

Report on misconduct by Geraldton police officers

27 June 2025



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INTRODUCTION

- [1] On 20 May 2024 a silver Holden Commodore was stationary in the carpark attached to the Geraldton Softball Association. The driver was suspected of involvement in several offences. The identity of the driver was at that stage unknown.
- [2] Senior Constable Wyndham driving an unmarked Police Skoda FG408 accompanied by Constables Alex Randal Miatke and Kasey Jade Hodge approached the stationary Commodore. The driver attempted to evade police and drove away. There was a minor collision between the Skoda and the Commodore at the softball centre carpark.
- [3] The Commodore was pursued along Utakarra Road and right into Alexander Street. Senior Constable Wyndham rammed the Commodore in a precision immobilisation technique (PIT) manoeuvre causing the Commodore to spin and go into reverse, hit a light pole and stop. The driver was arrested. This incident, which lasted a little over a minute, and what followed, is the subject of this report.
- [4] What probably started by S/C Wyndham as an attempt to avoid a disciplinary sanction for breach of WA Police driving policy became conduct worthy of an opinion of serious misconduct when the driver of the other vehicle involved was arrested for assaulting a public officer and criminal damage to a police vehicle.
- [5] Senior Constable Wyndham lied in official documents to support a charge of unlawful damage and justify his breaches of policy.
- [6] Constable Miatke also told untruths in official documents.
- [7] A person with a criminal record and suspected of offending is in a vulnerable position. If a police officer makes a false statement, there is a chance that suspect may not be believed. The suspect should face the consequences of any offences. However, they should not be put in legal jeopardy by being falsely charged with an offence.
- [8] Fortunately in this case, the actions of other police officers resulted in the charge of unlawful damage being withdrawn before a wrongful conviction could occur.
- [9] Policing is often an extraordinarily difficult job. Police are regularly called upon to make split second decisions in dynamic, potentially lethal situations. They are also regularly required to make judgment calls about whether they have enough evidence to charge a person with criminal offences – and such decisions can profoundly affect the lives of the person

charged and others. In performing these tasks, police are entrusted with wide-ranging powers.

- [10] The Western Australia Police Force Code of Conduct requires that members of the Force act with integrity, professionalism and fairness. Given their responsibilities, and the powers they wield in carrying them out, it is essential that police are accountable for their decisions.
- [11] A key accountability mechanism is the work of the Corruption and Crime Commission. The Commission is empowered to investigate police misconduct, an aspect of serious misconduct.
- [12] The Commission considered this incident required investigation in the public interest and commenced Operation Bruny.

CHAPTER ONE

Police acronyms and policies

For ease of communication, WA Police make extensive use of acronyms, some of which are important for this report.

AVA	Aggravated Vehicle Aggression.
BWC	Body worn camera.
CVC	Controlled Vehicle Contact.
EPID	Evade Police Intercept Driving. (Previously known as pursuit driving.)
ERT	Evade Resolution Tactics.
PIT	Precision Immobilisation Technique - a law enforcement tactic used to stop a fleeing vehicle by intentionally causing it to spin out of control.
POC	Police Operations Centre.
POET	Police consideration; Options to be considered other than emergency driving; Environment; Target consideration.
POLACC	Police Accident.
POLAIR	Police Air Wing.
SOCC	State Operations Command Centre.
TVI	Tactical Vehicle Immobilisation.
UoF	Use of Force.
VOI	Vehicle of Interest.

Police driving classifications

- [13] Police drivers are given a classification according to their training.
- [14] Most police officers attain Priority 2 qualification (now C2) (P2) usually at the Police Academy during initial training.
- [15] An officer with a P2 (C2) qualification is permitted to drive 20 km/h above the posted speed limit under lights and sirens. Senior Constable Wyndham was a P2 driver.
- [16] An officer with a Priority 1 qualification (now C1) (P1) is permitted to drive above the posted speed limit to a maximum 140 km/h. Constable Hodge is a P1 driver.
- [17] In each case the class of police vehicle must also fit the requirements for allowing departure from the speed limitation. Not all police vehicles are suitable for exceeding the speed limit. The police Skoda driven by S/C Wyndham was a Class 1 vehicle, suitable to be driven at excess speed.

- [18] There is a further driving qualification once known as pursuit driver, now certified EPID driver.
- [19] In any pursuit, from a routine police intercept to an AVA, officers are required to undertake continuous risk assessment. The decision and authority to terminate a pursuit can be exercised at any time by POC, POLAIR (if operational) or any passenger of the police vehicle. Obviously, the driver may terminate a pursuit at any time.
- [20] In the event of damage to a police vehicle, POLACC policy requires that the driver is to stop immediately, remain at the scene and await the arrival of an independent Sergeant. The police driver must undergo a breathalyser test.¹

Emergency Driving Policy

- [21] Sometimes WA police officers must respond to emergencies and other situations by driving above the posted speed limit. Such driving may be dangerous to the officers in the vehicle or to civilians and road users in the vicinity.
- [22] A critical safeguard is a continuous risk assessment.
- [23] Under the Emergency Driving Policy² police officers with current WA Police Force Driver qualifications are permitted to undertake emergency driving in accordance with their authorised category of emergency driving. The policy states:

4. Where special circumstances exist, as defined by the WA Police Force exemptions to the standard conditions and/or restrictions can be authorised. Exemptions, unless specified in the Emergency Driving Guidelines must be approved by the State Operations Command Centre Duty Inspector before a police officer can undertake the authorised exemption.

...

7. All WA Police Force employees who are involved in an emergency driving incident must conduct and continue to conduct a risk assessment process for the duration of the incident.

...

- [24] Under the emergency driving policy³ the maximum permissible speed for a police vehicle engaged in emergency driving is 140 km an hour or limited to the drivers qualifications vehicle class and/or otherwise approved by the

¹ Senior Constable Wyndham undertook a test at Alexander Street following the PIT manoeuvre and no alcohol was detected.

² Exhibit No 01817-2024-0011, WAPF EM-01.00 Emergency Driving Policy.

³ Exhibit No 01817-2024-0011, WAPF EM-01.02 Emergency Driving Policy.

SOCC Duty Inspector. The maximum permissible speed of a police vehicle being driven by a priority 2 qualified driver shall be no more than 20 km per hour above the posted speed limit.

Police officers must consider all risk factors in line with POET risk assessment and drive to the road conditions. The speed cap is a limit not a target. There are risk assessment requirements which include continuous risk assessment. Wherever the risk assessment indicates that the risk of emergency driving incident cannot be affectively managed the incident must be terminated forthwith by the person making the assessment.

Aggravated Vehicle Aggression

The AVA Policy

- [25] In the early 2020s in north Western Australia a new phenomenon developed. While some offenders drive recklessly, their motive in doing so is to evade capture and arrest. By contrast, the new phenomenon involved offenders deliberately ramming police vehicles with the intention of causing damage to the police vehicle and death or serious injury to any police officer inside.
- [26] In May 2024 there was no explicit reference to a PIT manoeuvre in the WAPF Emergency Driving Policy.
- [27] To protect officers and civilians, WA Police developed an Aggravated Vehicle Aggression (AVA) policy. Most operational police officers are trained in AVA via a desktop course, but with no practical or driving component.
- [28] An AVA exists where:
- The subject is in a vehicle and driving it in such a manner that a police officer reasonably believes that there is an imminent risk of grievous bodily harm or death to any person and the police officer reasonably believes that the subject is attempting to, or will attempt to, use the vehicle against a person such that there is an imminent risk of grievous bodily harm or death to that person.*⁴
- [29] Restrictions relating to emergency driving do not apply in circumstances of an AVA. Driving may be undertaken to either tactically disengage using evasive driving, or use force in line with relevant legislation, Police policies and guidelines.⁵
- [30] In short, a police officer in an AVA situation may use a police vehicle as a tactical option to reduce a threat and gain control of a subject. A police officer who reasonably believes they are in a life or death situation may act

⁴ Exhibit No 01817-2024-0162, WAPF Course - Aggravated-vehicle-aggression.

⁵ Exhibit No 01817-2024-0162, WAPF Course - Aggravated-vehicle-aggression.

as necessary to terminate an AVA. When the AVA is over, the police officer must revert to driving in accordance with emergency driving policy and guidelines.

- [31] The policy around an AVA is similar to the use of a firearm in dangerous situations. In an AVA situation a police officer with a P2 qualification may exceed the speed restriction if necessary.⁶ It appears that a police officer may also perform a PIT manoeuvre as a use of force option.
- [32] Police drivers can undertake driving in response to AVA in accordance with the special exemption as if approved by the SOCC Duty Inspector special exemption.

⁶ Exhibit No 01817-2024-0162. WAPF Course - Aggravated-vehicle-aggression.

