviemore

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*The Corruption and Crime Commission's Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* was tabled on 5 November 2015. It outlined major deficiencies in the investigation undertaken by the Western Australia Police Force under the Major Crime Squad investigation, Operation Aviemore. This investigation resulted in the wrongful conviction of Gene Gibson.

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### Purpose of this report

The Committee has taken a keen interest in the Corruption and Crime Commission (the Commission) investigation into Operation Aviemore and the implementation of recommendations made to the Western Australia Police Force (WAPOL) to address systemic issues.

Two reports have been tabled by the Commission in relation to this investigation.<sup>7</sup> The Committee resolved to review both reports and provide comment on whether the identified shortcomings have been adequately addressed by WAPOL.

The first report, tabled on 5 November 2015, identified deficiencies in investigatory action undertaken by WAPOL during Operation Aviemore, the Major Crime Squad investigation into the unlawful killing of Mr Joshua Warneke. The Commission made seven recommendations for improvements relating to WAPOL interviewing practices, the understanding and implementation of the *Criminal Investigation Act 2006* and the Commissioner's Orders and Procedures Manual (COPS Manual).

The Commission's second report, tabled on 4 April 2018, was a follow-up report, outlining the actions taken by WAPOL to address those recommendations and providing comment on the work that still needs to be done by WAPOL in this area.

This report focusses on two key areas where further action is necessary on the part of WAPOL to adequately address the concerns raised by the Commission in its reports.

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<sup>7</sup> *Report on Operation AvieMore Major Crime Squad Investigation into the Unlawful Killing of Joshua Warneke*, 5 November 2015; and *The Implementation of Recommendations Arising from the Commission's investigation into Operation Aviemore – A Further Report*, 4 April 2018.

## Chapter 1

### Background

A function of the Commission is to investigate police misconduct. The Commission 'generally performs this function by monitoring and reviewing investigations undertaken by the WA Police into possible misconduct by police officers.'<sup>8</sup>

When there is evidence of wider systemic issues and the potential for organisational reform, the Commission will often conduct a separate investigation and report on the 'lessons to be learned.' The investigation into Operation Aviemore was one of those wider 'lessons learned' type of inquiries.<sup>9</sup>

Joshua Warneke was killed on 26 February 2010 and his body discovered on the side of the Old Broome Road by a taxi driver. Two years after the incident, Mr Gene Gibson was identified as a person of interest in the investigation. Mr Gibson, an Aboriginal man with cognitive impairment who lived in remote Western Australia and did not speak English as a first language, was initially charged with the murder of Joshua Warneke, before pleading guilty to the lesser charge of manslaughter.

Mr Gibson was convicted and sentenced to seven years and six months imprisonment in October 2014, and successfully appealed the conviction in 2017, largely on the basis that the admissible evidence was unreliable.<sup>10</sup>

### **The Corruption and Crime Commission's 2012 investigation into, and report on, Operation Aviemore**

The stated purpose of the Commission's investigation into Operation Aviemore 'was to determine if any public officer employed by WA Police has, is, or may have been engaged in misconduct and/or reviewable police action during the investigation of the death of Joshua Warneke and the subsequent arrest and prosecution of Gene Gibson.'<sup>11</sup>

Although generally critical of Operation Aviemore, the Commission took a cautious approach in forming opinions on misconduct in relation to individual officers' actions. The Commission was of the view that the errors made by individual

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8 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p9.

9 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p9.

10 *Gibson v State of Western Australia* [2017] WASCA 141, [210].

11 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p9.

officers, in many cases, reflected ‘a deeper malaise and systemic weakness’ permeating criminal investigation in Western Australia.<sup>12</sup>

The Commission’s November 2015 report outlined deficiencies in the police investigation undertaken by WAPOL that resulted in the conviction of Mr Gibson. These included a failure by police to comply with statutory requirements relating to interviews, such as the provision of an interpreter, the absence of a caution and a failure to record the initial interview with Mr Gibson.<sup>13</sup>

The report also ‘exposed systemic issues in the manner in which Police interacted with indigenous people, and aspects of the investigative policies utilised by the Major Crime Squad.’<sup>14</sup> It made a range of recommendations to WAPOL in order to address these issues.

