



## **Community Development and Justice Standing Committee**

# **Review of the police investigation into traffic incidents involving a Member of Parliament**

WA Police Agency Review

**Report No. 5  
June 2014**

Legislative Assembly  
Parliament of Western Australia

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**Community Development and Justice  
Standing Committee**

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**Review of the police investigation  
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Report No. 5

Presented by

**Ms M.M. Quirk, MLA**

Laid on the Table of the Legislative Assembly on 19 June 2014



## Chair's Foreword

The Community Development and Justice Standing Committee has, as part of its portfolio responsibilities, the areas of police and road safety. This report is of an agency review that examined the performance of police in conducting investigations into traffic incidents involving the Member for Vasse on February 23<sup>rd</sup> 2014.

The Committee's examination included:

- Police communications and integration of information related to the incident;
- Investigations undertaken by police officers on the night in question;
- The nature of demand for police attendance on the night in question;
- The subsequent conduct of the investigation and collection of evidence;
- The decision to prosecute;
- The charges laid and legal advice sought.

The examination was conducted solely within these contexts. Given that the Member for Vasse pleaded guilty in court to certain offences, the Committee proceeded on the basis that the elements of those offences were fully admitted.

Since the Committee exclusively concentrated on police conduct in response to those admitted offences, the Member for Vasse was not called. It was beyond the scope of the inquiry to examine his conduct on the night in question, otherwise natural justice would have demanded the extension to him of the opportunity to answer allegations.

The Committee had the benefit of examining the prosecution brief, police running sheets, some forensic reports, mechanical reports, photographs as well as oral evidence from a number of police witnesses.

Within the running sheet were references to other potentially probative material which was either not presented to the Committee, no longer in existence or not pursued.

The oral evidence, for example, suggested that on the morning following the incidents, police had not yet made any connection between them. It is clear, however, that Wembley police were linking the pole and car crashes on that morning after the incidents. What they did not do was make the connection between these and the report involving the erratic driving of a white Caprice, registration no. 1DXJ315.

The Committee found that no follow-up occurred between the taking of these initial reports and media reports which surfaced some weeks later. Only at that time, when police came under public scrutiny, did they spring into action.

By that time, however, long after the event, any deficiencies in the original investigation could not readily be corrected.

It was found that once the investigation did commence in earnest, it was conducted under the erroneous assumption that no charges could be laid, in the absence of a breathalyser reading, under section 63 of the *Road Traffic Act 1974* for driving under the influence of alcohol. This false assumption influenced the course of further inquiries.

The Committee viewed with concern the evidence that conversations between Director General Conran and Deputy Commissioner Brown were not incorporated in the police running sheet. The Committee received this as two separate sheets of paper. The Committee was surprised that this had occurred in this case, since such a practice ordinarily attracts sharp criticism in the criminal courts.

The Committee was also surprised that any suggestion that third parties may have assisted in obscuring the true nature of the offending behaviour, or sought to minimize it, has been completely overlooked by police.

In this regard, Rachel Turnseck, the then Minister's Chief of Staff, was not questioned more generally about her role and duties. In that position she would have responsibility for office assets like the car. It appears she did not ensure that a RiskCover insurance form was ever submitted; her duties would have also included ensuring that the Minister's security details were kept current with police; her interview with police was lacking in material particulars and police gave evidence that she was less than forthcoming when interviewed.

Of note also are the unsolicited remarks of Director General Conran at an early stage of inquiries indicating to the Deputy Commissioner that he had concerns for Ms Turnseck's welfare. This may have had the effect of influencing police to run dead on examining Ms Turnseck's conduct.

This conversation certainly appears to have lacked propriety.

It was also noted, however, that Director General Conran did make police aware that a security guard in Dumas House had reported sighting the Member for Vasse in the basement emptying a bin full of bottles early in the morning of February 23rd. Alerting police to the existence of this evidence in a timely fashion was appropriate. It does, however, appear that this was never followed up by police. Given ongoing questions

about where Mr Buswell went immediately after the wedding reception and where he parked his car, this lack of follow-up is perplexing.

The failure of traffic police to identify the driver of the vehicle is directly attributable to the failure of Dignitary Protection to maintain and update adequate records on the residences and vehicle details of Cabinet members.

The evidence heard by the Committee about dignitary protection stretched credibility. It is certainly unsatisfactory that Dignitary Protection only had records about senior cabinet ministers where that information had been volunteered. There is a legitimate need for Dignitary Protection to be able to flag Members of Parliament on their computer records so that appropriate responses can be undertaken in a timely fashion. Members, and especially Ministers, do, by the very nature of their positions, face a higher risk of being targeted.

It is ironic that despite no contact with the Member for Vasse during the investigation police were able to identify him as the driver of vehicle 1DXJ315 through fingerprints, yet Dignitary Protection did not possess even basic information about the current residence and car driven by a senior member of Cabinet.

Whilst speculation, had those records facilitated identification of the driver on that evening, together with an unequivocal eye-witness account of erratic driving, the police might have given this matter greater attention.

And if coupled with the knowledge that there were a number of outstanding traffic infringement notices for that vehicle, police would have been given a compelling reason to proceed on that night.

Hindsight is, of course, a wonderful thing and the Committee was mindful that we would be accused of judging events through its distorting lens.

Nevertheless we did form the view that there were a number of questions relating to the police investigation that had not been satisfactorily addressed in any other forum.

The community does have a legitimate expectation that our traffic laws will be enforced without fear or favour. The community should also have confidence that police will always act in a professional and thorough manner. Moreover, it is not unreasonable to expect that the police deploy their significant resources to integrate information and intelligence from different sources.

Prior to this inquiry, there was also media speculation on various factual matters. Within the constraints of the terms of reference of the Committee a number of these issues have been clarified.

It did become apparent from our inquiries, for example, that there was a timely, albeit perfunctory, police response to a report of erratic driving in the early hours of Sunday 23 February 2014.

Furthermore, whilst the police investigation almost three weeks after the incident was professionally conducted, the extent to which admissible evidence could supplement those few initial inquiries was unlikely to be as satisfactory as contemporaneous material. In some cases best evidence had been destroyed.

Conversely a number of other questions arose which were not satisfactorily addressed by police despite almost a full day of oral evidence and the provision of supplementary material.

The Committee has made no definitive finding about the level of intoxication of the Member for Vasse. Given, however, that the Member was neither interviewed by police nor presented an affirmative defence in a court setting out an alternative explanation, the majority of the Committee believes it is reasonable to infer that his driving was adversely affected by alcohol.

Evidence was presented that he had been at a wedding reception for almost six hours, at which wine had been continuously served, and had been drinking throughout the night. He evinced an intention prior to the function either to take a taxi or walk home, indicating a consciousness that he might not be in a fit state to drive afterwards.

There is no contemporaneous material which suggests alternative explanations, although two witnesses noted nothing out of the ordinary in his behaviour later in the evening.

There was material before the Committee that in one of the earlier collisions on that evening the vehicle's steering may have been damaged, rendering the car difficult to drive on the remainder of the journey. However other evidence by the police vehicle examiner suggested that the damage was not sufficiently acute to prevent a competent driver from proceeding.

The Committee has come to the conclusion that there was a systemic failure at a number of levels on the evening: there was an inadequate police response; Dignitary Protection were unaware of the then State Treasurer's car registration or home address; police subsequently let any investigation lapse and left it to the media to join the dots.

While the nature of our brief did not extend to inquiring into the responses by the Department of Premier and Cabinet and its senior staff, already noted is a conversation between the Director General and the Deputy Commissioner which could be perceived



as injudicious. However there is no evidence, or suggestion, of any attempt to falsify, destroy or conceal evidence.

What is especially regrettable about this incident is its potential to compromise the public message that the Police struggle daily to sell to the community: that alcohol and driving do not mix. The media attention that this incident has received has also drawn attention to the limited nature of the police response and raises questions about the value of campaigning on drink-driving if enforcement is so publicly mediocre. So much for *"Anywhere, Anytime"*.

The Committee also notes with regret commentary that its inquiry was politically motivated. The Parliament does not do its work if the institutions of the State are not held to strict account, particularly where there are suggestions of partiality or bias.

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 Community Development and Justice Standing Committee 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 16**

While the police response to the report of erratic driving was understandable in the circumstances, a more proactive approach to making contact with suspected drunk drivers might result in more drink driving convictions being made.

## **Finding 2**

**Page 16**

The Committee accepts that the police officers attending the incident on 23 February did not know that the driver was a Member of Parliament, and therefore did not treat him any differently from anyone else.

## **Finding 3**

**Page 20**

Old technology has meant that WA Police are unable to integrate reporting and communication systems, resulting in reduced capacity to make important links between connected events in a timely manner, if at all.

## **Finding 4**

**Page 20**

The replacement of the Computer Aided Dispatch (CAD) system to a system which enables more complete integration of information is essential for effective policing, and the recent funding to enable this is welcomed.

## **Recommendation 1**

**Page 20**

That ongoing funding to support the new Computer Aided Dispatch (CAD) system is maintained and that the new technology is monitored for effectiveness.

## **Finding 5**

**Page 28**

The prosecution advice prepared by the State Solicitor's Office is conservative and based on a raft of assumptions. With different assumptions, the advice could have been to pursue a Driving Under the Influence charge in addition to the charges laid.

## **Recommendation 2**

**Page 29**

All MPs should be required to submit a Personal Security Information form and WA Police should ensure that they have received them. WA Police should also systematically ensure that the information contained on their databases is current.

## **Recommendation 3**

**Page 30**

WA Police training should address the widely-held misapprehension that the absence of a breathalyser test is fatal to laying and prosecuting a charge under Section 63 of the *Road Traffic Act 1974*.





# Chapter 1

## How events unfolded

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**This chapter explains why the decision to hold an agency review was made, and provides a chronology of events related to the police investigation of the traffic incidents involving the Member for Vasse.**

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On 8 March 2014, a Perth resident revealed to a media organisation that he had observed a car driving erratically in Subiaco in the early hours of Sunday, 23 February, and that he believed the driver was the Member for Vasse – at the time, the Treasurer and Minister for Transport. The Member for Vasse had been absent from work on personal leave since 24 February.

The media informant revealed that he had made a call to the Police Assistance Centre at the time of the observation, in which he said the driver “reminded me of Troy Buswell”,<sup>1</sup> and that the person had been “unsteady on his feet”.<sup>2</sup> The police had responded to the complaint by sending a Traffic Enforcement Group vehicle to the Subiaco address where the caller said the car had parked, but due to the vehicle being behind a locked gate and the driver nowhere in sight, the case was closed off nine minutes later.

The police instigated further investigations after the Police Commissioner was made aware of the Subiaco incident on 9 March courtesy of his media adviser. Subsequent police investigations revealed that there had been a series of crashes in the Subiaco area on the same night, and these were subsequently linked to the vehicle driven by the Member for Vasse.

There is speculation that the public would have remained unaware of the incident involving the Member for Vasse were it not for the fact that the police complainant contacted the media. Apparently due to the lack of integration of their information systems, the police failed to connect the call reporting the erratic driving to several crashes in the same area. Initial investigations by the media led police to conduct their own detailed investigations, resulting in charges of careless driving, failing to stop and failing to report a crash being brought against the Member for Vasse. The former Treasurer pleaded guilty to the charges on 28 April 2014. He was fined \$3100 and his drivers’ licence was suspended for 12 months.