CHAPTER TWO

The scope of Operation Bruny

- [33] On 31 May 2024 the Commission received a notification of suspected serious misconduct from WA Police. The Commission initiated Operation Bruny.⁷
- [34] The scope and purpose of Operation Bruny is to determine whether any police officer has engaged in serious misconduct in relation to the execution or purported execution of their duties in connection with an EPID incident that occurred in Geraldton on 20 May 2024.
- [35] In the course of the investigation the Commission examined BWC footage; closed circuit television (CCTV) footage, hundreds of records including incident reports, prosecution notices, statements, managerial interviews and photographs.
- [36] BWCs have revolutionised aspects of policing. The behaviour of suspected persons is often captured by BWC and speaks for itself. BWC are also an accountability measure in the interactions between citizens and police. The Commission had access to substantial footage from relevant BWC to determine what occurred during the incident.
- [37] A police officer while on patrol usually leaves the BWC in standby mode. In standby mode, a BWC continuously records but stores only the previous 30 seconds of video. A BWC can be instantly activated by double tapping a large button. The recorded previous 30 seconds is automatically back captured but does not have audio. Immediately after the button is doubled tapped, the BWC records audially and visually.
- [38] As part of its investigation the Commission examined BWC and CCTV footage, sometimes frame by frame.
- [39] The Commission acknowledges that it can be unfair to judge at leisure and with multiple viewings, events that occur in the heat of the moment and with limited time to consider all the options. A mistake made by an officer or a judgement call that turns out to be wrong is not serious misconduct.
- [40] Moreover, perceptions may differ. If the only issue was whether S/C Wyndham breached police policy (which he did), the Commission would have been content to let WA Police deploy its managerial processes.

⁷ Commission operations are currently named after lighthouses which shine light on dark places. The Cape Bruny Lighthouse is located on Bruny Island in Tasmania.

- [41] However, S/C Wyndham went further, charging the driver with the offence of unlawful damage to the police Skoda.
- [42] This charge initiated a course of justice which included contested issues ventilated in the Magistrates Court before a senior police officer in Prosecution Services concluded the charge should be discontinued.
- [43] The driver faced other charges. He pleaded guilty in the Magistrates Court and was sentenced.
- [44] The Commission appoints counsel to assist the Commission by taking carriage of an examination. Generally counsel is appointed from the Commission's legal services directorate. On this occasion, the Commission briefed Paul Yovich SC as principal counsel assisting. Although counsel consults with the Commissioner as necessary, counsel has independence of choice as to the conduct of an examination. Four civilian witnesses and ten police witnesses were privately examined between October 2024 and May 2025. Some witnesses were legally represented.
- [45] In the main, evidence of the witnesses examined by the Commission was consistent. Where there are differences, the Commission was cautious about drawing any adverse conclusion against the witness on a question of fact or credibility.
- [46] Senior Constable Keith Burrows has immense experience in evaluating police crashes. He has been a traffic enforcement officer, except for a three-year period, since 1994. He is a qualified crash reconstruction officer. He is not a crash expert. The Commission has not treated his evidence as expert opinion evidence. Rather, with his long experience, he has greatly assisted the Commission to make its own conclusions. By his observations at the scene and of the damage to each vehicle and, in particular, the site of that damage on each vehicle, he has drawn the Commission's attention to matters of relevance.
- [47] When a police vehicle has suffered damage, POLACC policy requires the driver to stop and remain with the vehicle. An independent Sergeant must attend. A breathalyser test on the police driver is routine. Sergeant Nathan Johansen was on patrol nearby and responded to a direction to attend the incident in Alexander Street. Senior Constable Burrows, then an Acting Sergeant, attended the scene. Sergeant Johansen relinquished control to S/C Burrows and departed. Whether or not it breached policy to do so, it was a reasonable decision in circumstances where S/C Burrows had vastly more crash experience and was an independent officer.

- [48] As part of its obligation to afford procedural fairness to any person who may be adversely affected by its public report, the Commission provided a copy of its draft report and tentative opinions to those persons.
- [49] Substantive responses were received from Const Miatke and Mr Wyndham.
- [50] The Commission has considered the responses and where appropriate has reconsidered its tentative opinion of misconduct. It has also made changes to the report where appropriate. Not all the responses or the legal reasoning advanced in support have been accepted.
- [51] In his response to a draft of this report, Const Miatke details the efforts he made to obtain legal representation for his private examination before the Commission. Those efforts were unsuccessful through no fault of Const Miatke.
- [52] Had Const Miatke been represented it is probable that evidence, which has now been given by him on Statutory Declaration, would have been part of the examination.
- [53] Constable Miatke was ably represented in responding to the draft report. The Commission accepts and takes account of the facts set out in the Statutory Declaration, some of which are set out in the body of the report.

The main issues

- [54] As will become apparent, there are two critical issues:
1. At the softball centre carpark, did the driver of the Commodore, while trying to evade police, ram the police unmarked Skoda FG408 driven by S/C Wyndham?
 2. Were there any civilians on the verge of Alexander Street when S/C Wyndham executed a PIT manoeuvre and disabled the Commodore?
- [55] The answer to both of these questions is 'no'.
- [56] The answer to these issues leads to the answer to the ultimate question:.
- [57] Was there a valid (AVA) incident in the softball centre carpark or in Alexander Street to justify S/C Wyndham's PIT manoeuvre and the charge of unlawful damage?
- [58] The answer to that question is 'no'.

CHAPTER THREE

What happened on 20 May 2024

[59] This summary is based on evidence which the Commission has found on the balance of probabilities to reflect the actual facts. That evidence includes testimony from witnesses, viewing of BWC and CCTV footage, analysis of records and the Commission's confirmation of observations by S/C Burrows. In assessing the evidence, mindful of the importance of any adverse opinion about a police officer or former police officers, the Commission has applied the test articulated in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

[60] In that case, which has been widely applied and accepted as an appropriate standard for tribunals such as the Commission, Latham CJ said:⁸

The standard of proof required by a cautious and responsible tribunal will naturally vary in accordance with the seriousness or importance of the issue.

[61] It was the afternoon of 20 May 2024 at the Geraldton Police Station and Team 7, commonly known as the Inquiry Team was busy, operating from a small room in Geraldton Police Station, sharing computer monitors and terminals.⁹ Members were preparing to follow up reported incidents of offending.

[62] The Inquiry Team focusses on high volume crime in Geraldton. The team was managed by two supervising Sergeants Johnson and Johansen - generally working shifts. However, Sgt Johnson was also acting Officer in Charge of Geraldton Police Station this week.¹⁰ Sergeant Johansen was on the road.

[63] During the previous year the Inquiry Team numbers had reduced from 23 to 12. There were many incident reports about suspected criminal offences and officers were encouraged to select a particular offence from the voluminous number for further inquiry. The workload was described by one officer as insane.¹¹

[64] One member of the Inquiry Team was S/C Wyndham, recently returned to duty following a period of administrative leave. He was known to be intense and focused with a good arrest rate.¹² Constable Miatke was said to be keen and a specialised drone operator who also had an interest in

⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336, 343.

⁹ Sergeant Paul Christopher Johnson transcript, private examination, 2 May 2025, p 9.

¹⁰ Sergeant Paul Christopher Johnson transcript, private examination, 2 May 2025, p 3.

¹¹ Brent Mitchell Wyndham transcript, private examination, 5 May 2025, p 134.

¹² Sergeant Nathan John Johansen transcript, private examination, 1 May 2025, p 11-12.

information technology.¹³ Constable Hodge, the second most junior officer in the Inquiry Team, was considered to be thoughtful, conscientious and thorough.¹⁴

- [65] Constable Miatke was especially interested in tracking down a silver Holden Commodore, the driver of which was suspected of being involved in a number of stealing offences and a burglary.¹⁵ A silver Commodore had evaded Const Declan Burt, on 12 May 2024 in an area of bushland. The Commodore had driven around Const Burt and his police vehicle to get away. Footage had been captured on BWC and viewed by members of the Inquiry Team.
- [66] The course of driving on that occasion was not an AVA incident and it was generally accepted that the driver of the Commodore was driving to evade police, not to harm them.
- [67] Knowing Const Miatke's interest in the Commodore, S/C Wyndham had spoken with S/C Burrows and asked him to keep a lookout also.¹⁶
- [68] Senior Constable Burrows was not in the Inquiry Team. The traffic officers had a separate chain of command but nevertheless worked with general duties and Inquiry Team officers when they could.
- [69] Constable Hodge was doing some paperwork but accepted an offer to accompany S/C Wyndham and Const Miatke when they went out on patrol in police Skoda FG408 - an unmarked Class 1 police vehicle equipped with lights and sirens.¹⁷ Constable Hodge, though more junior, held a P1 driving qualification, a higher qualification than the other two officers. She had been professionally trained to attain this qualification.¹⁸ Senior Constable Wyndham was a P2 qualified driver which allowed him to exceed the posted speed limit by no more than 20 km per hour under response driving conditions.
- [70] It was good practice for the highest qualified driver to be driving but S/C Wyndham took the wheel and they departed the station.¹⁹
- [71] Senior Constable Jayden John Valenti was another member of the Inquiry Team. He finished his day shift at 3.00pm and headed off to coach a junior sporting team.²⁰ Driving home at about 4.30pm, he noticed a Commodore

¹³ Sergeant Paul Christopher Johnson transcript, private examination, 2 May 2025, p 12.

¹⁴ Sergeant Paul Christopher Johnson transcript, private examination, 2 May 2025, p 10-11.

¹⁵ Constable Alex Randal Miatke transcript, private examination, 30 April 2025, p 24-25.

¹⁶ Senior Constable Keith John Burrows transcript, private examination, 3 February 2025 p, 14.

¹⁷ Constable Kasey Jade Hodge transcript, private examination, 29 April 2025, p 35.

¹⁸ Constable Kasey Jade Hodge transcript, private examination, 29 April 2025, p 36.

¹⁹ Constable Kasey Jade Hodge transcript, private examination, 29 April 2025, p 36.

