STANDING COMMITTEE ON LEGISLATION

CUSTODIAL LEGISLATION (OFFICERS DISCIPLINE) AMENDMENT BILL 2013

TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
TUESDAY, 7 OCTOBER 2014

Members

Hon Robyn McSweeney (Chair)
Hon Sally Talbot (Deputy Chair)
Hon Donna Faragher
Hon Dave Grills
Hon Lynn MacLaren

Hearing commenced at 11.01 am

Mr STEPHEN BROWN
Acting Commissioner of Police, sworn and examined:

Mr ALLAN ADAMS
Acting Assistant Commissioner, Professional Standards, Western Australia Police, sworn and examined:

Mr MATTHEW SAMSON
Acting Assistant Director, Legal and Legislative Services, Western Australia Police, sworn and examined:

The CHAIR: On behalf of the committee, I would like to welcome you to the meeting. Before we begin, I must ask you to take either the oath or affirmation.

[Witnesses took the oath.]

The CHAIR: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?

The Witnesses: Yes.

The CHAIR: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing and for the record. Please be aware of the microphones and try to talk into them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that publication or disclosure of the uncorrected transcript of evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

Would you like to make an opening statement to the committee?

Mr Brown: Yes, I will—a brief one. We received yesterday a number of questions from the committee. The document we will be referring to—the three of us—is that list of questions and the notes we have made in response to those questions. My opening statement is as follows. Western Australia Police has ceased using its historical disciplinary punitive model, instead transitioning to a managerial intervention model to target unprofessional conduct. The managerial intervention model is designed to favourably alter behaviour through guidance, training and development. Section 23 of the Police Act offences have not been utilised within Western Australia Police for at least the last two years. The escalating managerial intervention process is available for use in this model, and escalates from, at the lower level, verbal guidance, through to managerial notice, an assistant commissioner warning notice, and ultimately the loss-of-confidence process. These processes, exclusive of the LOC process, can be complemented with a managerial action plan, where training, development and other interventions can be stipulated for completion by the subject officer. Criminal conduct is dealt with concurrently but separately from unprofessional

conduct. Criminal remedies are used where there is reasonable prospect of conviction, and the pursuit of criminal charges is in the public interest. That is my opening statement; thank you.

The CHAIR: Given that the second reading speech for the bill states that the loss-of-confidence provisions mirror section 8 and part IIB of the Police Act 1892, the committee has the following questions: were you consulted on the drafting of the bill; and, if so, can the committee have a copy of your submission?

Mr Adams: WA Police was given an opportunity to provide a submission, Ms McSweeney, and a copy of a letter was forwarded to your good self by the Commissioner of Police in September 2014. In addition to this formal response, a number of meetings were held between the Department of Corrective Services and the professional standards portfolio to gain an understanding of the WA Police loss-of-confidence process.

The CHAIR: What is your view about how part IIB of the Police Act 1892 is currently operating?

Mr Adams: The question needs to be considered across the entire spectrum of the WA Police managerial intervention model—LOC being a single part of a broad suite of responses. I personally believe, and WA Police believes, that the loss-of-confidence process works well when conduct is of such a nature to question whether the Commissioner of Police should retain confidence in a police officer. If the unprofessional conduct is at a level that triggers this process, there is an independent review of the initial investigation that has nominated the officer for loss of confidence. If the findings of the internal investigation are supported by the independent review officer, then the matter progresses to the commissioner's legal representative, who will consider the matter from an industrial relations perspective. These respective opinions are provided to the commissioner for him to determine if he wishes to trigger the process by serving a notice of loss of confidence on the subject police officer. The police officer is then able to provide documentation to the commissioner to show cause as to why he or she should not be dismissed. The commissioner then considers that response and determines whether he wishes to dismiss the officer. If he does, then that officer still has an opportunity to resign, to maintain a degree of dignity; it always looks better to say that they resigned as opposed to being dismissed. The process as it lies within WA Police ensures that there is independent consideration throughout the process, by the independent review officer and the commissioner, and then also, if the commissioner makes a decision to dismiss, and it is supported by the police minister, the individual officer has the ability to appeal to the Industrial Relations Commission on the basis of unfair dismissal. Our position is that the system has a large number of independent reviews throughout the process. The individual officer has the ability to communicate with the commissioner during the process to argue why the commissioner should retain confidence, and ultimately there is that Industrial Relations Commission remedy at the end of the process if people do feel aggrieved at the decision of the commissioner. We think our procedure is very fair.