The Commission chose not to publish opinions of misconduct against individual officers, as disciplinary proceedings within the jurisdiction of the Police Commissioner were underway at the time of the report’s tabling. There was also consideration being given to criminal charges against one officer, and the Commission was loathe to prejudice any ongoing proceedings.<sup>15</sup>

### **Finding 1**

The Corruption and Crime Commission’s 2015 *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* exposed systemic issues in the manner in which Western Australian police officers interact with indigenous people, and aspects of the investigative policies utilised by the Major Crime Squad.

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12 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p9.

13 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p12.

14 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p1.

15 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p50.

## Chapter 1

### Finding 2

As a result of its investigation into Operation Aviemore, the Corruption and Crime Commission made a range of recommendations to the Western Australia Police Force in order to address the issues identified with the way in which Western Australian police officers interact with indigenous people.

### **The Corruption and Crime Commission's follow-up investigation into the implementation of recommendations**

In its 2015 report, the Commission 'made seven recommendations to Police for improvements relating to interviewing practices, the understanding and implementation of the *Criminal Investigation Act 2006* (CI Act) and the Police Manual.'<sup>16</sup>

The Commission tabled a follow-up report in April 2018, where it outlined the actions taken by WAPOL in responding to the recommendations made in 2015.

As detailed in the 2018 report, two of those recommendations remain outstanding as the Commission considers they have not yet been adequately addressed. The Commission will review progress on those two recommendations in 2019.<sup>17</sup>

Discussion of the two outstanding recommendations forms the basis of the remainder of this report.

### Finding 3

Two recommendations from the Corruption and Crime Commission's 2015 *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke* have not been adequately addressed by the Western Australia Police Force.

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16 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p1.

17 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p21.

## Chapter 2

### The capacity of police officers in Western Australia to deal with vulnerable people, particularly Aboriginal people

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In its 2015 report the Corruption and Crime Commission recommended that the Western Australia Police Force give immediate attention to ascertaining if the lack of knowledge demonstrated during Operation Aviemore in dealing with Aboriginal witnesses and suspects was widespread. If this was found to be the case, the Commission recommended the development of an ongoing training and refresher course in dealing with Aboriginal people with particular emphasis on language and culture.

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#### Systemic issues within the Western Australia Police Force

The Committee agrees that the systemic issues identified by the Commission in its investigation, largely around the manner in which Western Australian police officers interact with indigenous people, are 'matters of significance to the Western Australian community and to the administration of justice.'<sup>18</sup>

The findings of the Commission highlighted failings of the Western Australian justice system more widely in relation to Aboriginal people, particularly for those who may have a form of cognitive impairment.<sup>19</sup>

The work done in this area has been some of the most important carried out by the Commission in relation to the activities of WAPOL.

It is readily apparent, even to those with a passing interest in criminal justice in WA, that the issues highlighted by the Commission in the Operation Aviemore investigation are not new. What is less apparent is why concerted efforts were not made sooner to address these fundamental flaws in the manner in which police

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18 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p1.

19 Tulich, T., Blagg, H. and Hill-De Monchaux, A., 'Miscarriage of Justice in Western Australia: The Case of Gene Gibson', *Griffith Journal of Law and Human Dignity*, vol. 5, no. 2, 2017, p120.

## Chapter 2

officers enforce the law. It is hoped this valuable work of the Commission will act as a circuit breaker.

The Committee notes that *the Criminal Investigation Act 2006* came into force over a decade ago. The interview that was the subject of the appeal in the Gibson case (and found to be non-compliant) occurred six years after the Act came into force. This begs the question as to why more training had not occurred during this period.

### **Cultural awareness training**

Of the systemic weaknesses identified by the Commission, the lack of preparation for officers being deployed to remote areas of Western Australia that involved daily contact with Aboriginal people, beyond basic cultural awareness training on entry, was at issue.<sup>20</sup> For example, a number of the officers directly engaged in Operation Aviemore ‘had little or no experience dealing with Aboriginals from remote communities... [and] little idea of culture, customs or language variation.’<sup>21</sup>

The Committee believes the capacity to communicate effectively and to appreciate cultural differences and customs is crucial to police work in general, but perhaps more so in remote regions. Others have identified similar concerns.

A recent Australian Law Reform Commission inquiry heard about an unpreparedness of police entering into often remote and sometimes challenging Aboriginal communities. Submissions to that inquiry suggested that substantial improvements in training for police officers are needed to facilitate a better understanding of, and rapport with, local indigenous communities.