²⁰ Constable Jayden John Valenti transcript, private examination, 28 April 2025, p 18.

parked in the softball centre carpark in Utakarra Road near some bushes. Being aware of Const Miatke's interest in a Commodore,²¹ he pulled over and telephoned Const Miatke who, as chance would have it, together with S/C Wyndham and Const Hodge was patrolling nearby.

- [72] Although the Commodore was being sought, the identity of the driver remained a mystery. The Commodore had seen better days. According to the driver, it had been purchased by him for \$300 and a half-weight of meth.²² The driver had a long criminal record.
- [73] That afternoon he had driven the Commodore to an address nearby and picked up a passenger. As it happened, the passenger was picked up from a house where Civilian A and Civilian B lived. The driver's purpose at the softball centre carpark was to buy a half-weight of methamphetamine.²³ He was already under the influence of methylamphetamine taken earlier.
- [74] The events now to be narrated lasted a little over a minute.
- [75] Senior Constable Wyndham drove the Skoda into the softball centre carpark. He and Const Hodge activated their BWC. Constable Miatke did not. The driver of the Commodore saw them coming. His sole thought was to get away, as indeed he had done a few days earlier when he evaded Const Burt. He started to drive the Commodore to get away.²⁴
- [76] Meanwhile in the Skoda, the officers had taken off their seatbelts in anticipation of rushing the Commodore and making an arrest. Const Miatke started to open his car door a few inches. It looked like the driver might get away. The cars were travelling at low speed. Senior Constable Wyndham swung the steering wheel hard right and the Skoda rammed the Commodore. This was not enough to disable it and the Commodore took off up Utakarra Road before going onto the wrong side of the road and around a bend into Alexander Street. The driver had let air out of the tyres some days before and had not replaced the air, so the Commodore was difficult to steer. There may have been other cars on Utakarra Road at the intersection. The driver's actions were dangerous to other road users.
- [77] The Skoda was slightly damaged in the collision and so the situation became a POLACC requiring the Skoda to stop and S/C Wyndham to wait an independent Sergeant to attend.²⁵

²¹ Constable Jayden John Valenti transcript, private examination, 28 April 2025, p 19.

²² The driver transcript, private examination, 7 February 2025, p 4.

²³ The driver transcript, private examination, 7 February 2025, p 5.

²⁴ The driver transcript, private examination, 7 February 2025, p 10.

²⁵ In submissions on behalf of Brent Wyndham it was put that the collision was not such that it was a POLACC requiring the Skoda to stop. This submission is rejected. The requirement to stop is mandatory.

- [78] Instead, the Skoda regained momentum, completed a U-turn and set off in pursuit of the Commodore. The three officers refastened their seatbelts. Const Miatke closed the passenger door. He used the vehicle radio to try and raise POC. Senior Constable Wyndham activated lights and sirens. The Skoda turned from Uta Karra Road into Alexander Street. It rapidly closed the gap with the Commodore. The Skoda came in contact with the rear of the Commodore. Constable Miatke later described that as a 'brake checking' movement by the driver of the Commodore but examination of the BWC footage suggests that observation is unlikely. Senior Constable Wyndham later completed a UOF report which did not mention brake checking.
- [79] Senior Constable Wyndham performed a PIT manoeuvre. The purpose of a PIT manoeuvre is to spin a target vehicle to send that vehicle into reverse which has the effect of shutting the vehicle's engine off and bringing it to rest. In order to protect its mechanics and electronics, when a vehicle is turned opposite to its direction of travel, it is designed to engage reverse gear. The vehicle's brakes lock up and, if the vehicle comes to a natural stop, a driver would have to restart the engine by putting the gear selector into neutral or park. That did not happen to the Commodore because it travelled backward a short distance then hit a lamp post and stopped. The driver was arrested, handcuffed and seated on the ground. The passenger was unable to get out the passenger door side but climbed over and exited through the driver's side door. He was questioned, searched, and released, but not before Civilian B had attended the scene and given him a piece of her mind.
- [80] The driver was cooperative and volunteered information such as the presence of drugs in the Commodore. However, he steadfastly denied ramming the Skoda at the softball carpark. Body Worn Camera footage of S/C Wyndham recorded interchanges between police, the passenger and the driver. In the presence of the passenger, Const Miatke explained to another officer, what happened:²⁶

***Miatke:** parked out by the softball course so pretty much as soon as we pulled up he went at us then veered away.*

***Wyndham:** I hit my head.*

***The driver:** I went around you, you guys finished it. Youse rammed me.*

- [81] A little while after Sgt Johansen and S/C Burrows had arrived, the following explanation was given by S/C Wyndham:²⁷

²⁶ Exhibit No 01817-2024-0007, Wyndham BWC Epid incident, 20 May 2024 1652hrs.

²⁷ Exhibit No 01817-2024-0007, Wyndham BWC Epid incident, 20 May 2024 1652hrs.

Wyndham: Yeah we [indistinct] in the bloody softball park, and we fuckin pull up front to front. He goes - take off bang. Rams into the front of our car. Come round here, come round here. Get close to him and then fuckin ... [indistinct] crashed into him... Yeah he just fuckin -we just pulled in front of him. Boom, straight into us. Like fuck. Smashed my head.

- [82] The driver was informed he was being arrested for assaulting a public officer. He said to Const Miatke:²⁸

The driver: Yeah. Cos that was never my intention. It was to drive around youse and .. and just veered last second, caught me. I was actually quite surprised. I thought you only do that with violent offenders.

- [83] The only justification for S/C Wyndham to ram the Commodore deliberately at the softball centre carpark was if an AVA had been declared. Continuous risk assessment was required to continue under an AVA. Const Miatke had been unable to get through to POC on the radio. There was no authorisation for the Skoda to continue. Senior Constable Burrows spoke to S/C Wyndham at the POLACC in Alexander Street. Senior Constable Burrow's BWC records the following interchange at the scene in Alexander Street:²⁹

Burrows: Are you declaring him, his actions, as an AVA?

Wyndham: Yep.

Burrows: Aggravated vehicle aggression?

Wyndham: Yeah. So we've pulled in. Right.

Burrows: Yep.

Wyndham: He's come nose to nose with us and then just taken off. He just - straight in front of our car like this. I banged my head. And then gone from there, come around here, and what's happened has happened. We were driving along. He's driving next to us like this. He slammed on the brakes, come in front of us, we hit his car and just spun out, hit the pole.

Burrows: So he actually already has hit you?

Wyndham: Yeah, he rammed us first. 100 percent.

- [84] The only justification for performing a PIT manoeuvre in Alexander Street was if the AVA was still occurring. That in turn depended on whether there were civilians in a position of danger.

- [85] Senior Constable Wyndham could have avoided danger by complying with the procedure following a POLACC, stopping the Skoda at the softball

²⁸ Exhibit No 01817-2024-0004, Miatke BWC Epid incident, 20 May 2024 1653hrs.

²⁹ Exhibit No 01817-2024-0009, Burrows, BWC Epid incident, 20 May 2024 1659hrs.

centre carpark, reporting the incident to POC and waiting for attendance of an independent Sergeant.

- [86] An AVA was the only way that S/C Wyndham could justify his actions in performing a PIT manoeuvre. To make good the AVA he had to show aggression on the part of the driver at the softball centre by intentionally ramming the police vehicle in circumstances where there was a reasonable likelihood of death or grievous bodily harm.
- [87] The evidence available to the Commission suggests that at most, there was a slow speed involuntary collision between the Commodore and the Skoda. The driver's obvious intention was to try and evade police and get away as he had done previously. In evidence which the Commission prefers, in fact the collision did not occur because of any action by the driver but by the action of S/C Wyndham turning violently to the right on full lock causing the Skoda to come into contact with the Commodore.
- [88] But, even if the driver had driven aggressively at the Skoda at the softball centre carpark, that was not enough to justify S/C Wyndham's actions on Alexander Street. To maintain his account he needed more and so, the presence of children on the street was invented. Senior Constable Wyndham said there were children on the street, at one time saying there was someone on a scooter. This statement was to a degree corroborated by a statement of Const Miatke.³⁰ Constable Hodge did not mention it.
- [89] The presence of children was later amended in S/C Wyndham's account to claim that a short man had been on the verge at the time who S/C Wyndham had mistaken for a child.³¹
- [90] It is clear from the CCTV and the BWC of Const Hodge that there were no people whatsoever on or by Alexander Street at the relevant time.³² True it is that there were often children and others playing near the road. But there were none at this time.
- [91] As might be expected, the noise of the crash and the consequent attendance of police brought people out of their houses to see what had happened. One of those was Civilian B. Another was Civilian A. Civilian A is of short stature. His partner, Civilian B, and their children were inside their house at the time of the crash.
- [92] Two days later S/C Wyndham, in company with Const Hodge, door knocked and met Civilian A who told S/C Wyndham that he had not seen the

³⁰ Exhibit No 01817-2024-0003, Memorandum of Const Alex Miatke, 23 May 2024.

³¹ Exhibit No 01817-2024-0247, 20240812 - IMS IR 200524 1652 14746.

³² Exhibit No 01817-2024-0008, Hodge, BWC Epid incident, 20 May 2024 1652hrs.

accident. For a reason which she cannot properly explain, Const Hodge took a photograph of Civilian A and S/C Wyndham together looking in the direction of where the crash had been. The photograph showed that Civilian A was short. Senior Constable Wyndham stated that he mistook Civilian A for a child on the road at the time of the crash.