The CHAIR: Are there any changes you think should be made; and, if so, what changes?

Mr Adams: As Mr Brown said at the start, we have moved away from the section 23 model of discipline and punitive action against police officers. One of the negatives that has come from that is that it has reduced the commissioner's ability to demote, particularly. He has a legislated ability to promote individuals, but unless he goes through this section 23 process, he has not got an ability to demote a person. This has been highlighted and we are in the early stages of devising some legislative change that will provide him with the ability to execute a suite of other managerial interventions, but particularly the demotion aspect is one that stands out most tellingly as not being available to the commissioner, particularly when you have a position of a sergeant, as an example, who has exhibited an inability to act at that level. Really, if the commissioner wants to make a decisive decision in respect to that, he has to trigger the LOC provisions. By being able to demote someone, he might be able to save their employment, but have them at a level in the agency where they could function effectively.

[11.10 am]

Mr Brown: If I could just add to that, there have been cases over the last 20 years where, through the use of section 23 and that ability to demote an officer, we have gone through that course, demoted the officer and seen that person have a productive career over a large number of years—pretty much the rest of their career throughout—because that consideration was made. That has been not only for sergeants, but in a couple of cases for police inspectors who have lost their commissioned rank, they have been demoted back to sergeant or senior sergeant, and, then, on occasions they have actually on merit been promoted many years later, so it has worked well.

The CHAIR: What is your view about the application of part IIB loss-of-confidence provisions to prison and youth custodial officers under the bill, having regard to any comparisons between police and prison and youth custodial officers?

Mr Brown: I do not have a detailed understanding of the prison system, but I have a somewhat contemporary view from a distant observer. I see a number of similarities in the operating environment that our police officers work within that happens in the corrective services environment. There are certainly some parallels in the risk that faces those officers in the course of their work, particularly in regards to custody settings and personal interaction with known criminals. So my broad statement is I see those parallels making the loss-of-confidence process, from my view, quite open to further exploration and use in the corrective services environment.

The CHAIR: What factors are relevant in the exercise of the discretion to invoke the loss-of-confidence provisions in part IIB rather than general disciplinary provisions in section 23 of the Police Act? Please give examples citing why particular conduct would be dealt with under a loss-of-confidence provision rather than general disciplinary procedures.

Mr Adams: As stated earlier, WA Police has moved away from the disciplinary punitive model in the section 23 process. The commissioner's confidence in a member relates to the member's integrity, honesty, competence, performance and conduct as stipulated in section 33L(1) of the Police Act. Generally, the behaviours that trigger the LOC process are broken into two categories. You have that serious unprofessional conduct and I suppose I could probably best articulate it as a catastrophic incident—a police officer being charged with a sex offence or a drug-related offence or a serious assault. That isolated incident by itself could be worthy of triggering the LOC process. The other half of the equation is that constant unprofessional conduct, probably at a lower level of seriousness, but despite the efforts to train, develop and guide an individual, they have not taken up the cudgel in that respect. Obviously, at a point in time there will be a behaviour that the agency will say, "We've had enough and we're going to put you in front of the commissioner for consideration, that he lost his confidence in you." Generally, that will not occur until the person has been given an assistant commissioner's warning notice. Essentially, when that is delivered, the individual understands they have no credits left in the bank and they are expected to walk a very fine line in terms of their professional conduct. So I think that best explains how the process works in those two separate scenarios.

Hon DONNA FARAGHER: I know it was mentioned in your opening statement, and this could be taken on notice, is it possible if we could have, I suppose, a timetable—it is not a timetable; it is really the stages that are gone through? You talk about warnings and all of those sorts of things. I think it would be helpful to the committee when we are looking at this bill just to see the general stages that you go through as part of performance management, if that is possible.

Mr Adams: We could put something together without a major problem.

Mr Brown: Yes, certainly that can be done. Of course, all the circumstances are different.

Hon DONNA FARAGHER: Yes, I appreciate that. I suppose that is why I was sort of suggesting in the general course of events how it would be dealt with, understanding, though, that there are differences depending on the circumstances and the individual involved.

Mr Adams: There is a constant continuum that is followed. There is no template that you put the individual in, definitely.

The CHAIR: What would your response be to a view that loss-of-confidence provisions under part IIB have been used as a first option for the overwhelming majority of offences rather than other existing disciplinary processes?