The Aboriginal Legal Service of WA (ALSWA) stressed the importance of reporting on training as an accountability measure, submitting that WAPOL ‘should be required to report on an annual basis the proportion of police officers who have undertaken cultural competency training; the nature, location and duration of that training; and how many officers have undertaken subsequent training.’<sup>22</sup>

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20 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p9.

21 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p33.

22 Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133), 28 March 2018, see Chapter 14 ‘Police Accountability—Improving police culture’. Available at: <https://www.alrc.gov.au/publications/improving-police-culture>. Accessed on 18 July 2018.

The Committee was advised that in WAPOL's regular discussions with the Aboriginal Legal Service of Western Australia (ALSWA), cultural awareness within WAPOL is an issue that is invariably raised. The Committee also understands that ALSWA wants assurances given that officers placed in the Kimberley and Pilbara regions have adequate training and awareness of local issues.

Following the Commission's 2015 report, WAPOL initially agreed that ongoing and refresher training should 'be developed to train officers in aspects of the Aboriginal languages and culture.'<sup>23</sup> Later, in 2016, WAPOL advised the Commission that 'evidence available to the Police did not support a conclusion that there was a widespread lack of knowledge in this area, and that cultural diversity training was already being delivered to recruits.'<sup>24</sup>

During this time it also is significant that a number of recruits were brought in from overseas whose exposure to Aboriginal culture would have been even less than that of local recruits.

Nevertheless, WAPOL advised the Commission that training for officers on 'dealing with language barriers in the investigative environment' was being introduced, 'induction packages were being enhanced and refresher courses were being developed that emphasised cultural competencies in Police investigations.'<sup>25</sup>

In relation to cultural awareness training at the WA Police Academy, the Commission reports that this is 'under review to determine how this can be better facilitated.'<sup>26</sup> Recruit training at the academy lasts 28 weeks, and of this, around 1.5 days is devoted to cultural diversity training. Approximately a full day is devoted to Aboriginal culture specific training.<sup>27</sup> The Police Commissioner acknowledges that this is not sufficient time and that the delivery of this training should be expanded.

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23 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p9.

24 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p9.

25 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p9.

26 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, pp10-11.

27 Based on information provided to the Committee in August 2018.

## Chapter 2

However, he notes that there is then a potential trade-off with other training not being 'covered within that time frame.'<sup>28</sup>

WAPOL advised the Committee that they have been working with an Aboriginal educator and researcher, Professor Juli Coffin (and others), to improve the curriculum used to train police recruits in cultural diversity, particularly in Aboriginal issues.<sup>29</sup> A proposal for a *Cultural Security Audit for the WAPOL Force* has been reviewed by the Committee which:

*outlines an initial review of internal policy and training curriculum with the intention of strengthening the cultural security of the WAPOL Force in its interactions with Aboriginal Western Australians. It will attempt to achieve this aim by auditing the model of "cultural security"<sup>30</sup> within the agency curriculum held by the Training Education Design and Development division of the WAPOL Force, including related agency policies and procedures.<sup>31</sup>*

The initial proposal for the development and delivery of Aboriginal Cultural Security Education was provided to WAPOL in September 2016. It appears to the Committee that the current proposal is a review of existing training and not the implementation of any enhanced cultural diversity training.

WAPOL advised that recommendations arising from the audit were only recently received by WAPOL in March 2018. The Committee is concerned that this work appears to only have been recently commenced and it is unclear as to when these reforms are anticipated to filter through to the front line. The Committee will watch with interest as to what practical measures are implemented from this audit.

The Committee appreciates the commitment of, and comments made by, Police Commissioner Dawson in relation to current research and associated recommendations.<sup>32</sup> However, it questions the slow pace at which appraisal of the

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28 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p13.

29 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p8.

30 According to Professor Coffin, 'cultural security is a measure of how well a service can effectively deliver its programs to Aboriginal people' and the project outlined in her proposal aims to strengthen 'the cultural security of police services to Aboriginal Western Australians.' See below reference at p3.

31 The University of Notre Dame Australia, *Cultural Security Audit for the WA Police Force: Aboriginal Cultural Security Audit of the WAPOL Force curriculum provided by the Training Education Design and Development division, Joondalup, Western Australia*, prepared by Professor Juli Coffin, p2.