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1 Adrian Sevier, *Statement to Police*, 10 March 2014, p7.

2 *ibid*, p5.

## 1.1 The decision to conduct a review

In the days and weeks following the revelations in the media that a senior government minister had been involved in traffic crashes which may or may not have involved driving under the influence of alcohol, there was considerable public speculation about the integrity of the police investigation. People were concerned that:

- as a government minister, the Member for Vasse might have been treated more favourably by police than any other citizen would have been;
- police may have been pressured by members of the government to ignore particular evidence or to make particular findings;
- police did not pursue lines of inquiry (particularly related to testing for drink driving);
- police did not have the ability to immediately connect the erratic driving with the traffic crashes in the same area.<sup>3</sup>

Given that policing and road safety fall within the portfolio responsibilities of the Committee, on 7 May 2014 the Committee decided it would be of value to instigate an agency review of WA Police to examine their conduct throughout the investigation.

The Committee's intention to conduct the review was announced by the Speaker in the Legislative Assembly on 13 May. Hearings with five members of WA Police, including the Commissioner of Police, were held on 19 May. Since the focus of the review was police procedures and operations, the Member for Vasse was not required to appear at the hearing. (See Appendix 3 for list of witnesses.)

## 1.2 Sequence of events

The sequence of events involving the traffic offences, the police response, the investigation and the prosecution has been compiled from oral evidence at the hearing, documents provided during or after the hearing by WA Police, and media reports. It provides context for the Committee's evaluation of the police investigation in Chapter 2.

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3 For examples of public concern aired on talkback radio and through other media, see: Former police officer Dave Parkinson and others speaking on Morning 6PR, 7 May 2014; Mornings 720 ABC, 6 May 2014, 10.05am; Murray, P. "How a damaged car put big dent in Government", *The West Australian*, 12 March 2014, p20; Live chat with Premier Colin Barnett, *The West Australian* online, 7 May 2014; Vickery, K., "Coffee with Colin" Q&A, *Perth Now*, 22 May 2014.

**Table 1: Chronology of events**

*Note: Except where otherwise referenced, events are drawn from the Running Sheet compiled by the police investigation team.*

Saturday, 22 February	
1	<b>6.00-6.15pm:</b> Troy Buswell and Rachael Turnseck arrived in Mr Buswell's car at Mt Eliza House, Kings Park, to attend the wedding reception of Mr Vince Salpietro. <sup>4</sup>
2	<b>11.00pm</b> Ms Turnseck telephoned for a taxi, but then hailed a passing taxi from the corner of Kings Park Road and Fraser Avenue and went home. <sup>5</sup>
3	<b>11.30pm:</b> Inspector Lysle Cabbage, a guest at the wedding, spoke to Mr Buswell. He said he appeared in good spirits and, although drinking wine, did not appear to be drunk. He saw him (but did not speak to him) again at around 12am, and again he did not appear to be intoxicated. <sup>6</sup>
Sunday, 23 February	
4	<b>12.50am:</b> Mr Terence Turnbull, a driver for Limousines Australia, offered Mr Buswell a lift home in his mini bus with some other guests, but Mr Buswell said he was going to walk as it was not far. Mr Buswell appeared to Mr Turnbull to speak normally and to be stable on his feet. <sup>7</sup>
5	<b>1.28am:</b> Police Assistance Centre received a complaint of "erratic driving" on Roberts Road, Subiaco, near the south-eastern corner of Patersons Stadium from a member of the public. <sup>8</sup>
6	<b>1.45am:</b> A Traffic Enforcement Group vehicle was dispatched as a '317' (alleged drink-driver) to the Roberts Road house in response to the complaint. Attending officers sighted no vehicle at the scene. They patrolled the immediate vicinity and then returned to 129 Roberts Road. A white sedan was observed under a carport inside the gate. No serious damage to the car could be seen. The house was in darkness and the property was surrounded by a tall security fence.  A vehicle registration check revealed the vehicle was licensed to the Office of State Administration. <sup>9</sup>
7	<b>1.54 am:</b> Case closed off. <sup>10</sup>

4 Ms Rachael Turnseck, *Statement to Police*, 25 March 2014, p2.

5 *ibid*, p3.

6 Mr Lysle Cabbage, *Statement to Police*, 12 March 2014, p2.

7 Mr Terence Turnbull, *Statement to Police*, 19 March 2014, pp4-5.

8 Senior Constable Christian Patten, *Statement to Police*, 20 March 2014, p1; Adrian Sevier, *Statement to Police*, 10 March 2014, p6.

9 *ibid*, p3.

10 Cdr Alf Fordham, Commander of State Traffic, WA Police, *Transcript of Evidence*, 19 May 2014, p17.

8	<b>8.15am:</b> Officers from Wembley Police Station visited the owners of a car that had been damaged on Olive Street, Subiaco. <sup>11</sup>
9	<b>8.40am:</b> Officers from Wembley Police Station visited the owner of another car that had been damaged on Olive Street, Subiaco. <sup>12</sup>
10	<b>9.51am:</b> Subiaco resident reports vehicle damage via online crash reporting system. <sup>13</sup>
11	<b>11.10am:</b> Subiaco resident reports vehicle damage via online crash reporting system. <sup>14</sup>
12	<b>Later:</b> Premier advised by his Chief of Staff that Mr Buswell would not be attending Cabinet the following day. <sup>15</sup>
<b>Monday, 24 February</b>	
13	<b>8.30am:</b> Mr Buswell's Chief of Staff, Rachael Turneck, had a private meeting with the Premier prior to the Cabinet meeting. <sup>16</sup>
14	Mr Buswell absent from work, on 'personal leave'. <sup>17</sup>
<b>Tuesday, 25 February</b>	
15	The Liberal Party Room was told that Mr Buswell was away but would return to Parliament the next day. <sup>18</sup>
<b>Wednesday, 26 February</b>	
16	<b>5.12am:</b> Subiaco resident reports vehicle damage via online crash reporting system. <sup>19</sup>
17	Premier became aware that Mr Buswell had been admitted to hospital in Perth (and was later transferred to a clinic in Sydney). <sup>20</sup>
<b>Tuesday, 4 March</b>	

11 Jonathan Sparks, *Statement to Police*, 25 March 2014, pp3-4.

12 Emma Obst, *Statement to Police*, 21 March 2014, p3.

13 Det. Sen. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, *Transcript of Evidence*, 19 May 2014, p24.

14 *ibid.*

15 Foster, B. 'WA Treasurer Troy Buswell resigns after breakdown and crashing car', *The Guardian (Australia)*, 10 March 2014, p1.

16 *ibid.*

17 Parker, G. and Emerson, D. 'Mystery illness leaves Treasurer on sidelines', *The West Australian*, 5 March 2014, p4.

18 Emerson, D. 'Buswell missing so Barnett takes over Budget', *The West Australian*, 4 March 2014, p3.

19 Det. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, *Transcript of Evidence*, 19 May 2014, p24.

20 Hickey, P. 'Full transcript of Premier's address to the media following the resignation of Troy Buswell', *PerthNow*, 10 March 2014.

18	Premier informed Cabinet that Mr Buswell would be away 'for another two weeks' ... and that '...the reasons for Mr Buswell's personal leave were health-related'. <sup>21</sup>
<b>Saturday, 8 March</b>	
19	The complainant who had reported 'erratic driving' by telephone to the WA Police on 23 February, spoke to a media organisation about what he had seen.
<b>Sunday, 9 March</b>	
20	<b>2.00pm:</b> Premier was made aware of 'the driving incident' and 'damage to a government vehicle' by a member of his staff. <sup>22</sup>
21	<b>4.30pm:</b> Mr Buswell resigned as Treasurer and Minister for Transport in a telephone call to the Premier. <sup>23</sup> Mr Buswell admitted to the Premier that he had been involved in an incident in which he crashed his ministerial car into part of a fence at his Subiaco home. <sup>24</sup>
22	WA Police Commissioner: <ul style="list-style-type: none"> <li>• was made aware of the incident as a result of calls from the media to his media adviser;</li> <li>• informed deputy commissioner or assistant commissioner in charge of traffic and asked them to "have a look, see what this is all about";<sup>25</sup> contacted Department of Premier and Cabinet (because the vehicle was theirs);</li> <li>• telephoned the Police Minister.<sup>26</sup></li> </ul>
23	Channel Seven News reported that the Member for Vasse was involved in a car incident just before he took personal leave from his job as Treasurer. <sup>27</sup>
<b>Monday, 10 March</b>	
24	The witness who had called police about the erratic driving in Roberts Road claimed to media organisations that: <sup>28</sup>

21 Perpitch, N. 'Health issues force Buswell off budget', *The Australian*, 5 March 2014, p6.

22 Hickey, P. 'Full transcript of Premier's address to the media following the resignation of Troy Buswell', *PerthNow*, 10 March 2014. Available at <http://www.PerthNow.com.au/news/western-australia/full-transcript-of-premiers-address-to-the-media-following-the-resignation-of-troy-buswell/story-fnhocxo3-1226850497130>

23 Premier Colin Barnett, *Media statement*, 10 March 2014. Available at <http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBar nett&StatId=815>

24 Orr, A. 'A cloud of doubt hangs over who knew what and when: Mark McGowan', *WAtoday*, 10 March 2014.

25 Dr Karl O'Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p27.

26 *ibid.*

27 Parry, G. 'Claims Troy Buswell involved in car accident', *Channel 7 News*, 9 March 2014;

28 'Troy Buswell suffers 'mental breakdown' after drunken crash - quits Cabinet', *PerthNow*, 11 March 2014, Available at <http://www.PerthNow.com.au/news/western-australia/troy-buswell-suffers-mental-breakdown-after-drunken-crash-quits-cabinet/story-fnhocxo3-1226850029901>;

	<ul style="list-style-type: none"> <li>• ... (he) had to stop his vehicle to avoid being struck by [the] white Holden Caprice on Roberts Road, Subiaco.</li> <li>• 'The Caprice had earlier been seen obstructing the left lane of Roberts Road, sitting perpendicular to the kerb' and had '...veered across from the left to the right lane, nearly colliding with parked cars'.</li> <li>• [The Caprice] '...then pulled into Mr Buswell's Roberts Road driveway, where it allegedly hit a metal fence'.</li> <li>• ...saw the driver 'wearing black dress pants, a white "tuxedo-style" shirt, no tie or jacket and glasses, "fumble around" with the keypad on the front fence and gate. He looked like he was under the "effect of something"'. </li> <li>• 'He then got back into the Caprice, accelerated forward, hit the front fence and spun the vehicle's tyres. The driver then reversed before successfully navigating the car through the gate into the driveway'.</li> </ul>
25	Premier announced Mr Buswell's resignation from Cabinet. <sup>29</sup>
26	Police Commissioner held a media conference, confirming: '...police received a complaint on February 23 of a car being driven erratically on Roberts Road, Subiaco but said officers were not aware [at that stage that] Mr Buswell was involved'. <sup>30</sup>
27	Major Crash Investigations Section initiated investigation.
28	Deputy Commissioner Stephen Brown telephoned Department of Premier and Cabinet director general Peter Conran to advise that an investigation was being conducted. Mr Conran provided the pin code for Mr Buswell's property gate and organised for a spare set of keys to be given to the police investigation team. <sup>31</sup>
29	<b>9.00am:</b> Officers attended 129 Roberts Road and took pictures of damage to gate and Holden Caprice
30	<b>12.00pm:</b> Statement taken from person who reported the erratic driving on 23 February.
31	<b>1.00pm:</b> Three Integrated Crash Enquiry (ICE) files related to hit and run crashes in Subiaco accessed by police investigation team. Phone calls/emails to complainants.
32	<b>3.23pm:</b> Two briefing notes approved for dissemination to Police Minister's office by DC Brown: <sup>32</sup>

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Parker, G. 'Buswell crashes: Treasurer's career in doubt after late-night car crashes: Buswell in crash after hours of drinking', *The West Australian*, 10 March, p1; 'Foolish move that finally ended a career' by Gareth Parker, *The West Australian*, 11 March 2014, p4.