Mr Adams: I would strongly dispute that statement. In 2013–14—the financial year finished on 30 June—a total of 17 police officers were nominated for the loss-of-confidence process. Of these, seven persuaded the commissioner to maintain confidence in them, five resigned, one was subject to medical discharge, and four are still to be finalised. At the same time, 30 police officers were subject to assistant commissioner warning notices, 128 received managerial notices and 588 received verbal guidance. The allegations resulting in all these outcomes at some level were a breach of the Police Force Regulations, such as neglect of duty, conduct unbecoming, excessive force and, as such, under the old section 23 processes were all offences against discipline. When you look at that as a whole, only two per cent of those "offending officers" attracted the LOC resolution. To say that there was an overwhelming majority of offences pursued by LOC is just factually incorrect.

The CHAIR: This is just one of my questions. You said 17 loss of confidence and then you said five were medically discharged. Why would they be under loss of confidence? Would they not be in a separate category rather than loss of confidence if they were medically discharged?

Mr Adams: There was one that was subject to medical discharge. Five resigned and one was subject to medical discharge. Under section 8 of the Police Act, anyone separating from WA Police goes through, effectively, the process. There is a question later that asks about people that separate on the basis of health grounds. It is a similar process, but it is not managed by the professional standards portfolio. Our health and welfare area manages that and there is a regime that is followed to separate someone from the WA Police. The answers we are giving today are pretty well answering the questions around the professional conduct of a police officer that requires their removal from WA Police.

Hon DONNA FARAGHER: I think there is a question a bit later on based on some concerns raised by the police union.

Mr Adams: Yes.

The CHAIR: I just heard those figures and I thought I would jump in.

The committee has received evidence that very few officers have been removed under loss of confidence due to corrupt, illegal or other activity that would constitute serious misconduct. On what other bases have officers been dismissed under the provisions? You probably answered that in your previous question, unless you have anything else to add.

Mr Adams: I suppose the only other piece that I will add as context to that question is that when an officer has been removed, we are using that as the fact that they have gone through the process and they have not voluntarily resigned during it. Effectively, the result is the same. Generally, they will resign after they have been told that the commissioner has considered their feedback and has lost confidence and is going to pursue the removal action with the minister. So, again, the word "removed" could have a number of different meanings as to whether that is formally dismissed or they have resigned through the process.

The CHAIR: Please provide updated stats of loss-of-confidence actions since part II came into effect from those set out on pages 5 to 6 of the stat review report of 24 February 2006 into part IIB.

Mr Adams: I have obtained data from 2006 through to 2014—this is in calendar year—that I can obviously make available to the committee.

The CHAIR: Thank you. Of those actions how often is it that a review officer is appointed to conduct an inquiry?

[11.20 am]

Mr Adams: Upon anyone being nominated for a loss-of-confidence process and that being signed off by the assistant commissioner of professional standards, an independent review officer is allocated on every occasion.

The CHAIR: Have there been any circumstances where under section 33L(1), a written notice has not been given where a removal action takes place?

Mr Adams: The available data and information on hand strongly indicates that a written notice has on every occasion been given to the subject officer when removal action has taken place.

The CHAIR: Have there been any circumstances where under section 33L(2), a police officer has been refused permission to make written submissions?

Mr Adams: The available data and information on hand strongly indicates that a police officer has never been refused permission to make a written submission to the commissioner.

The CHAIR: Please provide the following stats on the time period between appellants lodging an appeal to the Industrial Relations Commission pursuant to section 33P of the Police Act and delivery of the decision of the commission.

Mr Samson: Look, unfortunately, we do not keep any data on that. I spoke to the State Solicitor who handles those for us. There are not many of them over the few years, so to get that data we would have to go through those files. I do not know whether the commission may be able to provide you with those stats in a better way. We could take action to try to find that out for you, but I would just be ringing them, I guess.

The CHAIR: Yes, we could do that as well.

Hon LYNN MacLAREN: Good idea.

The CHAIR: Has the minister directed, pursuant to section 33M of the Police Act, that a maintenance payment be paid to a member for a period greater than 28 days, and what factors have led to that occurring?

Mr Adams: The available data and information on hand indicates the minister has not executed his or her authority in this respect.

The CHAIR: Why is there a six-month limit in section 33M(3) of the Police Act?

Mr Adams: We went back through *Hansard* and it appears it was as a result of negotiation by the WA Police Union on behalf of their members that that six-month time frame was determined.

The CHAIR: In what time frames have the three commissioners been able to hear appeals pursuant to section 33P of the Police Act?