32 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p8.

training delivered to recruits is taking place, and whether WAPOL is taking this matter as seriously as it should be.

For example, the Committee notes recommendations made as far back as 2013, in a comprehensive report tabled by the Community Development and Justice Standing Committee, regarding training of both recruits and sworn officers:

*Recommendation 19*

*That Western Australia Police expands the diversity training module for recruits, which deals with Aboriginal culture, and ensures that Aboriginal people are involved in its delivery. Recruits should be able to demonstrate cultural competency – that is, a well-developed understanding of Aboriginal issues and the skills to deal effectively with Aboriginal communities.*

*Recommendation 20*

*That Western Australia Police ensures: (1) that sworn police officers receive ongoing cultural competency training; and (2) that it is standard procedure for officers transferred to a location with a significant Aboriginal population to receive a comprehensive induction program, tailored to reflect the issues and challenges of the location, and involving members of the local Aboriginal community.<sup>33</sup>*

While some training is currently delivered, it concerns the Committee that, mid-2018, it remains that cultural diversity training for police officers in Western Australia appears to be neither appropriate nor sufficient. This is evidenced by the fact that the Commission has not yet been able to sign off on the Operation Aviemore recommendation.

The Police Commissioner advised the Committee that cultural diversity training of recruits is supplemented by induction training, particularly for regional areas, because a particular local group and/or Aboriginal elders ‘may be able to further complement what is done and delivered in Perth’ and this ‘can be radically different [throughout the] regions because of the cultural differences that apply.’<sup>34</sup>

The Committee takes notice that many officers stationed in remote and regional Western Australia interact well with communities and learn on the job about

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33 Community Development and Justice Standing Committee, *In Safe Custody: Inquiry into Custodial Arrangements in Police Lock-ups*, Parliament of Western Australia, Perth, November 2013, p106.

34 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p13.

## Chapter 2

Aboriginal culture, particularly if the officer-in-charge (OIC) is culturally competent. However, this is often a matter of accident rather than design. The Committee considers that this inconsistent approach is not sufficient.

Working with local groups and elders is a sensible way to approach inductions for regionally and remotely stationed officers, and the Committee recommends that WAPOL expand and improve on this wherever possible—or, in the words of the Police Commissioner—‘normalise that, to make sure that we can have that as an embedded routine matter, that our officers get the best possible induction.’<sup>35</sup>

As the Commission pointed out in its 2018 report, ‘a well-designed cultural awareness training program for all officers, especially those working in regional or remote WA, could significantly diminish the risk of recurrence of some of the issues arising in Operation Aviemore.’<sup>36</sup> This conclusion is supported by a body of contemporary research.

Targeted induction training for officers stationed in regional areas is essential to ensuring that these officers are equipped to engage appropriately with indigenous people, and the Committee agrees with WAPOL that this training is best delivered on the ground in partnership with Aboriginal elders and local groups.

### **Finding 4**

Not enough time is currently dedicated to cultural diversity training for recruits during the 28-week program at the WA Police Academy.

### **Recommendation 1**

The Western Australia Police Force should routinely work with local groups and Aboriginal elders when inducting regionally and remotely stationed officers.

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35 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p13.

36 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p11.

## **Policy and procedures relating to interviewing vulnerable people**

According to the Office of Investigative Practices within WAPOL, a ‘vulnerable person’, for the purpose of a police interview, falls into one or more of the following categories:

- a child (children are always considered vulnerable);
- a person with impaired intellectual function (such persons are always considered vulnerable);
- someone with impaired physical functioning;
- an Aboriginal or Torres Strait Islander;
- a person from a non-English speaking background; or
- someone who has suffered an emotional or traumatic incident.<sup>37</sup>

Any of the above characteristics can predispose a witness or suspect to suggestibility, can have an impact on voluntariness, or can complicate the quality of communication between police officer(s) and the interviewee. If in doubt, an officer should always treat a person as vulnerable ‘to ensure fairness.’<sup>38</sup>

WAPOL told the Committee that dealing with people suffering from substance abuse, mental health issues, cognitive impairment and those with cultural and linguistic differences, all impact the ability of police officers to carry out their role. This is exacerbated in regional areas where resources are often lacking, which aggravates the acute and complex situations that police officers often find themselves in.