[93] From the available evidence, the Commission is comfortably satisfied to a high degree of probability:

1. The Commodore did not ram the Skoda driven by S/C Wyndham, intentionally or otherwise at the softball centre carpark.

In consequence, the driver did not cause unlawful damage. An AVA incident was not justified.

2. At the time of the PIT manoeuvre performed by S/C Wyndham in Alexander Street and in the short time leading up to it, there were no civilians on Alexander Street or its verges.

In consequence there was no justification for S/C Wyndham to declare an AVA and perform a PIT manoeuvre.

[94] Back at Geraldton police station, S/C Wyndham prepared a prosecution notice charging the driver with criminal damage.³³ The charge was not subject to proper scrutiny by Sergeants Johansen or Johnson, S/C Wyndham's supervisors. Senior Constable Wyndham was able to approve his own briefs for prosecution.

[95] Senior Constable Wyndham prepared an official document - a UoF report that was false relating to the collision in the softball car park and the presence of civilians in Alexander Street.³⁴

[96] Constable Miatke prepared an official document - a memorandum - to report to Inspector Colin Keen that was false relating to the collision in the softball car park and the presence of civilians in Alexander Street.

[97] Later, Const Miatke prepared a witness statement for the prosecution which contained false statements.

[98] Senior Constable Wyndham also prepared a witness statement for the prosecution which contained the same falsehoods.

[99] Acting Superintendent McGeown, Divisional Superintendent Prosecution Services Division, is a highly qualified lawyer. In due course he conducted a contentious prosecution review. As a result, the charge of unlawful

³³ Exhibit No 01817-2024-0491, Prosecution Charges List.

³⁴ Exhibit No 01817-2024-0001, UoF Report of SC Brent Wyndham 23 May 2024.

damage against the driver was withdrawn. The driver pleaded guilty to other offences and is serving a sentence of imprisonment.

- [100] At Alexander Street Senior Constable Burrows became suspicious of S/C Wyndham's assertions as to the cause of the damage to the Skoda and the existence of an AVA. The explanation did not match S/C Burrows observations.
- [101] He reported his misgivings to Inspector Keen who immediately commenced a process that required an incident report from officers involved. In due course, after consulting the Regional Superintendent Inspector Keen advised the Western Australian Police Internal Affairs Unit.
- [102] The Internal Affairs Unit commence an investigation and conducted a series of managerial interviews. The Commission was notified by the Commissioner of Police of an allegation of suspected police misconduct and commenced Operation Bruny.³⁵

³⁵ CCM Act s 28.

CHAPTER FOUR

Senior Constable Brent Mitchell Wyndham

- [103] Senior Constable Wyndham joined the WA Police on 4 June 2012. He was posted to Geraldton in January 2013 and except for a two-year period when he was attached to the Broome Police station he has worked at Geraldton Police Station. Senior Constable Wyndham resigned on 16 December 2024 following an extended period of leave.
- [104] In May 2024 he was part of the Geraldton Inquiry Team. He was a P2 driver, for which he qualified at the Police Academy.
- [105] On 9 March 2023 he completed his AVA training, a desktop course that did not involve practical competence. It was a compulsory course for all operational police officers.
- [106] As the driver of the police Skoda in the softball centre carpark and the subsequent pursuit of the Commodore, S/C Wyndham's actions are at the heart of the Commission's investigation.
- [107] Senior Constable Wyndham's reports and evidence have been consistent on two matters:
- the Commodore rammed the Police Skoda in the softball centre carpark; and
 - there were people on Alexander Street or its verges at the time he executed the PIT manoeuvre.
- [108] As a consequence of this evidence S/C Wyndham maintains that the arrest of the driver on a charge of assaulting a public officer in the execution of his duty, and the subsequent charge of unlawful damage, were legally justified and appropriate.
- [109] Senior Constable Wyndham gave evidence in a calm and measured manner. Standing alone, his evidence is plausible. It was consistent with earlier statements by him.
- [110] However, it does not stand alone. The entirety of the evidence including BWC footage and CCTV footage compels a different conclusion.
- [111] At the softball centre carpark it is clear that the Commodore was trying to evade police in the Skoda. The front of the Commodore did not make contact with the police vehicle. The police Skoda made contact with the side of the Commodore. This occurred when S/C Wyndham executed a sharp right turn ramming the Commodore. Whether S/C Wyndham

intended to ram the Commodore or turned right as an instinctive reaction out of panic, is immaterial. The Commodore did not ram the Skoda. No occasion for an AVA arose.

[112] The driver of the Commodore does not deserve sympathy for what happened. He is a prolific offender with a significant methylamphetamine addiction. He was trying to evade police.

[113] However, this report is not about him.

[114] The rule of law depends in part on respect and balance. Society invests police officers with significant powers including the power to detain and take action to solve crime and keep the peace.

[115] In return, society expects police officers will act honestly when exercising their powers and not make false accusations or fabricate evidence.

Alexander Street

[116] There were no people on Alexander Street or its verges. Apart from Const Miatke whose evidence on this point is rejected, no one else saw people on the street. Constable Hodge did not. Her BWC footage together with the CCTV footage established that there were no people. As a consequence, no occasion for an AVA arose.

[117] Civilian A and Civilian B have always maintained to police officers who interviewed them and under oath that they did not leave their house and go out onto Alexander Street until after the collision. It was the noise of the crash that brought them out. Examination of BWC footage and CCTV footage supports that evidence. They do not appear on any footage until 26 seconds after the crash.

The designation as an AVA

[118] An AVA allows a police officer to disregard the normal rules of engagement and take what action is necessary to save their life or someone else's from death or serious injury. Generally, an EPID will not involve an AVA.

[119] In order to justify his actions, when prompted by Const Burrows at the scene S/C Wyndham declared an AVA. His justification was the alleged ramming by the Commodore and subsequently the presence of civilians in harm's way.

[120] As the Commission has found, there was no ramming by the Commodore.

[121] Even if the Commodore had rammed the Skoda, it was a low speed collision objectively unlikely to cause injury to persons in either vehicle. Airbags were not deployed. The Commodore did not stop and despite a small

bump, the Skoda remained driveable. The Commission recognises that the test is not entirely subjective but depends on the reasonable belief of the officer.

[122] If S/C Wyndham truly believed this was an AVA incident, the obvious way to deal with it was to let the Commodore escape and follow policy by stopping and waiting for the attendance of an independent Sergeant and breathalyser. Stopping would have removed any risk that the Commodore might have posed.

[123] The more likely situation is that Const Miatke in particular but also S/C Wyndham and others had been on the lookout for the elusive Commodore for a week. It was suspected of being involved in certain non-violent offences. The circumstances suggest that S/C Wyndham's pursuit of the Commodore was not because of a continuing an AVA but because the vehicle was once again attempting to evade police.

The Use of Force Report at the softball centre carpark

[124] Senior Constable Wyndham submitted a UoF report to Inspector Keen on 23 May 2024. Under the heading 'situational appreciation' in relation to the softball centre carpark, he reported:³⁶

As I pulled up in front of the vehicle, I could see the driver look at us with a crazy look in his eye, I slowed took off my seatbelt as I was about to get out of the vehicle and activated my lights to alert him we were the police. At this point the vehicle accelerated forward towards us. At this point I believe the driver's intention was to ram us, just prior to hitting us he turned to his left before colliding with our vehicle. I had to turn to my right instinctively to avoid impact. As I did the VOI collided with the front end of our police vehicle. My right turn was not a conscious choice and occurred out of panic trying not to be hit. I continued to turn the vehicle to see as the VOI drove off out of the carpark. At this point the driver of the VOI was suspected of committing the following offences. Criminal damage, assault public officer, reckless driving, failing to stop and property damage.

People on Alexander Street up ahead I quickly sighted what I thought were about two juveniles standing up on the road approximately 200 m away. Door knocks later revealed this was in fact a short statured man and his partner. Civilian A and Civilian B.³⁷ This error was made due to distance and the dynamic nature of the incident. I am aware of this area and kids always play on this street.

The VOI was driving in their direction and at this point believing there was an imminent risk of grievous bodily harm or even death by being ran over. I used my police vehicle as a tactical option to reduce this threat and gain control of the VOI as there were no options at this point.

³⁶ Exhibit No 01817-2024-0001, UoF Report of SC Brent Wyndham, 23 May 2024.

³⁷ Exhibit No 01817-2024-0001, UoF Report of SC Brent Wyndham, 23 May 2024; Their names have been redacted wherever they appear in records.

- [125] At the time of this UoF report S/C Wyndham knew it to be false. He had spoken with Civilian A and been told the truth, that neither he nor Civilian B were on the street.

The Running Sheet

- [126] As part of normal procedure S/C Wyndham prepared a running sheet of his inquiries on Alexander Street. The running sheet showed:³⁸

22 May 2024 - 1500 inquiry door knock. Attended scene and door knocked in an attempt to find name of the persons standing on the verge at the time of the offence.

Spoke with Civilian A 16/03/1995 Alexander Street Utakarra.

He advised he was the one on the verge at the time that we would have seen him and his partner Civilian B was standing on the verge and seen the whole incident

Civilian A is very short and it is believed we mistook him for a juvenile. He signed photograph taken standing in position of where he viewed the incident from the verge.

Obtained CCTV footage from 4 Lifford Street Utakarra. Civilian A can be seen just in the distance outside his house at the time of the offence.