Mr Samson: Again, it is pretty much the same as 1.13. We do not keep data on that. Again, we could check it out, if you wanted us to.

The CHAIR: You would know if there was a case that took a really long time.

Mr Samson: My understanding is that it is within a reasonable time. I do not think they are having major issues with that.

The CHAIR: That answers that. In what circumstances are police officers unable to rely upon the privilege against self-incrimination?

Mr Adams: WA police officers must answer questions asked to them in respect to allegations of unprofessional conduct. Regulation 603 of the Police Force Regulations says that a police officer must follow a lawful order. There has been a court ruling that, under 603, that lawful order includes

the answering of questions related to their duty; and, as such, a police officer does not have an ability not to answer. If they did not answer, it is likely that they would be subject to the LOC provisions that we are talking about here today. As you can appreciate, a lot of the unprofessional conduct allegations against a police officer may have a concurrent criminal aspect to them. A police officer who uses excessive force has potentially also committed an assault. There is a standard within the WA Police that if any question is answered by a police officer under compulsion under regulation 603 of the Police Force Regulations, their answers will not be used as a criminal admission. It is clearly syphoned that that is a comment on their unprofessional conduct, even though it might be an admission to a criminal charge. However, under disclosure requirements, police have to disclose to the prosecuting authority and the defence any matter material to the charges being preferred. So, if a police officer is charged with an assault at the end of an excessive force investigation, police will not use the compelled answers to determine whether they should be charged; however, they will disclose the compelled interview to the DPP or the State Solicitor's Office. It is then an independent decision by that prosecuting authority as to whether they use that compelled answer as admissions to the criminal offence. If they did, generally there is going to be a legal argument prior to the trial by the defence to say that it is inherently unfair to the client that that information not be used. That is outside the control of WA Police.

There are some recent case law matters. There was an incident called Baff from New South Wales where a police officer was compelled to answer after he shot someone, as I understand it. He refused to answer the questions of the internal investigators. He was subsequently subjected to LOC provisions and was dismissed by the commissioner. That was appealed through the Supreme Court in New South Wales where it was overturned that he was unfairly dismissed. That decision was made at the New South Wales Supreme Court, so obviously it is of interest to Western Australia but it is not binding. That particular argument has not been used within Western Australia at this time. There is another matter called Lee that was a determination by the High Court, as I understand it—I am not legal mastermind—but when you compel someone to answer a question, whilst the WA Police position is not to use that compelled answer in their evidence around criminality, the case law decision fundamentally alters the mindset of the investigator. Even though he might not have any intention of using that compelled answer, undoubtedly it does help form a view as to whether the subject officer has acted criminally. There is currently a matter in front of the courts where the internal affairs unit charged a police constable with making a false declaration. The decision to charge was based on the appropriate evidence; it did not include his compelled evidence. The WA Police Union currently has submitted to the court that a stay of prosecution should occur because the compelled evidence undoubtedly set the mind of the investigator leading up to the criminal charges. That matter has been adjourned to 29 October when the magistrate will make a decision. Depending on which way the magistrate goes, I do not think it is the last we have heard of it, because I think whichever party comes out second best in that process is going to appeal. I think we are still a way away from understanding how the Lee matter will impact on WA Police internal investigations into the future.

The CHAIR: In your opinion, does the bill impose heavier obligations on custodial officers than under the Police Act in terms of abrogating the privilege against self-incrimination?

Mr Adams: Did we jump a question?

The CHAIR: I did jump a question because I thought you had answered that.

Mr Adams: No; we answered. I am happy with that.

The CHAIR: That is, unless there was something else you wanted to add?

Mr Adams: No. I will just go over the question again, my apologies.

The CHAIR: Sorry; that was me. I was jumping.

Mr Adams: No, that is all right. I cannot do two things at once! "In your opinion, does the bill impose heavier obligations on custodial officers than under the Police Act?" My reading of the legislation is there is a degree of protection for custodial officers through the provisions within the act that any answer that may self-incriminate cannot be used against them criminally. I understand the AFP have similar provisions within their legislation. I have not particularly examined the impact of that provision within their legislation, but I have been advised that it is not as clear-cut. It does not provide the clear-cut protection that it would have probably intended to set out to provide. But within the existing writing of the current custodial officer provisions, there does appear to be a degree of protection that is not afforded to WA police officers around that self-incriminating answers cannot be used, which would obviously preclude the DPP and the State Solicitor's Office, if it was written appropriately and enforceable at law, presenting the compelled interview product to the court.