WAPOL claim to be ‘making every endeavour’ to improve when dealing with these scenarios.<sup>39</sup> They advised they are developing procedures relating to interviewing vulnerable people as part of an overall ‘investigative interviewing’ policy. Development of an adjunct to the existing regional Western Australian induction package is also underway.<sup>40</sup>

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37 Western Australia Police Force, *Investigative Interviewing: Regional Western Australia*, prepared by the Office of Investigative Practices, February 2018, p3.

38 Western Australia Police Force, *Investigative Interviewing: Regional Western Australia*, prepared by the Office of Investigative Practices, February 2018, p3.

39 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p12.

40 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, pp9-10.

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Current WAPOL interviewing manuals outline approaches and offer guidance for interviewing vulnerable people. Examples of guidance offered (relevant to this discussion) include direction around:

- conducting a language assessment;
- considering the presence of an interview friend, responsible adult or independent person;
- properly checking the interviewee's understanding of the caution (this is discussed in more detail in the following chapter of this report); and
- using Anunga guidelines where appropriate (see below).<sup>41</sup>

In another related initiative, WAPOL told the Committee that they now work with clinicians from the Department of Health, who are embedded within the state operations centre within WAPOL. These mental health clinicians have direct access to the mental health database and are able to provide information to police officers when they are interviewing or interacting with people who appear to be impacted by mental health issues.<sup>42</sup>

### **Anunga rules**

The Anunga rules<sup>43</sup> enshrined guidelines for police officers in the Northern Territory to observe when interrogating Aboriginal people. The Northern Territory courts have excluded evidence of admissions on the basis of non-compliance with Anunga.

The guidelines enshrined in *R v Anunga* (1976) 11 ALR 412 were designed to alleviate some of the disadvantages Aboriginal people suffer in dealings with police. There are nine guidelines requiring that, when interviewing people of Aboriginal or Torres Strait Islander descent:

- an interpreter is present if the person is not fluent in English;
- consideration is given to an 'interview friend' being present (someone in whom the person has apparent confidence);

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41 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, pp9-10.

42 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p12.

43 On 30 April 1979, Justice FORSTER handed down his reasons for rejecting typewritten records of conversations in the matter of QUEEN v Angus ANUNGA, Sandy AJAX, Clancy AJAX, TJINGUNYA, Nari WHEELER and Frankie Miller JAGAMARA in the Northern Territory Supreme Court in August 1975 (*R v Anunga* (1976) 11 ALR 412).

- great care is taken in the administration of a caution (the right to silence) and in ensuring it is understood;
- great care is taken in the formulation of questions to avoid suggesting answers;
- admissions are corroborated from other sources;
- there is provision of basic refreshments (meals, drinks, toilets) and clothing, if required;
- no questioning takes place when a person is ill, drunk or tired;
- if clothing is removed, substitute clothing is required; and
- reasonable steps are taken to obtain legal assistance if requested.

WAPOL say they attempt to make officers understand the application of the Anunga Rules and related complexities when dealing with Aboriginal suspects. However, they also admit that this is impacted by some of the difficulties found with working in remote locations, the language divide and availability of interpreters. WAPOL acknowledge that in checks of audio-visual records of interviews, 'some failures to comply with Anunga appropriately' are occurring.<sup>44</sup>

#### **Foetal alcohol spectrum disorder**

Foetal alcohol spectrum disorder (FASD)<sup>45</sup> is particularly prevalent in regional Western Australia. WAPOL told the Committee that a lack of understanding by police officers around FASD, and how that may impact on a vulnerable person who comes into contact with police, is an ongoing issue.<sup>46</sup>

Identifying cognitive impairment is particularly difficult, and WAPOL admit that training needs to address aspects that a police officer is able to understand and apply without having to diagnose the person in question.<sup>47</sup>

Police officers are, however, required to make sufficient inquiry to ensure that a suspect is aware of the nature of the caution given to them. A corollary of this is that cognitive impairment through FASD or otherwise may render understanding limited. So while police are not expected to possess the expertise to make a firm diagnosis of a condition, they should be equipped with the tools to be able to form

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44 Ms Kylie Whiteley, Commander, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p9.

45 Foetal alcohol spectrum disorder (FASD) is the term used to describe the lifelong physical and/or neurodevelopmental impairments that can result from foetal alcohol exposure. See <https://www.nofasd.org.au/alcohol-and-pregnancy/what-is-fasd/>

46 Ms Kylie Whiteley, Commander, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p10.

47 Mr Bradley Jackson, Detective Inspector, Office of Investigative Practices, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p10.