- 29 Premier Colin Barnett, *Media statement*, 10 March 2014. Available at <http://www.mediastatements.wa.gov.au/pages/StatementDetails.aspx?listName=StatementsBarnett&StatId=815>
- 30 Ducey, L. 'Police "didn't know" Troy Buswell was involved in traffic incident: Police Commissioner', *WAtoday*, 10 March 2014. Available at: <http://www.WAtoday.com.au/wa-news/police-didnt-know-troy-buswell-was-involved-in-traffic-incident-police-commissioner-20140310-34haf.html>
- 31 Deputy Commissioner Stephen Brown, telephone call to Peter Conran, 10 March 2014, 2.12pm. Provided with response to Questions on Notice, 28 May 2014.
- 32 Copies provided to the Committee by WA Police on 28 May 2014.

	<p><i>Briefing note 1:</i> Advising that a member of the public had reported a Holden Caprice swerving along Roberts Road on 23 February 2014 at 1.28am. The description of the driver as provided by the caller is given, as well as the actions of the driver, and details of the police attendance. Vehicle registration check had revealed the car was licensed to the Office of State Administration.</p> <p><i>Briefing note 2:</i> Advising that check of registration of Holden Caprice revealed that the driver of the vehicle (employed by the State Administration) had been issued with numerous traffic infringement notices (TINs). Officers from Traffic Enforcement Command had determined that the TINs were dealt with correctly.</p>
<b>Tuesday, 11 March</b>	
33	<p>Media reports confirmed:</p> <ul style="list-style-type: none"> <li>• significant damage to the front bumper of the Holden Caprice parked in Mr Buswell's driveway.</li> <li>• damage to Mr Buswell's front gate consistent with the description given by the complainant.<sup>33</sup></li> </ul>
34	<p>Police made enquiries with resident of Olive Street, Subiaco, who claimed to have CCTV footage showing car headlights at Olive/Barker streets, but resident was unsure how to download footage. (Police first made aware of this footage during initial inquiries in February.<sup>34</sup>)</p> <p>Police attended home of owner of damaged Holden Barina in Barker Street, Subiaco. Forensic tests conducted on vehicle.</p>
35	<p><b>4.10pm:</b> Police attended 129 Roberts Road with search warrant. Accessed secure yard with PIN code. Vehicle was located in carport, showing front end and left side panel damage; vehicle was taken to forensic shed at Midland Police Complex.</p> <p>Landgate identified Troy Raymond Buswell as registered owner of Unit 2, 129 Roberts Road, Subiaco.</p> <p>Search warrant could not be left at the unit as no person was in residence and it could not be placed under the door.</p>
36	<p>Subiaco resident reported vehicle damage via online crash reporting system.<sup>35</sup></p>
<b>Wednesday, 12 March</b>	
37	<p>Computer crime technicians determined that the CCTV footage from the Olive Street resident had been overwritten. Task completed as nil action.</p> <p>City of Perth and Main Roads contacted regarding CCTV of area of interest, but none available.</p>

33 Parker, G. 'Fall of Troy: Poor health, car crash ends career of talented minister', The West Australian, 11 March 2014, p4.

34 Kenneth MacKenzie, Statement to Police, 26 March 2014, p6.

35 Det. Sen. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, Transcript of Evidence, 19 May 2014, p24.

	Kings Park contacted regarding CCTV. Advised that only CCTV was around the car park situated behind Fraser's Restaurant. Police were told management would organise to download CCTV from the night of February 22-23.
38	Mr Conran provided mobile telephone numbers for Mr Buswell and Ms Turnseck to police.
39	<b>1.30pm:</b> Resident of Roberts Road contacted investigation team, advised that between 1.00am and 1.30am he was on his veranda when he heard a car making a scraping noise. He saw a white car pull into the driveway at 129 Roberts Road, where he knows Troy Buswell lives, and stop across the footpath with the back end on the road. The car was idling there for five minutes, then reversed back on to the road and drove either straight up Roberts Road or turned into Hamilton Street.
40	<b>1.58pm:</b> Email sent to IMO (Incident Management Officer) regarding red light camera activations or multanova cameras in the area on the night of the incident.
41	<b>3.55pm:</b> Det. Sen. Sgt Hunter rang Mr Buswell's mobile phone number, no answer, left message to return call.
42	<b>4.30pm:</b> Det. Sen. Sgt Hunter rang Mr Buswell's mobile phone number, no answer.
<b>Thursday, 13 March</b>	
43	<b>8.40am:</b> Det. Sen. Sgt Hunter rang Mr Buswell's mobile phone number, no answer, left message to return call.
44	<b>8.48am:</b> Latent fingerprint from driver side window exterior of Holden Caprice identified as Troy Raymond Buswell.
45	<b>10.44am:</b> Forensic team to examine damaged Holden Commodore in situ outside residence in Park Road, Subiaco.
46	<b>10.48am:</b> Investigating officers received telephone call from Laura Willox of Timpano Legal, representing Mr Buswell. Informed police she will be advising Mr Buswell not to participate in an electronic record of interview but it may be possible they will get answers to their questions by letter or affidavit, depending on direction from Mr Buswell. Ms Willox was advised of the information that police were seeking.  Ms Willox advised that Mr Buswell would like to have this matter finalised as soon as possible but was "not faring too well as far as his mental health at the moment".
47	City of Subiaco confirmed they had not received any damage complaints which could relate to the night of the incident.
48	Further efforts to obtain CCTV from Mt Eliza House. Security manager to review and download CCTV from the camera around Mt Eliza House.
49	Media questioned the integration of computerised police systems. Police had multiple systems for recording and processing data and not all of them were



	linked. <sup>36</sup>
50	<b>1.25pm:</b> Ms Turnseck advised police she would speak to them after seeking legal advice.
51	<b>3.48pm:</b> Forensic tests revealed that a piece of plastic found near the damaged Barina originated from the headlight assembly of the Holden Caprice.
52	<p><b>5.54pm:</b> Email from solicitor Laura Willox to police, advising that she is acting on behalf of Mr Buswell and that that he is responsible for the Holden Caprice in question. To the best of his information he believes he was the driver of the vehicle on the evening of 22 February 2014.</p> <p><i>“That evening, Mr Buswell attended a social function at Mt Eliza House, King’s Park. To the best of Mr Buswell’s information and belief, later that evening he drove the vehicle from Kings Park to his residence at 129 Roberts Rd, Subiaco. We provide this information on Mr Buswell’s instructions to satisfy his obligations under the Road Traffic Act.”</i></p>
<b>Friday, 14 March</b>	
53	<b>8.17am:</b> Email from MCIS to Ms Willox advising that police are investigating a series of crash events in Subiaco in the early hours of 23 February and that they have evidence the Caprice was involved in those events. They wish to give Mr Buswell the opportunity to be formally interviewed, and intend to interview witnesses who may provide evidence of Mr Buswell driving on the night in question. Ms Willox was asked to indicate if Mr Buswell would voluntarily participate in an electronically recorded interview, or provide his whereabouts so that police can continue enquiries with him directly.
54	<b>10.10am:</b> Request to Traffic Intel to locate any YouTube or other images of Mr Buswell and the Caprice in or around Mt Eliza House and Subiaco.
55	<b>11.00am:</b> Statement obtained from witness mentioned at item 39.
56	<b>1.17pm:</b> Vehicle examination completed – no defects detected, only crash-caused damage, according to vehicle examiner.
57	<b>12.15pm:</b> Enquiry to Patersons Oval re CCTV facing Roberts Road.
58	<b>7.10pm:</b> Ms Turnseck had statement signed and witnessed by MCIS.
<b>Saturday, 15 March</b>	
59	<b>9.10am:</b> DC Brown advised Mr Conran that WA Police were in the process of registering a formal misconduct notification with the Corruption and Crime Commission, as they were obliged to do. <sup>37</sup>

36 Parker, G. ‘Troy leaves trail of questions’, *The West Australian*, 13 March 2014, p15.

37 Deputy Commissioner Stephen Brown, telephone call with Peter Conran, 15 March 2014, 9.10am. Provided with response to Questions on Notice, 28 May 2014.

60	<b>6.52pm:</b> DC Brown informed Mr Conran that the police had completed their interview of Ms Turnseck, and that she had provided a witness statement. He also advised that “any process that you may initiate with the Public Sector Commission will not impact on the police investigation”. <sup>38</sup>
<b>Monday, 17 March</b>	
61	Mr Conran advised DC Brown that: <ul style="list-style-type: none"> <li>• CCTV facilities inside and outside DPC premises in West Perth (Dumas House) may have captured footage of Mr Buswell (but he had not accessed the footage).</li> <li>• Dumas House has swipe card and ‘air-key’ facilities which can be downloaded to identify the time of access to the building.</li> <li>• A security guard at the building is reported to have seen Mr Buswell emptying bottles into a bin at the building on 23 February.</li> </ul> Building manager contact details are provided. <sup>39</sup>
62	<b>11.04am:</b> Email response from Ms Willox to MCIS request. Ms Willox advises that in relation to the particular incidents referred to (that is, the damage to vehicles in Subiaco) her client cannot provide any more details. <p style="text-align: center;"><i>“Our client wishes to assist the police as best he can but he cannot provide information that he does not have or cannot reasonably ascertain. It is our respectful view that our client has complied with his obligations pursuant to section 58 of the Road Traffic Act 1974 (WA), particularly having regard to section 58(1 )(c).”</i></p>
63	<b>11.22am:</b> Email from Ms Willox to MCIS, stating that her client cannot assist with the time he left the function at Kings Park.
64	Emails between MCIS and an engineer from GM Holden, regarding retrieving SRS crash data from the Caprice, and whether the satellite navigation unit and ECM may have data recording capability, in order to retrieve route history. <p>Computer Crime also approached about extracting the journey data.</p>
65	Insp. Clarke, Det. Sen. Sgt Hunter, Det. Sgt Buck and Det. Sen. Const. Warring attended the State Solicitor’s Office and briefed solicitor John O’Sullivan on the known facts of the case and handed him the evidence matrix. <sup>40</sup>
<b>Tuesday, 18 March</b>	

38 Deputy Commissioner Stephen Brown, text message to Peter Conran, 15 March 2014, 6.52pm. Provided with response to Questions on Notice, 28 May 2014.

39 Deputy Commissioner Stephen Brown, telephone call from Peter Conran, 17 March 2014, 12.05pm. Provided with response to Questions on Notice, 28 May 2014.

40 Det. Sen. Sgt Brian Hunter, WA Police, Letter provided to Committee in response to questions on notice (from hearing 19 May 2014), 28 May 2014.