[11.30 am]

The CHAIR: The committee notes that sections 137(8) and (9) of the Police Act refer to the refusal to answer a question on the grounds that it may be self-incriminating, and provide that any answer that may be self-incriminating is not admissible in any criminal or disciplinary proceedings except proceedings arising from the giving of a false answer. What is the basis for an answer that may self-incriminate not being admissible in disciplinary as well as criminal proceedings?

Mr Samson: I will answer that question. In the first instance, 137 is all about protection from personal liability. So, it only applies where a police officer has been sued as a result of his actions in the execution of his duty. He may have done nothing disciplinarily wrong at all, and in most cases they have not, because the test as to whether they get legal assistance from the government or whether the state is actually legally liable or vicariously liable is that they have not acted maliciously or corruptly. It actually has no general application to the provisions of loss of confidence or disciplinary; it is quite a separate process. Subsections (8) and (9) only apply where an officer is required to cooperate under subsection (7) with the state, and that is for the purposes of defending the claim against the state. If he does not cooperate, that is defined by subsection (8) exactly what not cooperating is, and one of those things is refusing to answer questions or to not provide a document and the like. Then essentially the state can recover costs including the costs of defending the action or the damages that might have been awarded. The self-incrimination in subsection (9) is essentially just acknowledging the common law principle that the answers that he may have given that incriminate him during the process are compelled by the fact that if he does not answer the questions, the state will take this action to recover the costs of the proceedings against him. So, the disciplinary process if, for instance, we want to go down the line of discipline as a result of industrial action that came out of defending a civil action, is that we would start again with the stuff that Allan Adams was talking about in terms of regulation 603 and compelling them to answer those questions; and the self-incrimination aspect of that just comes up again as a common law principle of giving your answers of your own free will, the right to silence and all those kinds of things. There is not anything in our legislation that specifically protects that self-incrimination.

The CHAIR: Why does section 33Y(1)(b) of the Police Act provide for standing down on full pay rather than full, partial or no pay?

Mr Adams: The information on hand, again, suggests that that was negotiation by the WA Police Union on behalf of their members at the time of the drafting of the legislation.

The CHAIR: With respect to section 33L(5)(b) of the Police Act, how are the documents and other materials referred to distinguished; and, why is there a need for seven days to give the officer a copy of documents and inspection of materials?

Mr Adams: The second part of that question is simply for management purposes, as far as we can tell. It just gives an ability to get what is needed together. In respect to the first half of the question,

I did a fair amount of follow-up on this yesterday to get my head around the process, but at the point in time when the police officer is provided with the commissioner's intention to remove them, they are provided primarily with the investigation summary, which is a document produced by the independent review officer. It is not the investigation file itself; it is a summary of that investigation file and the findings of that independent review officer. Attached to that are references to psychological reports that might be relevant in terms of the longer term prospects of rehabilitation by the police officer and particular statements that are pivotal to the change against that police officer. So, there is a set of documents that provide details of all the information that was provided or that was considered by the commissioner in reaching that decision.

The CHAIR: With respect to section 33L(5)(c), has removal action always taken place when the notice has been given; and, if not, what periods of time afterwards?

Mr Adams: Information and data on hand indicates that removal action has always taken place upon notice being given, unless the subject officer resigns at the time that the notice is received. Removal action under the act means that the commissioner forwards to the minister for his or her signature the dismissal of a police officer, but if upon providing the notice to that subject officer he resigns there and then at that particular point, realising that there is little chance for him to survive, then it would not be progressed to the minister.

The CHAIR: With respect to section 33N of the Police Act, has the removal action always been revoked if removal action has not resulted from a notice of loss of confidence under section 33L; and, how many times has a revocation occurred and for what reasons?

Mr Adams: Unfortunately, it is one of the questions I have not been able to get an answer on yet, but I am not far away from having it. So once I have it, I am happy to communicate it through.

The CHAIR: Thank you. Despite there being no provision for an oral hearing in part IIB of the Police Force Regulations before a decision is made to remove an officer for loss of confidence, are there any circumstances you can envisage where an oral hearing would be desirable or necessary; for example, for the allegations of the complainant to be tested, which can occur under the current disciplinary provisions in the Prisons Act? If so, please provide details and scenarios.