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a view about the level of understanding of the subject regarding the interview process and the right to silence.

It is important to note that in Gene Gibson's case, FASD did not surface as a mitigating factor until the court appeal process. The Committee is aware that Commission staff are more cognisant of this issue today than during the investigation into Operation Aviemore.

WAPOL advise that training for police officers has been developed (including as an adjunct to the regional Western Australian induction package) to assist them in several ways, including:

- identifying FASD;
- determining the relevant implications for dealing with someone with FASD; and
- early identification of vulnerabilities, before such a person is subject to investigation.<sup>48</sup>

Also as a result of the Commission's report, WAPOL have developed an interview guide that 'officers can read prior to interviewing someone that they believe may have FASD.'<sup>49</sup> The guide discusses some of the cognitive issues that those with FASD may suffer, and highlights particular ways to couch questions and set up environments for interviewing people suspected of having FASD.

### Finding 5

The Committee welcomes the increased focus by the Western Australia Police Force on cognitive impairment and its implications for compliance with the *Criminal Investigation Act 2006*.

### Recommendation 2

Cognitive impairment and foetal alcohol spectrum disorder are areas of emerging challenges and there is growing expertise around these issues. Given this, the Western Australia Police Force need to prioritise internal policies and increase training of frontline officers in order to keep in step with ongoing developments.

The Committee notes that the adjunct training to the regional induction package, particularly dealing with interviewing people with FASD from remote Aboriginal communities, has been implemented in Western Australia. WAPOL told the

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48 Ms Kylie Whiteley, Commander, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p10.

49 Mr Bradley Jackson, Detective Inspector, Office of Investigative Practices, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p10.

Committee that the training ‘emphasises the need for Anunga, it talks about the need for interpreters, and it is like a reminder—an *aide memoire*—in potentially a new environment for these people that have just started into those regional ... areas.’<sup>50</sup>

### **The Commission’s review of Western Australia Police Force current policy and procedures for interviewing vulnerable people**

The Commission makes no finding that the inadequacies in practice were attributable to targeted racism. However a lack of experience and training lead to the perceptions of systemic racism. In this regard, on the job training for officers posted to remote and regional Western Australia is essential. In that context, the leadership of the OIC in ensuring this training is occurring is vital. The OIC sets the tone and culture in a small policing community.

The Commission broadly approves of the WAPOL training package for interviewing vulnerable people. It observes that the Office of Investigative Practices within WAPOL ‘is working to ensure that officers are properly identifying vulnerabilities and applying appropriate practices, and is emphasising the use of the Anunga guidelines (where applicable) for all persons with vulnerabilities, not just Aboriginal people.’<sup>51</sup> However, it notes ‘there are still a number of initiatives awaiting endorsement that would be beneficial for officers, including the vulnerable person’s interview course.’<sup>52</sup>

### **Finding 6**

The Western Australia Police Force have progressed a range of initiatives to improve the delivery of cultural awareness training to police officers, for both recruits and officers being sent to regional areas. However, more needs to be done in the area of dealing with vulnerable people.

### **The Committee’s conclusion**

Following consultation with both the Commission and WAPOL, the Committee is of the view that progress can be made in addressing these systemic issues, provided that WAPOL are prepared to commit the time and resources necessary to the

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50 Mr Bradley Jackson, Detective Inspector, Office of Investigative Practices, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p10.

51 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p10.

52 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p10.

## Chapter 2

ongoing education and training of police officers in cultural awareness. The Committee believes that this should be done in close association with local Aboriginal groups and elders and Aboriginal organisations.

Furthermore, given the importance of the role of an OIC in regional and remote areas, great care should be taken by WAPOL to ensure that these senior officers are afforded the supervision and training required to carry out their role in a culturally sensitive manner. This will then set the tone for new officers posted to that area.

A concern held by the Committee is that WAPOL is not currently devoting enough resources to address these issues. While the Committee understands that the demands on WAPOL resources are complex and extensive, it is of the view that the issues discussed here are of utmost importance to the Western Australian community.