- [127] It is vital that senior police officers have confidence in the veracity of police records. Under Police Regulation 603, S/C Wyndham was required to give information on a UoF incident to Insp Keen.
- [128] The Commission is of the opinion that S/C Wyndham made false statements in the UoF report to justify his decision to perform a PIT manoeuvre, for which he was neither trained nor otherwise authorised.

The charge of unlawful damage against the driver: an odour of mendacity

- [129] A prosecution is commenced when a prosecution notice is filed in the Magistrates Court. If the accused pleads not guilty, a Magistrate may order the prosecutor to give full disclosure.
- [130] Full disclosure must be made of evidentiary material.
- [131] A witness statement is an essential part of the course of criminal justice as it forms the facts that support a prosecution brief.
- [132] A witness statement must contain this paragraph - *This statement is true to the best of my knowledge and belief. I have made this statement knowing that, if it is tendered in evidence, I will be guilty of a crime if I have wilfully*

³⁸ Exhibit No 01817-2024-0248, 20240812, IMS IR 200524 1652 14746 Running Sheet.

*included in the statement anything that I know to be false or that I do not believe is true.*³⁹

The witness statement of Senior Constable Wyndham

[133] Senior Constable Wyndham made a witness statement to support the unlawful damage charge on 7 August 2024.

[134] In relation to what occurred in the softball carpark, S/C Wyndham said:⁴⁰

9. As I pulled in front of the vehicle, I could see the driver look at us. I slowed took off my seatbelt as I was about to get out of the vehicle and activated my lights to alert him, we were the Police.

10. At this point the vehicle accelerated forward towards us at this point I believe the drivers intention was to ram us, just prior to hitting us he turned to his left before colliding with our vehicle, I had turned to my right instinctively as I did the VOI collided with the front end of our Police Vehicle.

11. I continued to turn the vehicle to see as the VOI drove off out of the carpark.

[135] In relation to seeing people in Alexander Street, S/C Wyndham said:⁴¹

18. As we came around the corner the accused was driving now in an Easterly direction along Alexander Drive, Utakarra.

19. Up ahead I quickly sighted what I thought were two juveniles standing up the road approximately 200m away.

20. I am aware of this area and kids always play on this street.

21. The VOI was driving in their direction and using the front of my vehicle I briefly hit the right rear of the vehicle as this occurred the VOI came across the front of me and I drove into the rear left of the VOI causing it to spin 180 degrees collide with the front left of my vehicle.

[136] These paragraphs are false. They are made in a statement that may to be used in a criminal prosecution.

[137] If a false charge is made and then supported by a false statement, there is a risk of perverting the course of justice. Any person who knowingly signs a prosecution notice under the *Criminal Procedure Act 2004* which in any material particular is to his knowledge false, is guilty of a crime.⁴²

[138] Acting Superintendent McGeown and the Police Prosecution Services examined the charges in his contentious prosecution review and stated:⁴³

³⁹ *Criminal Procedure Act 2004*, Schedule 3, cl 4(8).

⁴⁰ Exhibit No 01817-2024-0201, Statement of Wyndham, p 2-3.

⁴¹ Exhibit No 01817-2024-0201, Statement of Wyndham, p 4.

⁴² *Criminal Code* s 133A. The Commission has made no finding and expresses no opinion that Mr Wyndham has committed an offence.

⁴³ Exhibit No 01817-2024-0036, Contentious Prosecution Review, p 7.

In my preliminary view if this matter proceeds to trial on the material before me the court may be troubled by an odour of mendacity in requiring corroborative evidence.

The charge of unlawful damage

- [139] The driver was arrested at the scene for criminal damage and assaulting a public officer. At some point S/C Wyndham had sustained a bump on the head.
- [140] When preparing charges, S/C Wyndham opted instead to charge the driver with unlawful damage to the police Skoda. This was on the basis that the Commodore had rammed the Skoda.
- [141] In his examination Mr Wyndham was asked:⁴⁴
- Mr Yovich:** *How did you know to charge unlawful damage.*
- Mr Wyndham:** *I can't tell you exactly what my thought process was at the time.*
- [142] As part of the charging process S/C Wyndham had to prepare an evidence matrix which required endorsement by a senior officer. Insufficient attention was paid by the supervisor who verbally endorsed the charge.
- [143] Acting Superintendent McGeown was right to characterise the prosecution brief as having an odour of mendacity.
- [144] The seriousness of S/C Wyndham's conduct cannot be overstated. What started as a breach of police emergency driving policy after a POLACC became a serious attempt to mislead a court on a charge of unlawful damage.
- [145] Before finalising this report, the Commission received a response from Mr Wyndham through submissions of counsel. The submissions have been considered and adjustments have been made to this report. As to the central issues of the falsity of part of the UoF report and the witness statement, the Commission is not persuaded to alter its tentative opinion of serious misconduct. The statements of principle contained in the submissions concerning police actions in the reasonable use of force in the cases cited on behalf of Mr Wyndham may be accepted but provide no answer to the particular circumstances of this incident.
- [146] As Mr Wyndham is no longer a police officer. An opinion of serious misconduct has no legal effect.

⁴⁴ Brent Mitchell Wyndham transcript, private examination, 5 May 2025, p 25.

[147] Nevertheless, as a former senior constable with a duty to uphold the law, his conduct in that role has fallen so far below what is expected that an opinion of serious misconduct is appropriate.⁴⁵

⁴⁵ CCM Act ss 4(c) and 217A, the latter of which reads: *(1) This section applies in relation to a finding made, or an opinion formed or expressed, by the Commission or the Public Sector Commissioner in the course of performing a function under this Act. (2) The Commission or the Public Sector Commissioner must not publish or report a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence. (3) A finding or opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.*

CHAPTER FIVE

Constable Alex Randal Miatke

[148] Shortly after graduating from the WA Police Academy Const Miatke was posted to Geraldton where he has served for five years. He was regarded as the go to guy for technology. He was described as committed to proactive policing but not as thorough with documentation as he could be.

[149] In evidence accepted by the Commission, Const Miatke says:

In the five years that I have been a serving police officer, I have never been required to give evidence in court, nor have I been subjected to cross-examination. As a result, I have not had the opportunity to develop or learn from the valuable experience that comes with giving evidence under oath, responding to questioning in a courtroom setting, or observing how my statements are scrutinised. This lack of exposure has limited my ability to grow in this important aspect of policing.

[150] In his evidence Const Miatke conceded that he was less than thorough at times and should have taken more care. While the Commission accepts his inexperience in giving evidence, telling the truth is not a difficult concept.

[151] Constable Miatke further said:

Within Team 7, there was a limited number of Senior Constables and two Sergeants. Most of the lower level constables were tasked with day-to-day duties whilst the Senior Constables and Sergeants were responsible for administrative duties such as brief management or incident report reviews, leaving myself to work with the other lower level constables to achieve daily goals. This resulted in limited interactions with the Senior Constables and Sergeants outside of task delegation or administrative duties and check-ins.

[152] This evidence broadly accords with other evidence received by the Commission.

Constable Miatke's relationship with Senior Constable Wyndham

[153] This evidence is taken from Const Miatke's statutory declaration:

I joined Team 7 in April 2023.

At that time to the best of my recollection SC WYNDHAM was not an active member of the team.

At the time I joined Team 7 I had never met SC WYNDHAM.

At some point after April 2023 SC WYNDHAM returned to active operational duty within Team 7; and that is when I met him for the first time.

I have recently seen an email from the CCC dated 20 June 2025 that says S/C WYNDHAM last worked in Team 7 on 29 August 2024. I have no reason to doubt that date.

To the best of my recollection SC WYNDHAM and I worked together in Team 7 for about 1 year; so from about August 2023 (give or take a few months) to August 2024.

I had limited interactions with Senior Constable (SC WYNDHAM) whilst he was on active operational duty with Team 7. Our contact was infrequent and minimal, consisting only of occasional, brief conversations that were all work-related. The only communication we had was in the office and specifically surrounding the job of the day.

[154] In evidence, in relation to the events of 20 May 2024, Const Miatke said:⁴⁶

Mr Yovich: *Did you set out to interpret it (the events) in a way favourable to Senior Constable Wyndham?*

Constable Miatke: *Not necessarily. No.*

Mr Yovich: *And to describe it in a way favourable to Constable Wyndham?*

Constable Miatke: *Potentially yeah.*

[155] There is insufficient evidence to reach a conclusion about any influence S/C Wyndham may have had over Const Miatke. Consequently, the Commission has reached no conclusion as to Const Miatke's motivation in writing the memorandum and subsequent witness statement.

The lead up to the collision at the softball centre carpark

[156] In May 2024, Constable Miatke had selected from the many incident reports certain possible offences that appeared to have a common link. That link was a distinctive Commodore. The identity of the driver was unknown at that time.

[157] In the preceding fortnight prior to 20 May 2024, Const Miatke had asked other officers to keep an eye out for the Commodore. It had not, however, been spotted before S/C Wyndham and Constables Miatke and Hodge set out on patrol on 20 May 2024 in the Police Skoda.

[158] By good fortune the Skoda was on patrol in Utakarra Road when Const Miatke received a 78 second phone call from S/C Valenti telling him that he had spotted a Commodore.

[159] While Const Miatke was taking the call, S/C Wyndham drove towards the softball centre carpark.

⁴⁶ Constable Alex Miatke transcript, private examination, 30 April 2025, p 77.