Mr Adams: Personally, I cannot see where an oral hearing would be applicable within the WA Police model. Obviously, the investigation that leads to the initial nomination for loss of confidence interrogates all the evidence and the weight of that evidence to determine the investigative outcomes. The independent review officer then reviews that evidence and the way that it has been weighted and the way that it has been considered. I know that under the old section 23 disciplinary process, one of the reasons that that is not used anymore is that it became quite complex in its mechanisms of listening to the evidence and having a significant amount of legal argument being injected into the process. So I can see that if we were to introduce oral hearings by the commissioner to consider the evidence against a police officer, we would be taking a retrospective step potentially back into that environment where it would become conflict-based—people being cross-examined and then the right to have a representative during that process. I believe that we would be taking that step backwards.

The CHAIR: The committee understands that the assistant commissioner of standards has the role of deciding how a disciplinary matter should be dealt with, and that they may decide that further training or development is required. How often has the decision to provide further training been made and in what circumstances? And how many final warnings have been issued to officers who have committed offences that are not serious enough to warrant dismissal for loss of confidence?

Mr Adams: The assistant commissioner of professional standards' role in the meting out of training requirements is pretty well non-existent. Generally, those risks around training, development and guidance are developed. The response to those risks identified through an investigation are developed and implemented at the grassroot level where the individual works. Obviously, it has its

best outcomes when the managers or the supervisors of a particular officer are intimately involved in the execution of those processes. The assistant commissioner of professional standards is only injected into the process when someone is to be subject to an assistant commissioner's warning notice or the LOC process. He must sign off on the nominations for those processes to begin. So a training requirement or a development requirement will always be implemented when there is a need to put it in place. If someone has used force incorrectly, it is just natural that they will go back for retraining at our police academy to refine their skills. If they use a computer incorrectly, they might have a period of six months of filling out a log to be able to present to their supervisor to show that they are not using the computer for purposes that it was not intended to do so. They usually happen at the grassroot level. That is where you get the best result when those supervisors are intimately involved in the resolution. In respect to final warnings—we call them assistant commissioner's warning notices—they started on 21 December 2011. In 2011–12, which represented about six months considering the December start, there were four handed out, or served I should say; in 2011–12, that number increased to 21; and in 2013–14 that number was 30.

[11.40 am]

The CHAIR: Are you able to generally categorise the types of offences that would attract loss-of-confidence actions rather than the lower-level disciplinary action; and, if so, are these recorded in documentation?

Mr Adams: As previously discussed, serious offences could alone trigger the LOC process. They might have had a very good career up to a point, but there might be some catastrophic incident that makes it untenable for them to continue as a police officer, or, as I said earlier, that second half of the equation is that constant unprofessional conduct at a lower level where the training and guidance and development have been unsuccessful. That could trigger the LOC process.

Mr Brown: If I could add to that, this discussion has been within Western Australia Police for as long as I can remember—maybe 15 or 20 years. People often say to us, "Where does this particular offence fit within a matrix of particular offences?" If you turn your mind to, for example, drink-driving for a police officer, the questions on each of the scales that could come into play are: What is the reading that the officer blew; is it over .05, .08 or .15? Secondly, was the officer on duty or not? Was it in a police vehicle or not? Did it involve a crash or not? Did the crash result in an injury? What was the level of the injury sustained? Was there a death involved in that crash—yes or no? Were they compliant with the officers when they were apprehended on the roadside? You can just imagine that matrix with the large scale just for something which appears on the surface to be quite simple. We have grappled with that for quite some time. Of course, again, they all have their own unique circumstances.

Mr Adams: That is a very good point actually. In respect to excessive force, someone may have completely abandoned all the reasonable direction they have been given over their career and used a level of force that was well and truly beyond what was acceptable. However, you may end up with two exact same circumstances, and a police officer that shows immediate remorse and approaches their response to the incident in a way that gives you a degree of confidence that that police officer can go forward and play a significant part in the agency's requirements of him versus a police officer that is dragged kicking and screaming to the table and refutes any sort of ill-doing. In those two circumstances, whilst the behaviour may be well and truly of a serious nature, the commissioner well and truly has an ability not to pursue the LOC process against the police officer that indicates that he is willing to alter his behaviour. It does not necessarily mean there is a distinction line in the sand that if you cross it, the process will start. A lot of it comes down to that individual officer's response to the incident and how they approach it.

Hon DONNA FARAGHER: Taking up that point, and recognising that there are individual circumstances in the way that they deal with them, in the bill that is before us, there is a provision that the commissioner "may", rather than "shall", undertake an investigation, and that has been

a point of discussion by other witnesses that have appeared before us. I am just interested to know—perhaps it is going back to one of the earlier questions with respect to how often review officers are appointed for inquiries—who makes the decision for an inquiry or an investigation to be undertaken. Is that the assistant commissioner for professional standards? I am just trying to get an understanding of who makes, I suppose, the threshold question as to when an investigation would actually be undertaken.