### **Finding 7**

Progress can be made in addressing the systemic issues identified by the Commission provided that the Western Australia Police Force are prepared to commit the time and resources necessary to the ongoing education and training of police officers in cultural awareness. Failure to expedite concerns clearly identified in the past, but not acted upon, has led to a number of tragic incidents and situations, which could have been avoided.

### **Recommendation 3**

That the Western Australia Police Force commit the time and resources necessary to the ongoing education and training of police officers in cultural awareness.

## Chapter 3

### The administration of a caution for a person whose first language is not English

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The Corruption and Crime Commission recommended that attention be given to the administration of a caution for a person unfamiliar with their right to silence when English is not that person's first language. The Commission left it to the Western Australia Police Force to identify the best approach to improving the administration of the caution.

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#### The language barrier

The number and diversity of Australian Aboriginal language groups remains an issue for WAPOL—it has assessed that there are around 33 different language groups within Western Australia. Routine use of around 20 Aboriginal language groups necessitates assistance from translators. It is important that the right dialects and skill sets are utilised, enabling communication of a formal warning and ensuring effective interpretation.<sup>53</sup>

In 2015, the Commission reported that Gene Gibson ‘had a superficial understanding of English, sufficient to pass in basic conversation but was unlikely to understand the intellectual concept of choosing to speak or remain silent in an interview as a voluntary choice.’<sup>54</sup> The fact that the interpreter was a person well known to Mr Gibson was identified as a shortcoming in the interview process.

During a 2013 application in the Supreme Court for a ruling that Gibson’s interviews were inadmissible, Hall J found that:

*[the appellant’s] will was overborne because he was pressured ... to answer the police questions. Bearing in mind the cultural context and the kinship relationship between [the appellant] and [the person acting as interpreter], the statements made by [the interpreter] would have*

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53 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p7.

54 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p40.

## Chapter 3

*been understood by [the appellant] as a direction to answer the police questions.*<sup>55</sup>

The need for interpreters in Aboriginal languages is acute and remote communities where people may be related presents additional challenges. WAPOL recognise that ‘it is not ideal to have an interpreter that is related to the person being questioned.’<sup>56</sup>

In the 2018 follow-up report, the Commission reiterated that ‘this issue is likely to arise with other interviewees with English as a second language, including Aboriginal people.’<sup>57</sup>

### **Finding 8**

The number and diversity of Aboriginal language groups remains an issue for the Western Australia Police Force, particularly where they are cautioning or issuing serious charges to people whose first language is not English.

### **Pre-recorded cautions**

In 2015, WAPOL advised the Commission that it was ‘considering adopting the Northern Territory model whereby the caution is recorded in a variety of Aboriginal languages and the correct version is played to the interviewee prior to any interview.’<sup>58</sup>

The Commission reported that by 2018 the initiative had ‘not significantly progressed.’ WAPOL had engaged the Kimberley Interpreting Service to create pre-recorded cautions, with 20 Aboriginal languages identified and the caution wording drafted. A funding request was reported to be ‘under consideration.’<sup>59</sup>

The Commission expressed concern about this approach, claiming that it might not be the most cost effective way to bring about a ‘proper understanding of the criminal caution.’ There could be difficulties in capturing all languages spoken, a ‘margin for error in identifying the correct language spoken,’ and a ‘potential for a

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55 *State of Western Australia v Gibson* [2014] WASC 240 [175].

56 Mr Christopher Dawson, Police Commissioner, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p7.

57 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p13.

58 Corruption and Crime Commission, *Report on Operation Aviemore: Major Crime Squad Investigation into the Unlawful Killing of Mr Joshua Warneke*, Corruption and Crime Commission, Perth WA, 5 November 2015, p40.

59 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p13.

misunderstanding of comprehension of the language.<sup>60</sup> The Commission favours the implementation of the automated interview plan, which is discussed below.

In spite of these concerns, and notwithstanding inexplicable delays in implementation, which police attribute to the difficulties inherent in identifying the right dialects and skill sets, WAPOL report that they are making good progress with this initiative.<sup>61</sup> The Committee will monitor this progress, remaining cognisant of the Commission's concerns.

### **Finding 9**

The Western Australia Police Force are progressing the implementation of pre-recorded cautions in 20 Aboriginal languages in spite of delays and difficulties inherent in identifying the right dialects and obtaining adequate services to progress this initiative. No time frame for completion of this work have been given.