66	Statement taken from Limousines Australia driver, Terence Turnbull, who observed Mr Buswell at the end of the night of 23 February.
<b>Wednesday, 19 March</b>	
67	MCIS spoke to residents in Barker Road who heard a noise on 23 February and in the morning found that a metal Telstra pole had been knocked over.
<b>Thursday, 20 March</b>	
68	Telstra pole presented to Forensic Unit to test paint scrapings.
69	Door-knock of two residences on Olive Street, Subiaco. Residents had not heard anything.
<b>Monday, 24 March</b>	
70	MCIS emailed photographs of damaged vehicles and Telstra pole to John O'Sullivan, Senior Assistant Counsel at State Solicitor's Office.
<b>Thursday, 27 March</b>	
71	Statements from police officers West, Sideris, Pearce and McCance received and copies sent to State Solicitor's Office.
<b>Friday, 28 March</b>	
72	Order to produce footage from CCTV at Dumas House parking areas, including the garaged area, for period from 10pm on 22 February to 2am on 23 February was presented to Shane Jaffar, building manager.
<b>Monday, 31 March</b>	
73	<b>8.22am:</b> Ms Turnseck was asked when she and Mr Buswell arrived at the Kings Park venue and whether she knew where Mr Buswell parked the vehicle. "She stated that Mr Buswell dropped her off at the front of the venue then went to park his car so she has no idea where he parked."
74	Building manager Mr Jaffar handed over four DVDs with stored data at Dumas House to police.
<b>Tuesday, 1 April</b>	
75	Assessment of evidence and possible charges received from State Solicitor's Office.
76	WA Police charged Mr Buswell by summons with the following 11 offences: <ul style="list-style-type: none"> <li>• 3 x Fail to stop at traffic crash</li> <li>• 4 x Fail to stop at traffic crash</li> </ul>

	<ul style="list-style-type: none"> <li>• 4 x Careless driving</li> </ul> <p>Matter listed in Perth Magistrates Court for 29 April 2014.</p>
<b>Wednesday, 2 April</b>	
77	Police Commissioner confirmed that police sought legal advice from the State Solicitor's Office before charging Mr Buswell. <sup>41</sup>
<b>Thursday, 3 April</b>	
78	<ul style="list-style-type: none"> <li>• An internal investigation by Mr Conran found no misconduct or policy breaches by senior government staffers in relation to Mr Buswell's departure.</li> <li>• The State Solicitor's Office agreed with the conclusions contained in the report.</li> <li>• The report was submitted to Public Sector Commissioner Mal Wauchope.<sup>42</sup></li> </ul>
<b>Monday, 28 April</b>	
79	<p>Buswell matter was listed in the Perth Magistrates Court.</p> <ul style="list-style-type: none"> <li>• Mr Buswell was not required to appear in court</li> <li>• Entered an endorsed plea of guilty</li> </ul> <p>In court, Police prosecutor Patrick Cavagin alleged that Mr Buswell, driving a Holden Caprice, crashed into a series of cars, leaving a damage bill in excess of \$12,000. It was alleged that he:</p> <ul style="list-style-type: none"> <li>• First mounted the kerb at a roundabout on the corner of Barker Road and Olive Street in Subiaco, hitting a Telstra pole.</li> <li>• Sideswiped a Holden Barina parked at Barker Street, before hitting a Suzuki Vitara, which caused it to shunt into the back of a silver Mitsubishi Sedan, at Olive Street, before sideswiping a blue Holden Commodore also in Olive Street'.</li> </ul> <p>Chief Magistrate Steven Heath noted that Mr Buswell earned a 25 per cent discount on the maximum penalties for his early plea.</p> <ul style="list-style-type: none"> <li>• Mr Heath fined Mr Buswell \$200 for each count of careless driving and failing to report a crash, and \$500 for each count of failing to stop, which he said was the more serious charge.</li> <li>• He also suspended Mr Buswell's licence for four months on each charge of failing to stop.<sup>43</sup></li> </ul>

41 Parker, G. and Knowles, G., 'Buswell on 11 charges over multiple crashes', *The West Australian*, 2 March 2014, p9.

42 Emerson, D. 'Premier's office staff cleared', *The West Australian*, 3 March 2014, p9.

43 Ducey, L. 'Troy Buswell fined, loses licence over Subiaco crashes', *WAtoday*, 28 April 2014. Available at <http://www.watoday.com.au/wa-news/troy-buswell-fined-loses-licence-over-subiacrashes-20140429-37f5f.html#ixzz31pgCFqya>; Offer, K. 'Troy Buswell admits "wedding crash" charges — fined \$3100, banned for 12 months', *PerthNow*, 28 April 2014, Available at

## Tuesday, 29 April

80 After the court case, Mr Buswell released the following statement:

*'In relation to events of the morning of Sunday 23 February 2014, I offer no excuses for my actions, apologise to those upon whom I have impacted and accept fully the consequences as determined by the Magistrates Court today'.<sup>44</sup>*

## Thursday, 1 May

81 WA Police released audio of the seven minute call the Police Assistance Centre reporting erratic driving in Subiaco on 23 February 2014.<sup>45</sup>

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<http://www.perthnow.com.au/news/western-australia/troy-buswell-admits-wedding-crash-charges-fined-3100-banned-for-12-months/story-fnhocxo3-1226899182496>

44 Wearne, P. and Emerson, D., 'Buswell ordered off road for a year', *The West Australian*, 30 April 2014, p12.

45 WA Police, News release, 1 April 2014. Available online at <http://www.police.wa.gov.au/LinkClick.aspx?fileticket=nuJtad8FZy0%3d&tabid=1489&mid=1983>



## Chapter 2

# Assessment of the police response, investigation and prosecution

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**This chapter examines the evidence gathered by the Committee in relation to the terms of reference set by the Committee: the investigations undertaken by police and the demand for police attendance on the night in question; the integration of police communications systems; the subsequent conduct of the investigation; and the decision to prosecute.**

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The Committee has assessed the integrity of the police investigation based upon evidence presented at the hearing, as well as documents provided in response to questions on notice which arose from the hearing.

### 2.1 Police response and investigation at the time of the incident

The Committee accepts the WA Police position that the police response to the call early on 23 February was reasonable, given the information the officers had access to at the time and the limitations of the technology that they rely upon. The call-taker classified the task as Priority 3, the highest non-emergency response (Priority 1 is the highest response). The response time of 10 minutes (from when the task was allocated to when the police arrived) was well within the Priority 3 key performance indicator of 25 minutes.<sup>46</sup>

The traffic officers assigned to the task closed off the case after nine minutes. Driving around the area, they saw no evidence of crashed cars. At the property, they did not see any evidence of damage to the reported vehicle because of the way it was parked. The only damage they observed was to the bars of the fence next to the property gate. The house was in darkness and they had no legal right of entry to the property.<sup>47</sup> Commander of State Traffic, Alf Fordham, said that “with that amount of information, I would not expect them to take the matter any further”.<sup>48</sup>

WA Police were asked about their response in cases where a vehicle suspected of being involved in a traffic offence is parked in the driveway of a residence (and is not behind a security fence), and the house is in darkness. Would police knock on the door to

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46 Supt Lance Martin, Divisional Officer Communications, WA Police, *Transcript of Evidence*, 19 May 2014, pp4-5, 8.

47 Cdr Alf Fordham, Commander of State Traffic, WA Police, *Transcript of Evidence*, 19 May 2014, p17.

48 *ibid.*

establish whether anyone was home? The Committee was told that the officer would make an assessment as to whether to knock on the door based on a range of factors, which would change with each situation. If the resident answered the door and told the officers to “get lost”, they would have no choice but to do so, unless the officers had witnessed the offence themselves and were in pursuit of the person. For matters which fell within the scope of the *Road Traffic Act 1974*, there was no common law right of entry.<sup>49</sup>

In the case in question, the Committee contends that the police could have made a more concerted effort to contact the resident, given that a witness had provided a clear description of an erratic driver who appeared to be intoxicated. While this may have meant disturbing other residents in the apartment block (by using the intercom on the gate), it may have resulted in an opportunity to speak with and observe the driver and to ask to breathalyse the driver.

However, the Committee can appreciate the officers’ reasons for not attempting to make contact with the resident: there was no evidence of a crash or damage to the vehicle, and it was impossible to access the property without potentially disturbing neighbours.

### **Finding 1**

While the police response to the report of erratic driving was understandable in the circumstances, a more proactive approach to making contact with suspected drunk drivers might result in more drink driving convictions being made.

### **Finding 2**

The Committee accepts that the police officers attending the incident on 23 February did not know that the driver was a Member of Parliament, and therefore did not treat him any differently from anyone else.

The Committee questioned the Police as to why there was no follow-up the following morning – perhaps to examine the vehicle more fully, to look for any other damage in the vicinity and to seek to interview the driver. The Committee was told that the event fell below the benchmark for further investigation.<sup>50</sup> At that point, the Police did not know of any crashes. It would also have been too late at that time to breathalyse the driver.<sup>51</sup>

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49 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p21.

50 Cdr Alf Fordham, Commander of State Traffic, WA Police, *Transcript of Evidence*, 19 May 2014, p16.

51 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p16.



*After four hours has expired, you would not be able to retrospectively put someone onto a breathalyser or piece of equipment to acquire a sample of blood from them. As far as charging them with a drink-driving offence the following day, that would be very, very unlikely.*<sup>52</sup>

Police became aware that the car was registered to the Office of State Administration while they were still attending the scene, although there was no name or address linked with the registration. It appears that there was no link made between the fact that it was a government vehicle and the comment by the complainant that the person in question looked like a particular Member of Parliament. While it is usual for the call-taker to check the vehicle registration, on this occasion this did not occur<sup>53</sup> and the two officers attending the scene made the check.<sup>54</sup> Had the same person received both pieces of information, it is possible a link might have been made at the time.

It appears that at the time of the call, the call-taker attached no significance to the comment about the resemblance of the driver to a particular Member of Parliament (that is, the Member for Vasse). Having listened to a recording of the call, the Committee understands how the comment could have been interpreted as a light-hearted observation. The call-taker had no other information at that stage which might have prompted him to treat the comment any differently. In a briefing note from WA Police to the Premier, it was stated: "It would appear the officer receiving the call has simply determined this to be a joke and has not progressed this information."<sup>55</sup> It was another two days before it was made known to the public that the Member for Vasse had taken personal leave from work, and another two weeks before the crashes in Subiaco were linked to the vehicle parked at the Roberts Road address.

Nevertheless, WA Police contend that even if they had known the vehicle was registered to the Member for Vasse on the night of the offences, the response would not have been any different.<sup>56</sup> The Police said that if a caller mentioned a VIP or person of some interest, it was not standard procedure to ask the caller any further questions.<sup>57</sup>

*It is of no moment to the police who it is. We are not in a position to treat people differently. It does not matter to me or our officers*

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52 *ibid.*

53 Supt Lance Martin, Divisional Officer Communications, WA Police, *Transcript of Evidence*, 19 May 2014, p6.

54 Det. Sen. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, *Transcript of Evidence*, 19 May 2014, p18.

55 Briefing Note from Deputy Commissioner Stephen Brown to the Premier, 10 March 2014. Copy provided to the Committee by WA Police on 28 May 2014.