Mr Adams: Pretty well all allegations of police unprofessional conduct are subject to a degree of investigation. That may be at a low-level tabletop resolution. The classic example is someone who shows a bit of bad attitude when they hand out a traffic infringement. That may be dealt with by what is referred to as the ECAT within our police complaints area—unfortunately I do not know what the acronym stands for. They will work with the local supervisor, the person that is aggrieved and the police officer to come to, hopefully, a very short, sharp resolution. That might result in an apology being made to the person that is aggrieved or an agreement to agree to disagree. Obviously, as you walk up the scale of seriousness, as soon as you start heading into neglect of duty, conduct unbecoming and excessive force, there will always be an investigation. The investigation breadth and depth will always alter as it heads up the seriousness scale. Last year the internal affairs unit investigated in excess of 1 300 allegations against police officers. Because the internal affairs unit is not the only investigative body of police officer unprofessional conduct, the districts also have a role to play, and I think they had slightly more allegations that they investigated. I think it was around the 1 500 or 1 600 mark. There will always be a degree of investigation. Obviously, the further up the scale you go, the much more in-depth it will be, but there is always a degree of consideration about what happened, who did what, what do we need to do to prevent this happening again, and are there some more deep-seated policy-related issues within WA Police that need attention.

Hon DAVE GRILLS: With the senior ranks above investigator, with regard to fraud, we have seen that some officers have been in the paper with regard to misuse of vehicles. Is the evidence any different or is it the same for a constable as it is for the assistant commissioner and the decision is brought to the same conclusion?

Mr Adams: Yes. Without fear or bias is the internal affairs mantra. Generally, internal affairs will investigate all commissioned officers. That is one of our base-level responsibilities. The police officers involved in the breaches of the GVS policy were subject to managerial intervention no different from a constable that breaches the police force regulations.

Hon DAVE GRILLS: Okay. So the penalties for that are exactly the same for a police officer, as such, regardless of the rank of that police officer.

Mr Brown: Yes, absolutely. In fact, we would view senior officers committing offences or misconduct more seriously than junior officers because of their history, their education and their position and standing within not only the agency, but the community.

Hon LYNN MacLAREN: You have been very explicit in explaining that there are different degrees of investigation, whether there is a tabletop or whether it escalates to a higher level. Is that specified in a procedure manual? What guides you in deciding how complex an investigation is? I am asking you because this legislation which is proposed has two different methods of doing that. One is that it is actually set in the legislation that an investigation should or may occur and the other one is that how we deal with disciplinary matters is in the regulations. So, it is not specified in the legislation; it is in the regulations. I am curious to see how you decide. What is your manual? What is your guideline?

Mr Brown: There is an extensive managerial intervention model and documents that provide the framework underneath the process itself. We would be happy to provide that to you, which sets out the channels which these investigations take depending on their severity and the decision-making

process within that. It has taken quite some time to develop. It has been in place for two, three or four years probably.

Mr Adams: Yes, four years.

Mr Brown: It is something that, especially in the complex matters, everybody turns to as the Bible as to how to deal with those matters to ensure that there is consistency of process in decision-making and investigation.

Hon LYNN MacLAREN: So that leads me to ask: in your consultation regarding the bill, did you share that manual with the officers who were looking at drafting new legislation? Did you share with them that degree of detail about how you decide when you investigate and what level it is?

Mr Adams: I would imagine it was. I was not involved with the conversation with Corrective Services. I know they spoke to Assistant Commissioner Dominic Staltari and Senior Sergeant Steve Wilson, who has a significant part to play in the loss-of-confidence process. Those conversations could not have occurred without reference to the managerial intervention model. Obviously, the more serious the incident, the broader the investigative response. Again, you may have an incident where a reasonably minor indiscretion has occurred, but if someone has just received an assistant commissioner's warning notice for a similar type of behaviour or a build-up of a similar type of behaviour, what might normally be dealt with in a completely different way will be subject to a broader level of investigation because we know the potential outcome is going to be quite significant.

[11.50 am]

The CHAIR: Have the loss-of-confidence provisions ever been used to remove an officer who has medical issues, either physical or mental, which make them unsuitable to continue in the role; and, if so, how often?