- [160] As outlined above, as the Skoda slowed, every occupant took off their seatbelts in preparation to rush the Commodore and apprehend the driver when the Skoda stopped moving. Constable Miatke went so far as to slightly open his door, keeping it open with his fingers. He did not, however, leave his seat and the rest of his body stayed in the Skoda. After the collision, he closed the door immediately and put his seatbelt back on.

The memorandum to Inspector Keen

- [161] As a result of S/C Burrows' alert, Inspector Keen required Const Miatke to submit a report about the events.

- [162] Constable Miatke complied with a memorandum dated 23 May 2024.⁴⁷

- [163] The memorandum to Inspector Keen included the following account:⁴⁸

I began to take off my seatbelt and prepare to exit the vehicle

I opened the door and went to hop out as I saw the VOI move directly towards us. I quickly redirected back into the car, shut the door and went to put on my seatbelt.

I felt our car get impacted forcing me to jolt a bit by the impact.

- [164] Constable Miatke stated in his memorandum:⁴⁹

As I looked up Alexander Street I could see what appeared to be 2 small figures standing near on the left verge near the intersection of Alexander and Maloney.....

- [165] An irrelevant detail that was included as part of the background in the memorandum to Inspector Keen by Const Miatke was as follows:⁵⁰

Captured on CCTV driving past the address of a recent burglary in which the victim's remote and car keys were stolen.

- [166] Constable Miatke omitted to report that two juveniles had been apprehended for the burglary and were not associated with the Commodore.

- [167] The Commission is conscious that the events took place in a little over a minute. It is normal for people to have different recollections especially of an event which, if not traumatic to all, at least took place at a time of heightened concern for safety.

- [168] During his evidence to the Commission, Const Miatke acknowledged that he was not a good note taker and that his report was not up to scratch and that he should have taken more care.

⁴⁷ Exhibit No 01817-2024-0003, Memorandum of Const Alex Miatke 23 May 2024.

⁴⁸ Exhibit No 01817-2024-0003, Memorandum of Const Alex Miatke 23 May 2024.

⁴⁹ Exhibit No 01817-2024-0003, Memorandum of Const Alex Miatke 23 May 2024.

⁵⁰ Exhibit No 01817-2024-0003, Memorandum of Const Alex Miatke 23 May 2024.

- [169] The errors and omissions in the memorandum to Inspector Keen cannot easily be explained as neglect, notwithstanding evidence of Const Miatke's lack of thoroughness.
- [170] Constable Miatke did not activate his BWC immediately in the car park but he had watched the BWC of S/C Wyndham and Const Hodge before submitting the memorandum to Inspector Keen.
- [171] Constable Miatke stated in the memorandum 'the whole aggravated vehicle aggression incident lasted approximately one minute'.
- [172] As at May 2024, Const Miatke's state of knowledge as to what constituted an AVA and what action could be taken in response was imperfect. His characterisation of the incident as an AVA came from S/C Wyndham.

The witness statement

- [173] Constable Miatke was also required to make a witness statement for the prosecution of the driver on a charge laid by S/C Wyndham of unlawful damage. The witness statement was prepared with the assistance of a Detective Sergeant from the Geraldton Detectives Office. It was Const Miatke's opportunity to give an accurate account of the events of 20 May 2024.
- [174] The Detective Sergeant advised him that they would prepare the statement with free text indicating the detail would come from Const Miatke.
- [175] Signed on the 6 August 2024, Const Miatke had time and opportunity to review the CCTV and BWC footage. He had access to his own memorandum.
- [176] In the witness statement at paragraphs 3 and 4, Const Miatke said:

Prior to providing this statement I have taken the opportunity to review a range of reference materials in order to provide the most accurate account possible.

These materials include BWC footage, CCTV and photographs taken by attending police.

I looked up and saw that we were executing a u-turn after the impact and we were going after the VOI.

- [177] In relation to what occurred at the softball carpark, Const Miatke said:

16. I could see two males in the car, one in the front driver's seat and one in the front passenger seat. I couldn't make them out in any more detail than that.

17. We pulled up directly in front of them and WYNDHAM brought our car to a complete stop.

18. *As our car came to rest, I took my seatbelt off and opened my car door to get out and speak to the occupants.*

19. *I was about half out of the car when I felt the impact of the VOI connecting with our car.*

20. *When I felt the impact I immediately threw myself back into my seat and was a bit rocked by the impact.*

[178] In evidence before the Commission, Const Miatke acknowledged that just before the collision at the softball carpark he was not half out of the car.⁵¹ He was not afraid for his safety or his life. He was not going to get out of the Skoda before it stopped.

[179] In the course of his examination, Const Miatke conceded that at the softball centre carpark the Skoda was rolling and did not come to a complete stop. He said:⁵²

I didn't pay enough attention to that when I was reviewing it. My memory of that incident was that it was still moving as I went to try and hop out.

[180] Constable Miatke denies the statement about the Skoda was a lie. During his examination, Const Miatke said:⁵³

Mr Yovich: *That paragraph contains a deliberate lie, doesn't it?*

Constable Miatke: *It wasn't a deliberate lie.*

Mr Yovich: *Was it simply an instance of such extraordinary carelessness as to state something that is patently false?*

Constable Miatke: *Yep*

[181] The witness statement concludes at paragraph 71 as follows:

This statement is true to the best of my knowledge and belief. I have made this statement knowing that if it is tendered in evidence I will be guilty of a crime if I have wilfully included in this statement anything that I know to be false or do not believe is true.

[182] Constable Miatke knew that the statement could be tendered in evidence for a prosecution of the driver.

[183] Constable Miatke accepted that at the heart of the driver's criminal responsibility for the unlawful damage was that the Commodore hit the Skoda, not that the Skoda hit the Commodore.⁵⁴

⁵¹ Constable Alex Randal Miatke, transcript, private examination, 30 April 2025, p 60.

⁵² Constable Alex Randal Miatke transcript, private examination, 30 April 2025, p 87.

⁵³ Constable Alex Randal Miatke transcript, private examination, 30 April 2025, p 88.

⁵⁴ Constable Alex Randal Miatke transcript, private examination, 30 April 2025, p, 93.

Recollection of seeing two figures

[184] At paragraph 33 of his witness statement, Const Miatke said:

As we turned the bend of Alexander Road I was watching the VOI and trying to take in the area and could see off in the distance what I believed to be one or two people up ahead near the Maloney Street intersection.

[185] During his examination, Const Miatke's evidence in relation to the people on Alexander Street was:⁵⁵

Mr Yovich: *As you sit here now did you see two people?*

Constable Miatke: *I thought I did absolutely.*

Mr Yovich: *What do you think now?*

Constable Miatke: *Now I know there wasn't anyone in the street.*

Mr Yovich: *And how do you know that?*

Constable Miatke: *Because internals have been there and spoken to him and Brent made it up.*

[186] Constable Miatke maintained that he thought he could see people on the street at the time of the incident.

[187] He discussed the issue with S/C Wyndham shortly after the incident and believed there must have been people because S/C Wyndham had reassured him of that.

[188] The Commission has examined the CCTV footage and BWC footage exhaustively. It has taken sworn evidence from the two people nominated as being on the street and they each denied witnessing the accident. They also denied telling S/C Wyndham that they witnessed the accident. The only person who has consistently maintained throughout that there were the people on the street is S/C Wyndham.

[189] The Commission does not accept that Const Miatke thought he could see people on the street.

[190] The Commission has closely considered that the errors in the memorandum to Inspector Keen and the witness statement are the product of a neglectful officer less thorough than he should be, a degree lackadaisical.

[191] As to the alleged sighting by Const Miatke of people in the street, counsel for Const Miatke submits:⁵⁶

⁵⁵ Constable Alex Randal Miatke transcript, private examination, 30 April 2025, p 109.

⁵⁶ Constable Miatke Submissions dated 23 June 2025 para 52-53.

The difference between what he actually said at [33] of his statement and what ought to have said is an example of infelicity:

- (a) *Constable Miatke is a general duties officer. Infelicity of language on his part is not misconduct.*
- (b) *The draft report correctly accepts at [137] that Constable Miatke was not (at the time of the events) "as thorough with documentation as he could be".*

Constable Miatke's statement was subconsciously tainted by S/C Wyndham telling him that there were people in the vicinity. He had seen blobs that he thought might have been people. He was wrong. But because he thought he saw something, when S/C Wyndham told him there were people, it cemented the matter in his mind as truth.

[192] The Commission has considered the submissions made by counsel for Const Miatke. It has further reflected on the standard of comfortable satisfaction in *Briginshaw v Briginshaw* in light of the submissions.

[193] In his response Const Miatke through counsel submits:⁵⁷

The accounts he has given (on 4 occasions) are imperfect. They are more consistent with uncertainty, imprecision and inexperience in formal statement and report writing than a cover up.

No serious misconduct finding should be made against Constable Miatke in relation to either his memo to Inspector Keen, or his witness statement, in relation to events in the car park.

[194] The significance of the memorandum to Inspector Keen is that Const Miatke may have given false information to Inspector Keen.⁵⁸

[195] The Commission has considered the circumstances surrounding the memorandum to Inspector Keen. The subsequent witness statement was to Const Miatke's knowledge likely to be tendered in evidence. He had time to reflect on the true position before making the statement. It contains falsehoods.

[196] The *Briginshaw v Briginshaw* test as to the balance of probabilities has long been accepted as appropriate by the Commission.

[197] Reference to the case is no mere incantation.