56 Cdr Alf Fordham, Commander of State Traffic, WA Police, *Transcript of Evidence*, 19 May 2014, p18.

57 Supt Lance Martin, Divisional Officer Communications, WA Police, *Transcript of Evidence*, 19 May 2014, p10.

*whether it is a member of Parliament or someone just down the road, they all get treated the same. I would not have expected those officers to act any differently if they had known who the owner of that vehicle was or the driver of that vehicle.*<sup>58</sup>

The Police Commissioner was quoted in the media as saying that the “...the officers should at some stage, not necessarily on the night but at some stage, have spoken to the complainant”.<sup>59</sup> However, at the hearing Dr O’Callaghan said that he meant that the complainant should have been contacted and informed of the outcome of his call – that is, that that the police would not be doing anything more.<sup>60</sup>

Supt Martin agreed that there would generally be an expectation by a caller that police were going to respond, and it would be “valuable for the call taker to say, ‘I’ve taken details and will arrange a response’.”<sup>61</sup>

### **2.1.1 Nature of demand for police attendance**

Suggestions by the WA Police Union that the Traffic Enforcement Group officers that were assigned to the job in Roberts Road left after nine minutes because their priority was to support officers attending a melee in Northbridge<sup>62</sup> were unfounded. While there was an incident in Northbridge that consumed considerable police resources on that night,<sup>63</sup> the officers that attended Roberts Road were sent back on patrol, according to the Police Commissioner.

On the night of 22-23 February, there were eight vehicles allocated to traffic tasking responsibilities, and other traffic resources that were involved in other activities.<sup>64</sup> Cdr Fordham said that any one of these eight vehicles assigned to deal with traffic issues could be diverted if a more urgent incident arose.<sup>65</sup>

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58 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p6.

59 Ducey, L. and Orr, A., ‘Premier to address Troy Buswell crash claims’, *WAtoday*, 10 March 2014. <http://www.WAtoday.com.au/wa-news/premier-to-address-troy-buswell-crash-claims-20140310-34gg7.html#ixzz31mSn9f31>

60 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p20.

61 Supt Lance Martin, Divisional Officer Communications, WA Police, *Transcript of Evidence*, 19 May 2014, p12.

62 Brandon Shortland, Vice President, WA Police Union, ‘Police handling of Buswell traffic incident’, *Drive 6PR*, 10 March 2014, 5.41pm..

63 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p20.

64 Cdr Alf Fordham, Commander of State Traffic, WA Police, *Transcript of Evidence*, 19 May 2014, p20.

65 *ibid.*

### 2.1.2 Information integration

Later on the morning of 23 February (after 9am), two online reports of vehicle damage were made by Subiaco residents (see items 10 and 11). However, these were not investigated because the damage to the vehicles was below the threshold to warrant police investigation. The crashes would have been logged on the Integrated Crash Enquiry (ICE) system, which records the details of approximately 30,000 crashes reported each year.

Evidence indicates that officers from Wembley Police Station made connections between the crashes on the morning of 23 February (see items 8 and 9). A resident whose car had been damaged was visited by police around 8.15am and told to make an online crash report and contact his insurance agency.<sup>66</sup> According to a witness statement, police telephoned the owner of one of the cars that had been hit at around 8.30am.<sup>67</sup> Wembley police attended the witness's home "and explained that other cars in the area had also been hit overnight", and that she should lodge a crash report online.<sup>68</sup>

The Computer Aided Dispatch (CAD) system – which serves to take calls from the public, send them to a dispatcher, arrange for police attendance and support front-line service officers while they are at the scene – is not designed to integrate information from other systems. Hence, no connection was made by police – including Wembley police – between the reported crashes and the call regarding an erratic driver in the same area.

The Police Commissioner said that the agency was working on integration of various systems which at present cannot be linked.<sup>69</sup> Funding of \$20.7 million for a CAD replacement project was announced on May 18 (the day before the agency hearing), with \$928,000 per year for nine years allocated for ongoing support and maintenance of the system.<sup>70</sup>

The new system will include: interfaces to other policing systems; technology to enable the replacement CAD system to communicate with the current hand-held Tasking and Data Information System (TADIS) in-vehicle and hand-held devices; replacement of CAD desktop software in use at the Police Communications Centre and CAD desks in major district centres (as well as the "light" version on police workstations); software package that enables GPS signals produced by in-car and other mobile devices to be

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66 Jonathan Sparks, *Statement to Police*, 25 March 2014, pp3-4.

67 Emma Obst, *Statement to Police*, 21 March 2014, p3.

68 *ibid.*

69 Dr Karl O'Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p14.

70 WA Police, answer to question on notice (from 19 May 2014 hearing) regarding CAD upgrade, prepared by Supt Lance Martin, Divisional Officer Communications.

used for tracking and positioning vehicles; and CAD reference data, which includes access to Geographic Information System (GIS) data which supports mapping, address and location functionality of the CAD system.<sup>71</sup>

### **Finding 3**

Old technology has meant that WA Police are unable to integrate reporting and communication systems, resulting in reduced capacity to make important links between connected events in a timely manner, if at all.

### **Finding 4**

The replacement of the Computer Aided Dispatch (CAD) system to a system which enables more complete integration of information is essential for effective policing, and the recent funding to enable this is welcomed.

### **Recommendation 1**

That ongoing funding to support the new Computer Aided Dispatch (CAD) system is maintained and that the new technology is monitored for effectiveness.

## **2.2 Subsequent conduct of the investigation and collection of evidence**

Following the media reports on March 9 and 10<sup>72</sup> that suggested a link between the crashes in Subiaco, the call to police describing erratic driving by a person fitting the description of the Member for Vasse and that Member's absence from work, the response by WA Police was rapid and intensive. There were extensive investigations to try to establish the vehicle's movements between King's Park and Subiaco. Police interviewed witnesses present at the Kings Park wedding reception (see item 66) and in the Subiaco streets where the vehicles and Telstra pole were damaged (items 30, 31, 34, 67, 69), made attempts with multiple agencies to access CCTV or other footage that might reveal the route taken by the Caprice (see items 34, 37, 40, 48, 54, 57, 72 and 74), endeavoured to download electronic records of the route taken by the Caprice (for example from GPS and satellite navigation systems (see item 64), attempted to contact the Member for Vasse, and compiled extensive forensic evidence from the damaged vehicles that would ultimately definitively connect the Caprice with the damaged vehicles (see items 41, 42 and 43).

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71 *ibid.*

72 Parry, G. 'Claims Troy Buswell involved in car accident', *Channel 7 News*, 9 March 2014; Parker, G. 'Buswell crashes: Treasurer's career in doubt after late-night car crashes', *The West Australian*, 10 March 2014, p1; Robertson, K., 'Police Commissioner launches Buswell driving probe', *PerthNow*, 10 March 2014, p1; Ducey, L., 'Police "didn't know" Troy Buswell was involved in traffic incident: Police Commissioner', *WAtoday*, 10 March 2014.

However, despite the extensive investigation (as set out in Chapter 1), there are some inconsistencies which have not been adequately explained and some events which do not appear to have been fully investigated:

- According to a record of telephone conversations provided to the Committee, Department of Premier and Cabinet (DPC) director general Peter Conran told Deputy Commissioner Stephen Brown on 17 March that a security guard at DPC premises had seen the Member for Vasse emptying bottles into a bin at the building on 22-23 February.<sup>73</sup> It does not appear that the security guard was interviewed about what he had seen. This security guard's alleged sighting of the MP has not been documented in any other way (for example, it does not appear on the Running Sheet), and was not mentioned during the hearing. It is unclear whether this was followed up, and if not, why not.
- CCTV footage from the area near Mt Eliza House was collected and provided to Police (see item 37 and 48), but there is no record of what this revealed, if anything. When asked about this in the hearing, the Committee was told that there was very little CCTV footage around Mt Eliza House and that it was "all quite dark and little car parks everywhere".<sup>74</sup> In spite of their many enquiries, no one could tell the Police where the Caprice had been parked.
- Ms Turnseck did not appear to have been questioned with any great vigour. Her response when being interviewed was described as "a very guarded, very measured response".<sup>75</sup> However, the Committee acknowledges that the police interviewer may have felt hindered by the presence of Ms Turnseck's lawyer. Without having been there, it is impossible for the Committee to say whether the police could have successfully extracted more information from Ms Turnseck. It seems likely, however, that Ms Turnseck had further information about the case which was never formally exposed by police. This leads to speculation that in not volunteering information, Ms Turnseck was attempting to minimise the Member's exposure to prosecution.

Police did not question why Ms Turnseck, as the chief-of-staff of a minister with responsibility for assets such as the ministerial vehicle, had not ensured that a Riskcover form had been submitted. The form is allowed to be completed and submitted by someone other than the driver – hence, if the Member for Vasse had been incapacitated (as suggested by his hospitalisation), Ms Turnseck could have completed the form for him.

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73 Deputy Commissioner Stephen Brown, telephone call with Peter Conran, 17 March 2014, 12.05am. Provided with response to Questions on Notice, 28 May 2014.

74 Det. Sen. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, *Transcript of Evidence*, 19 May 2014, p35.

75 *ibid*, p41.

The chief-of-staff would also have responsibility for ensuring that a minister's personal details are kept current with police for security reasons, but this had not occurred, and was not questioned.

- A record of a telephone conversation between Mr Conran and DC Brown (which was not included in the police investigation Running Sheet) suggests that Mr Conran was concerned about Ms Turnseck's welfare,<sup>76</sup> which might have been a veiled suggestion that police back off in their investigations of her knowledge of events.
- There was inconsistency between the reports of people at the wedding reception who said that the Member for Vasse was coherent until late into the night and statements attributed to him that he could not remember driving home.<sup>77</sup> Possible explanations for this "contradictory evidence"<sup>78</sup> do not appear to have been pursued.
- The police were apparently unable to establish the whereabouts of the MP, even though others must have known where he was. While the Running Sheet shows that police attempted to speak to him by calling his mobile phone several times (see items 42, 43, and 44), his failure to return calls meant that once again, the media was a step ahead of the police. The MCIS officer-in-charge said that he became aware through the media that the Member for Vasse was in Busselton.<sup>79</sup> This strikes the Committee as somewhat embarrassing for the police if this is the case, but the alternative explanation – that police did not divulge that they knew his whereabouts – is unpalatable.
- Wembley police delayed collecting CCTV footage from a Subiaco resident which (according to his witness statement) showed headlights go "up into the air and then down towards the ground" as if the vehicle had been driven up onto the kerb and back onto the road.<sup>80</sup> The resident was told by a neighbour on the day after the crashes that Wembley police wanted a copy of the CCTV, but they did not attempt to collect it for another three weeks, by which time the relevant footage had been taped over.<sup>81</sup>

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76 Deputy Commissioner Stephen Brown, telephone call with Peter Conran, 15 March 2014, 9.10am. Provided with response to Questions on Notice, 28 May 2014.

77 Ms Rachael Turnseck, *Statement to Police*, 25 March 2014.

78 Dr Karl O'Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p49.

79 Det. Sen. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, *Transcript of Evidence*, 19 May 2014, p44.

80 Kenneth MacKenzie, *Statement to Police*, 26 March 2014, p5.

81 *ibid*, p6.

- If Wembley police had already begun connecting the crashes on 23 February, why did they not follow up? While the individual crashes may have been below the damage threshold to warrant investigation, the suspicion that they were caused by the same vehicle seems to the Committee like reasonable cause for further investigation.