### **Automated interview plans**

WAPOL are considering other initiatives to address the recommendation regarding the administration of the caution. The option preferred by the Commission is an automated interview plan (AIP) to 'give interviewers a tool to prompt them to identify potential vulnerabilities, and apply the information necessary to address them within an interview context.'<sup>62</sup>

As WAPOL advised the Committee, 'interviewing people with cognitive impairments is particularly difficult,' and much of the qualifying information comes from various sources, these being: legislation; case law; WAPOL policy and other guides, manuals and information.<sup>63</sup> For this reason, a mechanism that brings this information together is desirable.

WAPOL have had a business plan approved for implementation of the AIP and are currently having it costed. The AIP will allow an interviewing officer to fill in certain information, identify vulnerabilities, and then the application constructs an interview plan specific to the person being interviewed. It will offer information

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60 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Avimore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p14.

61 Mr Christopher Dawson, Police Commissioner, WAPOL, *Transcript of Evidence*, 20 June 2018, pp6-7.

62 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission's Investigation into Operation Avimore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p13.

63 Mr Bradley Jackson, Detective Inspector, Office of Investigative Practices, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, pp10-11.

## Chapter 3

about the person and the application of the Anunga Rules. If FASD is selected as a potential vulnerability, relevant information would be included.<sup>64</sup>

The AIP is considered by the Commission to be more cost effective than the pre-recorded caution. However, concerns ‘relating to the comprehension of the caution have not been fully addressed.’<sup>65</sup>

The concern around the caution being adequately understood is shared by WAPOL. This is an issue, which has been noted by police when conducting recent ‘investigative practices health checks’ (checks which are partly comprised of reviews of audio-visual records of interviews).<sup>66</sup>

The Committee notes that in training of recruits and also in interview training for current officers, WAPOL ‘are reinforcing that officers must take steps to ensure that interviewees properly understand a caution before proceeding to interview.’<sup>67</sup>

### Finding 10

The administration of a caution for a person unfamiliar with their right to silence when English is not that person’s first language, and the ability of the interviewee to properly understand that caution, remains an ongoing concern for the Corruption and Crime Commission and the Western Australia Police Force.

### Finding 11

The Committee notes that the Corruption and Crime Commission is committed to ongoing monitoring of these matters and accordingly no formal recommendation will be made by the Committee at this time in relation to findings 8, 9 and 10.

### Finding 12

The Western Australia Police Force are progressing the implementation of an IT solution known as the Automated Interview Plan (AIP), to allow an interviewing officer to fill in minimal information and identify potential vulnerabilities of a witness or suspect. The AIP generates an interview plan with specific attention to the needs and vulnerabilities of the person being interviewed.

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64 Mr Bradley Jackson, Detective Inspector, Office of Investigative Practices, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p11.

65 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p14.

66 Mr Bradley Jackson, Detective Inspector, Office of Investigative Practices, Western Australia Police Force, *Transcript of Evidence*, 20 June 2018, p9.

67 Corruption and Crime Commission, *The Implementation of Recommendations Arising from the Commission’s Investigation into Operation Aviemore – A Further Report*, Corruption and Crime Commission, Perth WA, 4 April 2018, p14.

### **The Committee's conclusion**

The Committee recognises the difficulties faced by police when dealing with issues in remote and regional areas, and commends WAPOL on efforts to address the recommendation regarding the administration of a caution to a person whose first language is not English. However, it agrees with the assessment of the Commission that more needs to be done.

The Committee will maintain a watching brief on the progress of the two initiatives being implemented by WAPOL—the pre-recording of the caution in Aboriginal languages and the automated interview plan.

The Committee regards addressing and resolving these matters, and the implementation of the reforms identified by the Commission, as being of paramount importance. This will evidence a sincere determination on behalf of WAPOL to improve their interactions with Aboriginal Western Australians.

A handwritten signature in black ink, appearing to read 'M.M. Quirk', is positioned above the typed name.

MS M.M. QUIRK, MLA  
CHAIR



## Appendix One

### Committee's functions and powers

By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 15 June 2017.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-293 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied. Certain standing orders of the Legislative Council also apply.

It is the function of the Joint Standing Committee to -

- a) monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission;
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector; and
- c) carry out any other functions conferred on the Committee under the *Corruption, Crime and Misconduct Act 2003*.

The Committee consists of four members, two from the Legislative Assembly and two from the Legislative Council.



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