[198] There are two alternatives. Either Const Miatke deliberately lied, or he was carelessly neglectful of his obligation to report accurately to Inspector Keen or to be accurate in the witness statement. Careless

⁵⁷ Constable Miatke Submissions dated 23 June 2025 para 41-42.

⁵⁸ *Criminal Code*, s 170.

neglect, even reckless disregard, which Const. Miatke's statements might be, do not amount to intentional falsehood.

[199] The Commission is not comfortably satisfied that Const Miatke deliberately lied. The alternative explanation of neglect is reasonably open and is preferred.

[200] The lack of care in which Const. Miatke approached his duty to make an accurate memorandum and a truthful witness statement is nevertheless, significant. The Commission has formed an opinion of police misconduct relating to Const Miatke's neglect in preparation of the memorandum and witness statement.⁵⁹

⁵⁹ CCM Act s 4(d).

CHAPTER SIX

Constable Kasey Jade Hodge

[201] Constable Hodge joined WA Police on 25 October 2021. At the time of the incident she was 22 years old. She had only joined the Inquiry Team in April 2024, a little more than a month before the incident. She was the second most junior officer in the Inquiry Team. Although young, she was a P1 driver and reported to be conscientious and thorough.

[202] The Commission assesses her evidence on oath as generally honest. It was her first time giving evidence anywhere.

The incident at the softball centre carpark

[203] Constable Hodge was in the rear seat of the Skoda and had a limited view of the collision.

[204] When taking part in a managerial interview on 18 November 2024 she did not concede it to be an AVA incident. No one's safety was at risk. She felt an impact, not saw it. Her BWC footage is restricted in its footage of the incident.

[205] However, in her report to Inspector Keen (undated) she said:⁶⁰

I sat up prepared to exit the vehicle when the VOI accelerated towards us and collided with the front end of the police vehicle. I felt the impact and was pushed backwards into my seat.

[206] Constable Hodge acknowledged it was a poor report. She said S/C Wyndham was over her shoulder reading it.⁶¹

[207] In her examination Constable Hodge acknowledged that she had watched BWC footage multiple times and knows that it was the side of the Commodore that must have been impacted by the front of the police vehicle.⁶²

[208] She acknowledged that part of the report to Inspector Keen was misleading.⁶³

In complete honesty, this was my interpretation of it. I wrote it from my body worn, what I felt. And I guess when you do read it, it is misleading to the actual truth of what happened.

⁶⁰ Exhibit No 01817-2024-0002, Memorandum of Const Kasey Hodge (undated), p 2.

⁶¹ Constable Kasey Jade Hodge transcript, private examination, 29 April 2025, p 58.

⁶² Constable Kasey Jade Hodge transcript, private examination, 29 April 2025, p 58.

⁶³ Constable Kasey Jade Hodge transcript, private examination, 29 April 2025, p 58.

The Alexander Street incident

[209] Constable Hodge has consistently maintained that there was no one on the street or verge of Alexander Street. She has maintained this position despite pressure to change.

[210] In her report to Inspector Keen she said:⁶⁴

During the time at the incident location I noticed multiple members of public outside their houses and walking along the length of Alexander Road.

[211] Constable Hodge was pressed by Mr Yovich, counsel assisting, on this paragraph. She denied any implication that she included that paragraph that there were, or may have been, people on the street at the time of driving and said, 'definitely not, no'.

[212] In fact, as would be expected, the noise of the collision did bring people out on Alexander Street to see what had happened, so Const Hodge's statement is literally true.

[213] The Commission notes that Const Hodge did not positively say there were no people on the street which would have been an easy and correct thing to do. She knew at the time of her report that S/C Wyndham was asserting there were people including a child (later acknowledged to be a small man) on the street.

The photograph of Civilian A

[214] On 22 May 2024, S/C Wyndham and Const Hodge canvassed the neighbourhood for CCTV footage. On this occasion Const Hodge drove.

[215] After obtaining CCTV footage downloaded to a USB from one householder, S/C Wyndham directed Constable Hodge to stop the vehicle at Civilian A's house.

[216] Senior Constable Wyndham spoke with Civilian A. How long they spoke for is contentious. During her Managerial interview with the Internal Affairs Unit Const Hodge explained that they spoke for 40 minutes but told the Commission that was an error encompassing the earlier visit and that the conversation with Civilian A was a few minutes.

[217] Constable Hodge did not take part in the conversation. There was no context as to when Civilian A was on the street.

[218] Civilian A's evidence to the Commission, which is accepted, is that he and his partner were inside, as were their children, and they came outside to look after the collision had occurred. BWC footage corroborates this.

⁶⁴ Exhibit No 01817-2024-0002, Memorandum of Const Kasey Hodge (undated), p 2.

[219] Civilian A impressed the Commission as being without guile. His partner's evidence to similar effect is also accepted.

[220] At one point during the conversation between S/C Wyndham and Civilian A, Const Hodge took a photograph from behind the two men. The photograph shows Civilian A to be of short stature. It may have been taken where he stood after the collision.

Conclusion - Constable Hodge

[221] As indicated, the Commission assessed Const Hodge's evidence as honest. She acknowledged points of her report to Inspector Keen were misleading and it was a very poor report.

[222] She has consistently denied the presence of civilians in Alexander Street at the time of the collision.

[223] Importantly she has not made a false statement in criminal proceedings involving the driver.

[224] Her initial assertion to Inspector Keen that the Commodore collided with the front end of the police vehicle was misleading. For whatever reason, she took a photograph of Civilian A and S/C Wyndham from behind.

[225] The Commission has considered the probabilities through the lens of *Briginshaw v Briginshaw*. The Commission is not affirmatively satisfied that Const Hodge's actions amount to police misconduct or reviewable police action. It therefore forms no opinion of misconduct.

CHAPTER SEVEN

PIT manoeuvres

- [226] A PIT manoeuvre is inherently dangerous to the police officer who executes it, to the driver of the other vehicle and to any other vehicles or people in the near vicinity.
- [227] PIT manoeuvres are controversial because of risk of injury or death to both involved and uninvolved. In the United States, the PIT manoeuvre has been linked to at least 30 fatalities between 2016 and 2020.
- [228] A PIT manoeuvre is executed when a police vehicle makes deliberate contact with the vehicle of interest by touching the rear side panel of the VOI. The intended result is to force the VOI into an unplanned change of direction, preferably 180 degrees from the line of travel.
- [229] Practical training is required for the use of a taser or a firearm. Given the potential dangers associated, PIT manoeuvres should not be deployed by a police officer unless they have undergone practical training in its use.
- [230] On 11 November 2024, WA Police released a new policy to define approved pre-emptive tactics and resolution strategies, known as ERT.
- [231] ERT can be used to prevent or resolve pursuits under circumstances where it is reasonably believed a suspect or target vehicle is an actual threat, potential threat or may endanger the health, life or safety of the community.
- [232] ERT options include the use of a police vehicle as a tactical option through:
- Controlled Vehicle Contact (CVC); and
 - Tactical Vehicle Immobilisation (TVI).
- [233] CVC is when a trained officer in a designated vehicle, in a low risk environment, makes contact with a target vehicle at low speed, with the intention of mechanically disabling or positioning the target vehicle so evasion is not possible or practicable.
- [234] TVI is when a trained officer in a designated vehicle makes contact with the target vehicle causing a forced rotational stop, followed by the positioning of other police vehicles to contain the target vehicle. TVI is more commonly known as the PIT manoeuvre.
- [235] ERT can only be undertaken by qualified police drivers in approved police vehicles in the following circumstances:

- the suspect is wanted for offences subject to a term of life imprisonment;
- the manner of driving by a suspect presents significant danger to the community. A Police Officer must form a reasonable belief there is an actual threat or potential threat that could endanger the health, life or safety or another; or
- the pursued vehicle has incurred mechanical damage, a tyre or tyres have been deflated and the vehicle has not stopped within a reasonable time. The implication being the driver can no longer safely operate the vehicle.

[236] The policy now clarifies that an AVA is 'not a tactical option'. It is a level of resistance from a suspect where there is believed to be an imminent risk of grievous bodily harm or death to any person. In these circumstances, tactical contact (e.g. CVC or TVI) is to be considered in accordance with the WA Police Emergency Driving policy.

[237] The policy states that ERT tactics, such as TVI, should be conducted by trained ERTD officers only, to prevent or resolve EPID, and permission to use TVI should be sought unless:

- an actual or potential threat to the community exists;
- the circumstance for use of the tactic is reasonably believed to have been met; and
- an immediate opportunity presents to prevent danger to the health, life or safety of the community prior to authorisation being granted.

[238] It is the Commission's understanding that WA Police has recently commenced training in PIT manoeuvres to a very small number of police officers.

[239] The policy updates are promising and demonstrate the resolve of WA Police to mitigate the risk associated with officers using the PIT manoeuvre. However, the use of ERT tactics is new and the full impact is yet to be understood.

[240] In accordance with the Commission's prevention and education function, the Commission will conduct a review of the WA Police use of ERT in 12 months' time.