## **2.3 The decision to prosecute, the charges laid and legal advice sought**

Once forensic tests which showed a match between a piece of plastic found near a damaged vehicle and the headlight of the Caprice (see item 51), it was clear that police could proceed with charges against the Member for Vasse. The nature of the charges focussed on whether it was possible to charge the Member for Vasse with driving under the influence of alcohol (DUI) (Section 63 of the *Road Traffic Act 1974*, hereafter s.63 RTA 1974), and whether he would be charged with careless, reckless or dangerous driving.

The police sought advice from the State Solicitor's Office (SSO) and briefed Senior Assistant State Counsel John O'Sullivan on 17 March.<sup>82</sup> On 1 April, WA Police received the assessment of evidence and possible charges from the SSO. The Committee obtained a copy of the advice, which it regards as reasonable but conservative. (See section 2.4.2 for details of the effort required to obtain the copy of the advice).

In considering the evidence, Mr O'Sullivan's opinion was that while it may seem that "the respective collisions with the Telstra pole and the parked cars is consistent with ... being intoxicated"<sup>83</sup> and incapable of controlling the vehicle, it could not be assumed that only an intoxicated person would drive in this manner. To succeed on a charge under s.63 RTA 1974, the prosecution would need to prove beyond reasonable doubt that alcohol and/or drugs had rendered the driver incapable of controlling the vehicle. Unless other reasonable inferences could be excluded, it would not be possible to make a conviction under s.63 RTA 1974.

Mr O'Sullivan said that it could be argued that the driver's inability to control the vehicle may have been because he was affected by "migraine, a dizzy spell or (being) in a highly emotional state". It may also have been the case that the steering of the car was damaged when the vehicle mounted a kerb and hit a Telstra pole. Mr O'Sullivan acknowledged that while this might explain why the parked cars could not be avoided, it did not explain why the Telstra pole was struck in the first instance.

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82 Det. Sen. Sgt Brian Hunter, WA Police, Letter provided to Committee in response to questions on notice (from hearing 19 May 2014) , 26 May 2014.

83 Mr John O'Sullivan, State Solicitor's Office, Letter to WA Police outlining advice in the case of Troy Raymond Buswell MLA, 31 March 2014, p9.

Opinions on damage to the steering of the vehicle are inconsistent. While Det. Sen. Sgt Hunter told the hearing that damage sustained when the vehicle mounted the kerb in Olive Street “pretty much rendered the vehicle impossible to drive normally”,<sup>84</sup> the vehicle examiner stated that the vehicle drove with constant pulling to the left, but that this was counteracted by constantly steering to the right. This was “effective albeit in a much less responsive manner compared to an undamaged vehicle”.<sup>85</sup> Information at the start of the Vehicle Examination Report summarises the damage and defects as follows: “Damage: This vehicle has sustained moderate crash impact damage predominately to the front. Defects: Nil.”<sup>86</sup>

The Committee contends that, consistent with the Vehicle Examination Report, it would have been possible for a competent driver to steer the vehicle. The SSO seems to have offered up mechanical failure as a plausible alternative explanation for hitting three cars with little regard for the evidence in the Vehicle Examination Report.

Mr O’Sullivan did not believe that the evidence provided by the person who witnessed the Member for Vasse at the gate of his unit would be admissible. His observations that the Member appeared to be “under the influence of something”<sup>87</sup> would not be enough alone to indicate DUI, given that this was but one of many other indicators of intoxication that the witness had not been in a position to observe.<sup>88</sup> However, the solicitor seems happy to accept the evidence of the Limousines Australia driver (Terence Turnbull) and Inspector Lysle Cabbage (a guest at the wedding) that “Mr Buswell was not demonstrating signs of intoxication at the reception”.<sup>89</sup>

Likewise, the admission by the Member for Vasse to Ms Turnsek that he could not remember driving home was not necessarily attributable to intoxication, according to Mr O’Sullivan. He said this memory loss could have been a result of fatigue or stress.<sup>90</sup>

The Committee is concerned by evidence suggesting that the only way to obtain a successful s.63 prosecution is with a blood alcohol reading in excess of 0.15g, or in cases where the observation of drink driving has been made directly by a police officer. According to the Police Commissioner, if there was sufficient evidence (for example, a drunk driver had been pulled over or was involved in a crash and the police were present) there would likely be grounds for successful prosecution even without a

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84 Det. Sen. Sgt Brian Hunter, Officer in Charge, Major Crash Investigation Section, WA Police, *Transcript of Evidence*, 19 May 2014, pp37-38.

85 Sen. Constable Darren Harston, Vehicle Investigation Unit, State Traffic Operations, *Vehicle Examination Report*, 29 March 2014, p9.

86 *ibid*, p1.

87 Adrian Sevier, *Statement to Police*, 10 March 2014, p5.

88 Mr John O’Sullivan, State Solicitor’s Office, Letter to WA Police outlining advice in the case of Troy Raymond Buswell MLA, 31 March 2014, p10.

89 *ibid*, p9.

90 *ibid*, p10



breath test. But the Police Commissioner said it was unusual to charge someone with DUI on the basis of a report by a member of the public.<sup>91</sup>

Dr O’Callaghan said that the facts that police once used for a visual DUI—such as bloodshot eyes, slurred speech, unsteadiness on feet—were no longer accepted by the judiciary. “You have to have much better evidence than that and you have to eliminate other possibilities.”<sup>92</sup>

Commander Fordham said that no one in the Traffic Enforcement Group could recall a driver being charged with visual DUI in the past five years. “How far we have to go back to find the most recent visual DUI prosecution I would not know, but, as the commissioner has alluded to, they are historic.”<sup>93</sup>

In an email to investigator Det. Sgt Buck, Senior Constable Mark Adams, a project officer with the Traffic Policy Unit, states that he has been unable to find any case law in reference to visual DUI.

*I checked with Sgt Hay at Breath Tech Unit and he was also unaware of any possible case law references.*

*His opinion is that to successfully prosecute a charge of visual DUI you would need credible reliable independent witnesses who are familiar with signs and symptoms of intoxication, that can state that a person was heavily intoxicated, evidence that they had been drinking alcohol all night, etc.*

*He further stated that if no breath test was done any allegations of poor driving may be countered by the explanation of mental stress or some other defence not related to alcohol and/or drugs.<sup>94</sup>*

According to the Police Commissioner, even an admission of drink driving by the driver is not necessarily grounds for prosecution. Dr O’Callaghan cited a case (Bunning v Cross (1978) 141 CLR 54) in which a driver was observed driving erratically and admitted to having been drinking, but this was not sufficient to establish reasonably that the driver was driving under the influence of alcohol so as to render him incapable of driving a car.<sup>95</sup>

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91 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p21.

92 *Ibid*, p22.

93 Cdr Alf Fordham, Commander of State Traffic, WA Police, *Transcript of Evidence*, 19 May 2014, p22.

94 WA Police, Case law – visual DUI, *Running Sheet*, 14 March 2014, 11.54am.

95 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p48.

Having looked into the case, the Committee believes the reference is somewhat misleading, in that the case revolved around whether the blood test process was reasonable and proper and should have been considered by the magistrate. The fact that the driver had admitted to drink driving was not the focus of the case – rather, it was that the police officer had not considered whether the person was incapable of being in control of a vehicle before asking him to take a breath test.

Attempting to interview a suspected drink driver with the aim of obtaining a breath test is also problematic, especially when the police officers have been called to an address following a report from a member of the public. In such circumstances, according to the Police Commissioner, it was not unusual for a person to say that they had been drinking since they had arrived home.

*...for as long as I have been a police commissioner people have been going home and shutting themselves in houses and drinking alcohol after they have driven on the road to avoid police prosecution.<sup>96</sup>*

The Committee is open to the conclusion that it is difficult for police to make a successful DUI prosecution in the absence of a blood alcohol reading. However, it is also fair to conclude that s. 63 could have been applied with a more concerted effort to gather evidence and/or to present the circumstantial evidence in a different manner.

Since the alternative explanations to DUI (e.g. mental stress, migraine) suggested by the prosecution were not presented as an affirmative defence in court (and since the Member did not present such evidence to police, having refused to submit to a police interview), the Committee is more convinced by DUI as an explanation of the careless driving than any other reason. There is considerable other evidence which supports this, but which was not given due consideration – for example the Member indicating to Ms Turnseck that he would walk home from the wedding reception, which indicates an intention to drink heavily;<sup>97</sup> evidence that he had been drinking steadily at the wedding; the evidence of the witness who made the call and described the driver as “under the influence of something”.

### **2.3.1 Reckless, dangerous or careless?**

The SSO ruled out applying the more serious charges of reckless driving and dangerous driving. To prove reckless driving, there needed to be an element of wilfulness, and it did not seem to be the case that the Member for Vasse had deliberately and purposefully collided with other vehicles.

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96 Dr Karl O’Callaghan, Commissioner of Police, WA Police, *Transcript of Evidence*, 19 May 2014, p18.

97 Ms Rachael Turnseck, *Statement to Police*, 25 March 2014, p2.

While the Member's manner of driving may have been potentially dangerous to the public, the SSO said there was no evidence that there were any other road users or pedestrians in the vicinity when the collisions took place (given that no eye witnesses came forward).<sup>98</sup> While there was at least one road user in the vicinity when the Member was driving on Roberts Road (the witness who made the phone report), it was argued that the low speed at which the driver in question was travelling did not present a danger to anyone.

However, the SSO seems to have overlooked evidence in a statement by a resident of Roberts Road that there were a "few cars sounding their horns" and "there was still quote a lot of traffic in the area",<sup>99</sup> as well as that of the witness who made the call:

*The vehicle then veered off into the left hand lane again just avoiding parked cars on the left hand side of the road. The vehicle has travelled on in the left hand lane. My attention was drawn away from the vehicle as I was worried about members of the Public in the area...*<sup>100</sup>

Mr O'Sullivan concluded that the Member for Vasse could be charged with careless driving for each time that he collided with the stationary vehicles and with the Telstra pole. In his opinion, whether or not the collisions were attributable to mechanical failure, the charges would be the same, since it was careless to continue to drive a damaged vehicle.

The Committee comprehends the police and SSO explanation of the charges of careless driving, but does not accept that the Members' driving could not be have been regarded as dangerous, given that there were cars in the area and considering the witness statements that expressed a concern for public safety at the time of the incident.

The Member for Vasse was also charged with three counts of failing to stop and give information in relation to the damage caused to the vehicles (he did not remain at the scene or leave his details in a note with the vehicles), and four counts of failing to report property damage to the police.

### **2.3.2 In conclusion**

The prosecution advice prepared by the SSO, while sound, is based on repeated assumptions regarding what will be accepted in court. It assumes that a court would be more willing to accept that the erratic driving was caused by a migraine or mechanical

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98 Mr John O'Sullivan, State Solicitor's Office, Letter to WA Police outlining advice in the case of Troy Raymond Buswell MLA, 31 March 2014, p13.

99 Mr Douglas Nicholl, *Statement to Police*, 14 March 2014, p4.

100 Adrian Sevier, *Statement to Police*, 10 March 2014, p3.

failure than by intoxication, and that it would be more willing to believe that the driver's inability to recall driving home was due to fatigue or stress rather than intoxication.