Mr Adams: Section 8 of the Police Act, as I mentioned earlier, provisions that any person leaving through illness, through poor performance or discipline, be subject to those loss-of-confidence proceedings. But, again, they happen in a much more softer environment, over with the health and welfare. I am not saying that ours is a hard and ruthless environment, but obviously when you look at it, potentially wilful acts of unprofessional conduct naturally lead themselves to be dealt with differently than someone who is subject to an illness, which obviously would not be at their instigation I would strongly suggest. So it is followed through the same provisions of the legislation, but they are dealt with in completely different manners.

The CHAIR: Thank you. Lucky last, throughout the hearing you have outlined a range of reasons why an officer is dismissed from the police force, but do you have anything further to add?

Mr Adams: The only thing I can say is section 33L(1) of the Police Act says —

> If the Commissioner of Police does not have confidence in a member's suitability to continue as a member, having regard to the member's integrity, honesty, competence, performance or conduct, the Commissioner may give the member a written notice setting out the grounds on which the Commissioner does not have confidence in the member's suitability to continue as a member.

That is the quintessential legislative direction we have to determine whether someone is worthy of wearing the blue uniform, effectively.

The CHAIR: Thank you. I will now open it to the committee for questions.

Hon LYNN MacLAREN: One of the issues is the role of a prison officer versus the role of a police officer, and it has been put to us that one is a servant of the Crown and the model of their behaviour has to be consistent throughout their life, not just when they are on duty but also when they are off duty. I just wondered if you had a comment about that, because is there a reason why police are

held to a higher standard in their off-duty life? It would be conjecture, but what would your opinion be of prison officers, for example, holding the same standard?

Mr Brown: I think the standard should be held, in my opinion, to be closer, but at different levels. If you think about associations with criminals, for a police officer or a prison officer to associate with a known criminal off duty would cause me just as much concern whether I was the Commissioner of Police or the Commissioner of Corrective Offices, because of the potential impact on the system—corruption of the system, corruption of the individual, infiltration of that. You would be aware that Police and Corrective Services over the past year have done some considerable work around intelligence systems in the prison network, because of a range of things that have happened around that—the smuggling in of drugs, other contraband, mobile phones and the like—gives us collectively a great concern, and we are working on that very closely together within our organised crime team and the equivalent units of intelligence within the corrective services area. So I see them as being closer together in the risks associated both on duty and off duty.

Hon LYNN MacLAREN: It does strike me, though, that you have a much more sophisticated training procedure and you are held to criminal laws, whereas a prison officer is more considered to be a public servant and they play a different kind of role. They certainly would not have the infrastructure surrounding them that it seems like your officers have in relation to training and managerial correction and disciplinary procedures, being able to promote them and demote them according to their performance. It does strike me that you have got a much more well developed mechanism of management.

Mr Brown: I think it is very safe to say that. We have also got a professional standards portfolio of, let us say, 100 FTE —

Mr Adams: That is —

Mr Brown: We will debate that; 60 to 100, for a sworn population of 5 700 police officers. So we have built that over time to get better processes. And of course we have had a royal commission as well, going back 10 years ago, so we learnt a lot out of that experience. The other thing I would say in that same space is that your average police officer day to day is interacting with members of the public and criminals. A prison officer is interacting day in, day out with a criminal element. That is their day-to-day job.

Hon DONNA FARAGHER: And in a closed environment.

Mr Brown: Yes. But when we find 20-plus mobile phones with corrective services within a prison, smuggled in, that gives great concern. Without saying too much here, our suspicions around organised criminal activity being coordinated within prisons is real and present, and that presents great potential for corruption and misconduct within that environment.

Hon DAVE GRILLS: Would you say, then, that it gets back to what you mentioned earlier about the integrity of the officer involved, irrespective of training or anything else that operates within the system? The loss of confidence is brought on by a loss of confidence in that person's integrity, irrespective of anything that is around that person at that level?

Mr Brown: It is a little bit like a leader is born or made; it is a bit of both. It is in the individuals that we recruit in the first place; it is the training, the guidance, the education, and the mentoring and support and supervision throughout all of their career, because you can be a really good officer in either of these streams and, at one moment in time on one particular day, succumb to a temptation. That is because we just represent the broader community. Behind the blue shirt or whatever uniform you wear, you are just an individual subject to any temptation. So you have got to keep your guard up 24/7 right throughout your career.

The CHAIR: On behalf of the committee, I would like to thank you very much, all of you, for coming in to appear before us. It has been extremely informative, so thank you.

Hearing concluded at 11.56 am