CHAPTER EIGHT

Supervision at Team 7 - the Inquiry Team

- [241] In May 2024 the Inquiry Team was supervised by Sergeants Johansen and Johnson. They usually worked alternative shifts.
- [242] It appears that in addition to their workload as supervisors, they would also carry out patrols from time to time.
- [243] Among their duties as supervisors, they were required to review all incident reports and UoF reports. Before a charge of a criminal offence could be commenced by a prosecution notice, an approval by a supervisor was required and an evidence matrix was required to be prepared and approved.
- [244] The Commission heard evidence that during the year preceding 2024, the Inquiry Team had reduced from 23 to 12 or 13 police officers. This was due to the creation of a domestic violence team in Geraldton.
- [245] The Inquiry Team dealt with violent crime such as theft, burglary, car stealing, shop lifting. The amount of work was described as huge, insane, astronomical, a revolving cycle all day.⁶⁵ Team members would also be required to assist other areas which experienced staff shortage.
- [246] However, this diminished the opportunities for proper supervision.
- [247] The Inquiry Team's experience ranged from senior constables to constables who had only completed their probationary period a short time before.
- [248] The high volume of work may explain, if not entirely excuse, poor supervision in relation to charges and briefs for prosecution.

An arrest is merely a first step

- [249] A prosecution notice must be prepared identifying the appropriate charge.
- [250] To ensure there is evidence to support the charge an evidence matrix template must be completed. An evidence matrix lists the elements of an offence and the evidence to support the charge.
- [251] The evidence matrix template requires an entry in the evidence panels for each element of a charge. An officer cannot move to the next step if the matrix is empty.

⁶⁵ Sergeant Nathan Johansen transcript, private examination, 1 May 2025 p 85.

- [252] This safeguard could be overcome by the officer completing the matrix simply placing a dot or full stop in each square
- [253] The charge and evidence matrix must be approved by a supervisor.
- [254] Following these steps provides safeguards for the charging police officer and the accused person.
- [255] These steps were not followed in all cases in the Inquiry Team.
- [256] The regimental number of a supervising sergeant would be added to the matrix template to indicate approval had been given. At times the supervising sergeant had not approved and had no knowledge of the charge despite their regimental number being added.
- [257] Sometimes, but not always, a verbal approval might be given. There is no written record when that occurs. It is assumed that the placement of a dot means that verbal approval has been received but no one knows.
- [258] When S/C Wyndham took long service leave and then resigned, an audit of outstanding charges he had laid was completed and many prosecutions were discontinued. Senior Constable Wyndham was known as a driven, intense officer who was fast on paperwork. He had a record of arrests that was looked upon favourably. However, there was often no corroborative evidence supporting the charge.
- [259] Arrest levels indicate very little. Convictions are a better performance indicator.

Incident reports

- [260] An officer is required to complete an incident report. These should be reviewed by the supervisor. This did not always happen.
- [261] The Commission heard evidence that supervisor reviews of incident reports was lax due to the volume. Reports would be filed without a supervisor's knowledge. Some officers would 'kill' an incident report so a supervisor would not know of its existence.
- [262] The Commission was assured the system has changed and now all incident reports are reviewed by a supervisor. Some oversight is restored.⁶⁶
- [263] Both supervising sergeants of the Inquiry Team indicated that they had massive learnings from the evidence described in this report. They have both tightened their practices and now require much more rigour before approving a charge. This is encouraging but should have always occurred.

⁶⁶ Sergeant Paul Johnson transcript, private examination, 2 May 2025 p 86.

The Commission will seek a response from WA Police in 12 months as to whether there is now adherence to policy and procedures in the Inquiry Team.

The events of 20 May 2024

- [264] On 20 May 2024, Sgt Johnson was Acting Officer in Charge Geraldton Police Station, in addition to his other duties. He had limited involvement in the events of that afternoon.
- [265] Sergeant Johansen was on patrol near-by and attended Alexander Street upon request as an independent Sergeant.
- [266] When he arrived, S/C Burrows was at the scene and already beginning his work to reconstruct the crash. After a short time Sgt Johansen handed over the duties of independent officer to S/C Burrows and returned to other duties. This was a breach of policy but reasonable in the circumstances. Senior Constable Burrows had vastly more crash reconstruction experience and was indeed more obviously independent.
- [267] In the following days Sergeants Johansen and Johnson each reviewed the BWC footage. Both were less definite about what the BWC footage showed at the softball centre carpark than other officers, including Inspector Keen. This difference in views led to some robust exchanges. Neither had consulted S/C Burrows as to his opinion. Each accepted they should have examined the BWC footage more thoroughly.⁶⁷
- [268] Both Sergeants Johnson and Johansen were closely examined as to their initial opinions by counsel assisting the Commission. The Commission concludes that each of their opinions was honestly held. There is no misconduct in expressing different opinions to other officers, even if mistaken.

⁶⁷ Sergeant Paul Johnson transcript, private examination, 2 May 2025, p 69 and 75.

CHAPTER NINE

An interview that broke all the rules

- [269] This chapter is part of the Commission's misconduct and education function in relation to police. It is included as an example to other police officers how not to conduct a criminal interview.
- [270] The reforms brought in by the *Criminal Investigation Act 2006* gave clarity on the conduct of a criminal interview. It also gave an arrested suspect certain rights. Once an arrested suspect has been charged with an offence, it is even more important that a police officer is scrupulous in following the rules.
- [271] In the evening of 20 May 2024, S/C Wyndham had charged the driver with numerous offences. Had procedures been followed, the charges would have been supported by a completed evidence matrix.
- [272] But S/C Wyndham still had gaps in information, so he sent Constables Hodge and Miatke to question the driver who was by then in a cell in the police lockup. What followed was a class in how not to do an interview.
- [273] A police officer may ask questions of any person. That person is free to answer or not. When a person is being questioned as a witness, the provisions of the *Criminal Investigation Act* s 28 apply.
- [274] When a person is an arrested suspect or a charged accused, the *Criminal Investigation Act* Part 12, Div 5 applies.
- [275] The Commission notes that neither supervising sergeant knew of the interview of the driver conducted by Constables Hodge and Miatke.
- [276] Constable Miatke was the interviewer and Const Hodge was present to corroborate.
- [277] WA Police use a standard interview template to ensure that an interview is voluntary and that an arrested suspect is informed of their rights under the *Criminal Investigation Act*. This did not occur. The ethnicity of the driver was not explored as required.
- [278] No interview plan was prepared. Significantly, S/C Wyndham told Const Miatke he wanted evidence about some stealings, but not to worry about asking questions regarding the day's driving events.

- [279] An interview plan would have covered all offences, giving the driver an opportunity, if he wished, to explain his driving on the day when he had denied earlier any attempt to ram the Police Skoda.
- [280] At the commencement of the interview which Const Miatke recorded on his BWC, Const Miatke made an attempt to explain that the driver did not have to answer questions and that anything he did say could be used in evidence. The driver appeared to understand this aspect of his rights.
- [281] From earlier in the day Const Miatke knew that the driver had used drugs. This knowledge was reinforced when the driver said in the interview to Const Miatke '[h]ere's the issue. I'm coming down. I want to be able to answer properly'.
- [282] That statement alone should have urged caution. There was no examination of the driver's fitness to take part in an interview.
- [283] The interview was conducted in the lockup. Constable Miatke told the Commission 'it didn't cross my mind to take the driver to the interview room'.
- [284] Constable Hodge said that she was told the driver did not want to be formally interviewed but was happy to answer questions in the lockup. No clarification was sought by Const Miatke.
- [285] The driver had a blanket draped over his head and body. His head was down throughout the interview except when he half raised it from time to time. It is impossible to identify the driver from the BWC footage. His face never fully appears.
- [286] No real attempt was made to ensure that the interview was voluntary. No check was made at the conclusion to determine whether any threats or inducements had been made or offered.
- [287] The admissibility of the interview in court proceedings might be challenged both on voluntariness and fairness of grounds.
- [288] The Commission does not know if this type of interview is an isolated example or more widespread. Unless the *Criminal Investigation Act* is applied and procedures such as use of an interview template and preparation of an interview plan are followed, there is a significant misconduct risk.
- [289] The purpose of this chapter is not to assign blame or form an opinion of police misconduct. It is to remind all police officers that the law and policies about interviewing arrested suspects must be followed for the protection of both the interviewing officer and the arrested suspect.

[290] The Commission acknowledges the voluminous workload facing the reduced Inquiry Team at the time. It is not the only team in the district facing a significant volume of incident reports relating to criminal activity. Cutting corners is not the answer.

CHAPTER TEN

Conclusion

- [291] The events of 20 May 2024 exposed significant weaknesses in the procedures of the Inquiry Team, an example of which is poor supervision leading to an officer approving their own briefs for prosecution.
- [292] The scope of the Commission's investigation did not extend to whether there are systemic issues in Geraldton Police Station and Team 7, the Inquiry Team. But the Commission has seen sufficient to draw the Commissioner of Police's attention to the possibility.
- [293] The Commission has formed an opinion of serious misconduct and an opinion of police misconduct.
- [294] In the Commission's opinion, inaccuracies in the use of force report and witness statement by S/C Wyndham mean an opinion of serious misconduct is appropriate.
- [295] In the Commission's opinion Const Miatke's memorandum to Inspector Keen and the witness statement were prepared so neglectfully that an opinion of police misconduct is appropriate.
- [296] These opinions do not imply and are not to be taken as a finding or opinion that a particular person is guilty of or has committed a criminal offence or a disciplinary offence.⁶⁸
- [297] The Commission recommends to the Commissioner of Police that consideration be given to the prosecution of Brent Mitchell Wyndham. The Commission has no role in prosecuting suspected criminal offences or adjudicating upon them.
- [298] The Commission recommends to the Commissioner of Police, if it has not already occurred, that consideration be given to taking disciplinary action in relation to Alex Randal Miatke.

⁶⁸ CCM Act s 217A.