Documents provided to the Committee reveal that the police were able to match fingerprints on the Caprice to the fingerprints of the Member for Vasse,<sup>101</sup> which they must have already had on record; and that the driver of the Caprice had previously been issued with multiple Traffic Infringement Notices (TINs). No mention was made of this in the prosecution advice, so perhaps the solicitor was not made aware of this information. The Committee believes knowledge of previous driving offences may have been useful to the prosecution. It also raises the question of why police apparently did not have a record of the Member's details on their system if he had previously been issued with traffic infringements.

### **Finding 5**

The prosecution advice prepared by the State Solicitor's Office is conservative and based on a raft of assumptions. With different assumptions, the advice could have been to pursue a Driving Under the Influence charge in addition to the charges laid.

## **2.4 Other relevant issues**

### **2.4.1 Dignitary protection**

The Police Dignitary Protection Unit was asked about procedures for maintaining records of the residential addresses of MPs. The Committee was told that it was not mandatory for MPs to provide Personal Security Information (PSI) (such as family information, vehicles, phone numbers) to the police. Police used to send out the PSI form to all MPs after the election results were confirmed. As of this year, the forms are to be sent every six months. This year 28 forms were returned – a vast improvement on the six from the previous year but still a very low return rate. The Member for Vasse's was not one of those returned. Police have the Busselton address details for the Member for Vasse stored on their IMS (Information Management System) database, but had no record of his Subiaco address. Their IMS alert (a notification that the person is an MP) is linked to the Busselton address.

The Committee is alarmed that security arrangements for members of Cabinet are not taken more seriously. It should be mandatory for MPs to submit a Personal Security Information form (which is regularly updated) to Police, and the police should take responsibility for following up non-returns – of Cabinet ministers at least. The MPs' car registration should also be recorded on the PSI form. At present, there is no way for the police to identify who a government vehicle belongs to outside of business hours.

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101 WA Police, Forensic Identification Fingerprints, *Running Sheet*, 13 March 2014, 8.48am.

## **Recommendation 2**

All MPs should be required to submit a Personal Security Information form and WA Police should ensure that they have received them. WA Police should also systematically ensure that the information contained on their databases is current.

### **2.4.2 Attempt to withhold the State Solicitor's Office advice**

The hearing opened with the Committee seeking clarification from the Police Commissioner as to whether he was able to provide the advice received from the SSO. The Police Commissioner had previously informed the Committee that the police had been advised not to provide the advice, because it was subject to legal professional privilege.

If the Committee wanted the advice, it would need to summons it under Section 5 of the Parliamentary Privileges Act 1891. Later in the hearing, the Committee met in private and unanimously agreed that the summons should be issued. However, this became unnecessary when the SSO agreed, via the Police Commissioner, to provide the advice and had it sent to the hearing.

The Committee contends that it is a myth that the document being sought was privileged in this case, since parliamentary privilege over-rides legal professional privilege. In the Committee's view, privilege had also already been waived by virtue of some details of the advice having been published in a WA Police press release on 1 April.

## **2.5 Concluding comments**

The police were let down by an unsophisticated communications system which did not reveal connections between events which were clearly linked. Had the connections not been made by a witness and then investigated further by the media, the police would most likely have never known who caused the damage to the vehicles in Olive and Barker streets, Subiaco.

The police investigation was then hampered by the refusal of the Member for Vasse to be interviewed. While the Committee accepts his legal right to remain silent, this stance sent mixed messages to the public. If a politician refuses to cooperate with the police, does he or she have something to hide?

The Member for Vasse would admit (through his lawyer) only to having driven from King's Park to his home in Subiaco on the night in question. He completed the Statement Nominating Driver form which formally acknowledged he was the driver, following a request from police. However, he did not report the crashes or stop after the crashes. This is not the sort of behaviour that citizens expect an MP to model to members of the public.

Community expectations were that the Police would find enough evidence to charge the Member with drink driving. Their failure to do so would invite speculation that an MP was being treated differently (more leniently) than ordinary citizens.

The Committee does not believe that the police investigators treated the MP in this incident more leniently; the first officers that were involved did not even know whose address they were attending. If anything, the public scrutiny of the case would have meant that the Police ensured that they were seen to be conducting a thorough and fair investigation. It may be the case, however, that they were pressured by members of the government to ignore particular evidence or to make particular findings; however, it is beyond the scope of this review and this Committee to further investigate such matters.

The review has revealed the extent to which police are constrained in doing their job by policies and laws – for example, the inability to enter premises of suspected drink drivers, and being unable to use visual observations of DUI to bring about drink driving convictions. Perhaps police officers need to be offered more clarity in regard to the pursuit of visual DUI, and more training in how to collect the evidence.

This is one of the most concerning findings to come from this review, since it sends a message to drink drivers that they can evade a conviction if they lie low. This directly undermines State Government drink-driving and road safety campaigns such as the “Anywhere, Anytime” campaign, which implied that a drink driver had a high chance of being stopped by police for a random breath test. Advertising campaigns were designed to encourage drink drivers to think twice before getting behind the wheel, since there was a strong probability they would get caught.

Given that 31 out of 162 road fatalities (19%) in 2013 were attributed to alcohol, the Committee believes Police should be pursuing any and every means possible to apply Section 63 charges.

The Committee believes many members of the public would be concerned that police would not necessarily pursue a conviction even in cases where a driver had admitted to being under the influence of alcohol and there was corroborating evidence.

### **Recommendation 3**

WA Police training should address the widely-held misapprehension that the absence of a breathalyser test is fatal to laying and prosecuting a charge under Section 63 of the *Road Traffic Act 1974*.



MS M.M. QUIRK, MLA  
CHAIR

# Appendix One

## Inquiry Terms of Reference

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The review sought to examine:

- Police communications and integration of information related to the incident
- Investigations undertaken by police officers on the night in question
- The nature of demand for police attendance on the night in question
- The subsequent conduct of the investigation and collection of evidence
- The decision to prosecute, the charges laid and legal advice sought





## Appendix Two

### Committee's functions and powers

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The functions of the Committee are to review and report to the Assembly on: -

- a) the outcomes and administration of the departments within the Committee's portfolio responsibilities;
- b) annual reports of government departments laid on the Table of the House;
- c) the adequacy of legislation and regulations within its jurisdiction; and
- d) any matters referred to it by the Assembly including a bill, motion, petition, vote or expenditure, other financial matter, report or paper.

At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and Joint Committee of the Assembly and Council. The Speaker will announce them to the Assembly at the next opportunity and arrange for them to be placed on the notice boards of the Assembly.



## Appendix Three

### Hearings

Date	Name	Position	Organisation
19 May 2014	Dr Karl O'Callaghan	Commissioner of Police	WA Police
	Detective Senior Sergeant Brian Hunter	Officer-in-Charge, Major Crash Investigation Section	
	Commander Alf Fordham	State Traffic Operations, Traffic and Emergency Response	
	Superintendent Lance Martin	Communications Division (Officer-in-Charge, Police Assistance Care)	
	Superintendent Mike Bell	Counter Terrorism & Emergency Response (Dignitary Protection Unit)	



## Appendix Four

### Acronyms

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317	Alleged drink-driver
CAD	Computer Aided Dispatch
CCTV	Closed circuit television
Cdr	Commander
DPC	Department of Premier and Cabinet
DUI	Driving Under the Influence
ECM	Engine Control Module
GIS	Geographic Information System
ICE	Integrated Crash Inquiry
IMO	Incident Management Officer
IMS	Information Management System
MCIS	Major Crash Investigation Section
MPs	Members of Parliament
PSI	Personal Security Information
PIN	Personal identification number
TADIS	Tasking and Data Information System
TINs	Traffic Infringement Notices
SSO	State Solicitor's Office
SRS	Supplemental Restraint System



# Appendix Five

## Map of where incidents occurred



Map prepared by David WILLIAMSON PD87279, Analyst, State Traffic Intelligence, Planning & Coordination Unit, 16/MAY/2014





## Minority Reports

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### Minority Report 1

I.M. BRITZA MLA

#### Terms of Reference:

- Police communications and integration of information related to the incident
- Investigations undertaken by police officers on the night in question
- The nature of demand for police attendance on the night in question
- The subsequent conduct of the investigation and collection of evidence
- The decision to prosecute, the charges laid and legal advice sought

The Committee's primary responsibility was to find out whether or not the Police treated the Member of Parliament more favourably than any other citizen would have been in the same circumstances.

I don't believe it was the committee's responsibility to drive an enquiry into what might have happened or not. While the committee was well aware of what the community, at large, were thinking and even asking, it was the committee's sole responsibility to simply find out if the Police, in the course of their response and subsequent investigation, did anything that might have given the slightest of perception that a Member of Parliament had been given special favours not given to the ordinary citizen.

It was, and still is, my primary view that the police in all of its capacity and ability to respond, did so with the utmost professionalism. Their response to the initial call was exemplary and they followed, to the letter of the law in my opinion, all that was required of them to accomplish and report. Their report went into their system, as all reports of this nature go into, and would have had further investigation when the report was read in more detail in due course.

After the Member of Parliament's name was publicly revealed then there certainly was more vigour thrown into the investigative process and all aspects of the matter were looked at more carefully from the first phone call until the completion of the final report.

HOWEVER, until the Member's name was revealed to the relevant authority, the initial report on the matter by the Police had received its due course of action.

Any further matters dealing with the IT Technology made available to the Police or the Registration of Members names with the appropriate information attached to that register, had no impact on the fact that the Police acted with absolute impartiality to the matter presented to them on the evening in question and proceeded with their course of action in every manner to which they had been completely trained to fulfil. These matters, if dealt with, can only enhance even further the ability of the Police to pursue their areas of responsibilities with an even greater degree of impartiality, accountability and desire to protect, shield and defend the public at large.

I need to just briefly state that while we, as the committee, did in fact agree to obtain the State Solicitors Report, I held personal reservations, that I declared at the time, as to not only the legality of what we finally agreed on but whether or not it was a precedent worth pursuing. Hindsight is a wonderful thing but as I stated in my inaugural speech, "it is easy to do justice, but so very difficult to do right". If names of people were in fact shown on our website without their approval then I need to state categorically here in this Chamber that I believe that it was wrong to do so.

The perceived, or not perceived, actions of the Member involved was completely irrelevant to the Terms of Reference the committee gave itself and I believe that the Committee may have gone a little beyond its own terms of Reference in order to achieve another result and possible outcome.

Therefore Mr Speaker, it is with a great deal of reticence that I tender this report of mine as a 'minority report' as Deputy Chair of this committee.

Ian M Britza, MLA

## **Minority Report 2**

### **Review of the Police Investigation Into Traffic Incidents Involving a Member of Parliament**

#### **Terms of Reference:**

- Police communications and integration of information related to the incident
- Investigations undertaken by Police Officers on the night in question
- The nature of demand for Police attendance on the night in question
- The subsequent conduct of the investigation and collection of evidence
- The decision to prosecute, the charges laid and legal advice sought.

This minority report has been submitted by Chris Hatton MLA in order to address what I believe to be significant omissions, broad assumptions and incorrect conclusions.

This minority report is submitted with due consideration given to the Terms of Reference and the intent of the Agency Review.

The Committee's primary responsibility was to find out whether or not the Western Australian Police treated the Member of Parliament more favourably than any other citizen would have been in the same circumstances and whether police procedures and operations were appropriate.

The Review was driven by an awareness that there was a degree of public concern about the integrity of the investigation and the subsequent charges and court conviction.

However, throughout the Review it became apparent to me that there was a level of disparity between the Review intent and the conduct of the Review.

I believe that parts of the Review waived from the Terms of Reference and instead became more focused on the assumption that the Police investigation was inadequate in that it did not pursue a different charge or conviction.

In effect, I believe that a degree of partiality was demonstrated and that this led to some evidence being considered in a manner that was contentious to the Terms of Reference.

It is my view that the Police acted within its capacity and ability to respond and investigate, doing so with the utmost professionalism.

Throughout the Review it became apparent that the WA Police responded appropriately to the site of the incident, professionally investigated the incident, conducted forensic analysis and sought to prosecute an appropriate charge based upon the available evidence.

In accordance with the Committee, I do not believe that the Police investigation treated the Member more leniently due to a position of high office and standing. In fact, greater investigative diligence may have been applied due to the probability of greater public scrutiny.

Although it could be considered by some people that the police investigation could have been compromised by some government influence, there was no evidence to support this assumption.

In relation to an assumption that the incident was as a result of drink driving, the comprehensive Police investigation was unable to support that assumption.

However, while I strongly acknowledge along with the Committee that drink driving is serious and should result in a drink driving charge and conviction, the evidence surrounding this incident could not be supportive of that charge or conviction.

At this point I raise my concern that, as a Committee, we did agree to obtain the State Solicitor's Report. I held personal reservation in this procedure at the time, with concern about the legality of such an action. However, in the pursuit of evidence, the action was taken.

On reflection I continue to hold reservations, with a particular concern for any people's names that may have entered the public domain.

I submit this report with the view that the Committee and Review was compromised by a level of partiality and bias.

**Chris Hatton MLA**  
**Committee Member**  
**Community Development & Justice Committee**

## **2.1 Police response and investigation at the time of the incident with regard to response time (P1 and 2):**

In accordance with the Committee, I am in agreement with the following:

- The Committee was in agreement that there was a reasonable response time with regard to the investigation at the time of the incident.

However the Committee contended that the police could have made a more concerted effort, whereas I believe that, in the case in question and as evidenced by police, the Police on site investigation was adequate and appropriate in that Police officers;

- 1) Acted according to their legal boundaries,
- 2) In accordance with safety and risk.

In considering the actions of the attending Police officers, the Committee's contention that more could have been done, in my opinion, does not give due recognition to:

- a) The scope of the Traffic Act regarding common law and right of entry to a property.
- b) The ability or inability to gain further evidence.

It is my contention, from the evidence presented, that the Police officers investigating at the time of the incident applied procedure according to the scope of the Traffic Act and to their professional judgement that there was a mitigating safety risk.

Therefore, with regard to Finding 1, the conclusion that a more pro-active approach in on site investigation, remains a pertinent finding. However, in my view, it is quite possible that there will remain an inability to do so under present constraints.

In accordance with the Committee, I am in agreement with Finding 2, that is, the Committee accepted that the attending Police officers did not know that the driver was a Member of Parliament and therefore were not treating him any differently from anyone else.

### **2.1.1 Nature of demand for Police attendance**

#### a) Traffic Enforcement Officers

It was evidenced that the Traffic Enforcement Group Officers acted in accordance to normal procedure by attending the incident in a reasonable time, investigated according to regulation and the environment at the time and return to normal patrol duties.

#### b) Information Integration

The Committee was informed that the current Police communication and information collection system, that is The Computer Aided Dispatch System (CAD), is deficient in enabling links between connected events in a timely manner.

Therefore, in my opinion, the Police responded appropriately in accordance to available data that presented with a deficient CAD system.

Finding 3, Finding 4 and Recommendation 1 support this.

### **2.2 Subsequent conduct of the investigation and collection of evidence**

I contend that this section of the report is deficient of relevant data.

The data presented, displays a tendency to conjure that the Police investigation was not thorough.

The report, in my opinion, is not conclusive and accurate in that it does not evidence or provide investigation data that details the following;

- 1) A number of witness statements that do not support intoxication,
- 2) Details of forensic evidence that states that the vehicles steering mechanism was compromised by an initial impact at the incident causing reduced control.

It may be true that there is the possibility that some evidence gathered is obscure, but in my opinion it also remains true that the available evidence was gathered methodically and presented according to a thorough Police investigation.

Section 2.2 Dot point 6, p.22, of the report states, in reference to the Police being unable to establish the whereabouts of the driver:

“This strikes the Committee as somewhat embarrassing for the Police if this is the case, but the alternative explanation – that the Police did not divulge that they know his whereabouts – is unpalatable.”

I contend that the Committee, once again, does not duly recognise that the Police investigation was limited by not only a deficient CAD system, but also by the inability to identify the owner of the vehicle due to circumstances related to the vehicle lease and the limited available Personal Security Information.

### **2.3 The decision to prosecute, the charges and and the legal advice sought**

I dissent from finding 5 Section 2.3.2 (p. 28), in conclusion that the State Solicitor’s Office’s advice is conservative and based on a raft of assumptions.

Firstly, in reference to allegations, charges and lawful prosecution, it cannot only be assumed that an intoxicated person, although possibly the case, would drive in a manner that caused the collision.

It should be noted that to succeed in a charge other than proceeded –

- The State Solicitor’s Office concluded that it could not proceed with a charge under Section. 63 (s.63) dealing with intoxication, because the evidence could not support that charge.

In effect, the prosecuting evidence concluded that there was reasonable doubt due to –

- a) Insufficient evidence, including conflicting witness statements
- b) The ability to control the vehicle may have been affected by other factors such as ‘by migraine, a dizzy spell or a highly emotive state’.
- c) A vehicle examination report stating that the vehicle’s steering was compromised by an initial impact during the incident and that the damaged steering could be a factor to be considered when relating to erratic driving.
- d) Visual evidence relating to intoxication, such as ‘unsteadiness on feet’, is not sufficient judiciary evidence.

In reference to point d)

Under section 2.3, p. 26, paragraph 1, I dissent from the wording 'somewhat misleading'.

Under section 2.3, p. 26, paragraph 3, I also dissent from the sentence (and notion) –

'However, it is also fair to conclude that s.63 could have been applied with a more concerted effort to gather evidence.'

I contend that, the Police investigation was conducted according to compliances in the Act, and in consideration of safety and risk factors and that to pursue a s.63 conviction would have lacked substantial basis.

In relation to section 2.3, p.24, paragraph 2,

"The Committee contends that, consistent with the Vehicle Examination Report, it would have been possible for a competent driver to steer the vehicle."

I dissent from this contention on the basis that there is conflicting evidence to the contrary.

In relation to section 2.3, p. 24, paragraph 2,

"The Committee is concerned by evidence suggesting that the only way to obtain a successful s.63 prosecution is with blood alcohol reading of excess 0.15g, or in cases where drunk driving has been made directly by a police officer."

I have concern that the Committee is suggestive of Driving Under the Influence (DUI) evidence being allowable by a subjective report by a member of the public.

The Commissioner said it was unusual to charge someone with DUI on the basis of a report by a member of the public and that you have to have much better evidence than that and you have eliminate other possibilities.

Therefore I cannot support the assertion by the Committee that circumstantial evidence is valid when other possibilities could cause behaviours.



In relation to section 2.3, p. 27 paragraph 4, I dissent from the wording 'does not accept'.

I contend the Police and State Solicitor's Office, after examining the scope of the charges, (Reckless, Dangerous or Careless) considered that the incident was caused by careless driving, which involved:

- a) Low speed (airbags not deployed).
- b) No apparent danger to other road users.

In reference to a) and b) –

The State Solicitor's Office evidence report states that –

"It is the danger posed to the public that separates dangerous driving from careless driving and that regard must be given to the actually circumstance at the time, not by speculating as to any apparent danger posed to a member of the public had one been present."

and the Member was travelling at low speed and his driving did not appear a danger to other road users.

I contend that the wording 'does not accept' be replaced by 'fails to fully understand'.

In support of the decision to pursue the charge of careless driving, the State Solicitor's Office report refers to the driving as clearly a departure from that expected of other road users, but establishing that it was potentially dangerous to the public would be difficult.

With regard to section 2.3.2 p. 27, in conclusion:

I dissent from this conclusion on the basis that it aims to levitate the gravity of the incident without giving due consideration to the evidence at hand and the scope of the charges.

**I contend that the conclusion should read:**

‘The prosecution advice prepared by the State Solicitor’s Office, while sound, is based on the limited powers of the police to be able to gain evidence and is also based on the understanding that erratic driving can be caused by other factors such as ill health, medical condition or mechanical failure of a vehicle. When considering the possibility of other causative factors, combined with limited available evidence, the prosecution assumed the position that a lesser charge would be judicated.

The Committee notes that a number of previous traffic infringement notices logged against the Member for Vasse were not on police records to be potentially used for prosecution, or accessible in the police system.’

In relation to section 2.5, p. 29, concluding comments, I dissent from this conclusion.

**I conclude that:**

The Committee accepts that the WA Police responded to the reported incident well within the key performance indicator response time.

The Committee also accepts that the incident scene was adequately investigated, although for a relatively short time, giving consideration that it was dark and the reported location was unable to be safely investigated to another level.

It became evident to the committee that the police investigation and the gathering of evidence was limited by the reduced capacity of the somewhat out-dated computer aided dispatch (CAD) system, being limited in its ability to integrate and link information.

A new updated integration system is being commissioned; however, there should not be the assumption that if the new system was already in place, there would have been a difference judicial outcome related to this incident.

Subsequent, post incident investigation was conducted according to a collection of new emerging evidence, including public reports of damage to other vehicles.

Comprehensive forensic evidence was gathered, including evidence that the offender's vehicle's steering mechanism was most likely significantly damaged on an initial impact. It was determined that damage affected the roadworthiness of the offender's vehicle, rendering it difficult to control.

The prosecution advice prepared by the State Solicitor's Office was sound and, based upon the available limited evidence, more serious charges were not pursued.

The resulting (perceived) lesser conviction was a judicial outcome based upon the reasoning that causations other than alcohol could very well have taken a place in the incident, such as erratic driving caused by other factors and a damaged and compromised steering mechanism due to an initial impact during the incident.

The convictions were reflective of the evidence at hand resulting from a comprehensive police investigation, the limitations of the law and the fact that the offender drove carelessly on the evening, failed to stop and failed to report a crash.

The Committee does not believe that the police investigations treated the offender more leniently due to a position of high public office and standing. In fact, greater investigative diligence may have been applied due to the probability of greater public scrutiny.

Although it could be considered by some people that the police investigation could have been compromised by some government influence, there was no evidence presented on this assumption.

In relation to an assumption that the incident was a result of drink driving, the comprehensive police investigation was unable to support that assumption.

While the Committee acknowledges the public concern that drink driving is serious and should result in a drink driving charge and conviction, the evidence surrounding this incident could not be supportive of that charge or conviction.

**Appendix to Changes:**

Dissent from Finding 5, section 2.3.2, p.28 - that the State Solicitor's Office's advice is conservative and based on a raft of assumptions.

Dissent from section 2.3, p. 26, paragraph 1, from wording 'somewhat misleading'.

Dissent from section 2.3, p. 26, paragraph 3, from sentence (and notion).

Dissent from section 2.3, p. 24, paragraph 2 from conclusion.

Dissent from section 2.3, p. 7, paragraph 4 from wording 'does not accept'.

Dissent section 2.3.2, p. 7 – in conclusion.

Dissent from section 2.5, p. 29 – concluding comments.

