



Review of a WA Police Investigation into Allegations of Serious Misconduct by Officers During an Incident in the Perth Convention and Exhibition Centre Carpark

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Image credit: This artwork was painted by Corruption and Crime Commission staff under the guidance of Justin Martin from Djurandi Dreaming.

AN INCIDENT IN THE CONVENTION AND EXHIBITION CENTRE CARPARK

- 1 The Indian Ocean Defence Security Conference was held at Perth Convention and Exhibition Centre (**Centre**) in late July 2024. WA Police considered the conference posed a high security risk and there was concern over associated protests. Consequently, a declaration was made under s 69(2) of the *Criminal Investigation Act 2006* (**CIA**) in respect of the Centre, including its underground carpark.
- 2 Section 69 permits a senior police officer to declare a public place as a place in which police officers are authorised to exercise various powers conferred by the section. Those powers are limited given the exceptional nature of a declaration made under the section. Relevantly, a police officer may order a person to leave the place unless they consent to a basic search.
- 3 Mr Iva Hayward-Jackson attended a protest held outside the Centre. He parked his car in the Centre's carpark. He returned to the carpark after leaving the protest. He was carrying a large pole with an Aboriginal flag wrapped around it.
- 4 He was spotted by security who reported his presence to the police. Police officers were tasked to intercept Mr Hayward-Jackson 'and establish his credentials and reason for being at the venue, to ensure he was not planning unlawful protest activities'.
- 5 Acting on that direction, two police officers on pushbikes stopped Mr Hayward-Jackson as he walked towards the carpark pay station (the **first officer** and the **second officer**). He was approximately two metres from the pay machines when he was stopped. He was holding his wallet which contained a valid parking ticket.
- 6 The first officer informed Mr Hayward-Jackson he was in a high-risk area because of the protest upstairs. Mr Hayward-Jackson responded by reaching for his mobile phone, apparently intending to film his exchange with the police officers.
- 7 The first officer advised Mr Hayward-Jackson that his personal details would be taken, he would be searched and a move on order would be made if he did not state why he was in the carpark. It was said by the officer that s 69 of the CIA permitted the police to exercise those coercive powers.
- 8 Two other police officers on pushbikes arrived shortly after. One of those officers was the senior ranking officer at the incident (the **senior officer**).
- 9 Mr Hayward-Jackson informed the police officers to the effect that he was going home and was walking to a pay machine to pay for his car parking.
- 10 What should have occurred next was obvious. Mr Hayward-Jackson should have been invited to pay for his parking ticket and allowed to exit the carpark in his car. The police officers could have accompanied him while he paid the parking fee, retrieved his car and observed him leave the carpark. That would have achieved the objective of the allocated police task.

11 Instead, an incident unfolded in which:

- Mr Hayward-Jackson maintained he was in the carpark to retrieve his car so that he could leave the Centre - at one point he invited the senior officer to inspect his parking ticket;
- the senior officer informed Mr Hayward-Jackson he was not interested in why he was in the carpark despite that being the reason for the allocated task;
- the senior officer required Mr Hayward-Jackson to provide his personal details;
- Mr Hayward-Jackson refused to consent to being searched but the senior officer nevertheless conducted a search;
- the second officer made a move on order which alleged that Mr Hayward-Jackson had committed two offences: disorderly conduct and obstructing a public officer;
- Mr Hayward-Jackson was allowed to leave the carpark in his car after the move on order had been made.

THE COMMISSION'S REFERRAL TO WA POLICE

Police Misconduct

- 12 The Commission's functions include ensuring that allegations of serious misconduct are dealt with in an appropriate way.¹ 'Serious misconduct' is defined to include 'police misconduct'.
- 13 Police misconduct includes 'reviewable police action'. Reviewable police action means, among other things, any action taken by a police officer that is:
- (a) contrary to law;
 - (b) unreasonable, unjust, oppressive or improperly discriminatory.²

Mr Hayward-Jackson's Report to the Commission

- 14 Mr Hayward-Jackson reported the incident to the Commission on the same day it occurred. He provided a video recording of his interaction with the police officers.
- 15 The Commission assessed the recording and information provided by Mr Hayward-Jackson and reviewed body worn camera footage of the incident taken by the attending police officers. The Commission formed an opinion under s 22 of the CCM Act that police misconduct may have occurred.

The Allegations Referred by the Commission

- 16 Six allegations regarding the conduct of three of the attending officers were referred to WA Police for further investigation and action.³ The allegations concerned whether the officers had acted contrary to law and whether their actions were unreasonable, unjust or oppressive. They raised several issues for investigation and outcome by WA Police.

The Powers Exercised by the Police Officers in the Incident

- 17 In forming its opinion, the Commission identified three powers exercised against Mr Hayward-Jackson during the incident - the power to request a person to provide their personal details, the power to conduct a basic search and the power to make a move on order.
- 18 The police officers who dealt with Mr Hayward-Jackson only referred to s 69 of the CIA during the incident; no other source of power was identified. Section 69 confers a power to search a person who is in a declared area but the exercise of the power is subject to the person's consent. The relevant provisions of s 69 are reproduced later in this report.

¹ *Corruption, Crime and Misconduct Act 2003 (CCM Act)*, s 18.

² Section 18 of the CCM Act. Section 3 of the Act defines 'serious misconduct' to include 'police misconduct'. The section also defines 'police misconduct' and 'reviewable police action'.

³ Section 40, CCM Act.

- 19 Section 69 does not authorise a police officer to request a person provide their personal details. Rather, that power is conferred by s 16 of the *Criminal Investigation (Identifying People) Act 2002 (CIIPA)*. However, the power can only be exercised where a police officer, among other things, reasonably suspects that the person has committed or is committing or is about to commit an offence.
- 20 Section 69 of the CIA also does not confer a power on a police officer to make a move on order. Rather, s 27 of the Act confers that power. However, the power can only be exercised if a police officer reasonably suspects that a person, while in a public place, is committing a breach of the peace or hindering or obstructing any lawful activity or has committed or is committing or intends to commit an offence.
- 21 A suspicion is a less certain state of mind than a belief. A reasonable suspicion is a suspicion formed from facts that are capable of rationally supporting the suspicion. The facts may be, for example, what a police officer has observed or what they have been told (including hearsay information) but the facts must be capable of positively supporting the reasonableness of the suspicion held. A suspicion will not be reasonably held if it formed merely from speculation.

The Issues Raised for Investigation by WA Police

- 22 First, did the senior officer act according to law in searching Mr Hayward-Jackson? That question required WA Police to consider the effect of s 69 of the CIA and whether Mr Hayward-Jackson had consented to the search.
- 23 Second, did the senior officer act according to law in requesting Mr Hayward-Jackson's personal details? That question required WA Police to determine:
- whether the senior officer had suspected that Mr Hayward-Jackson had committed or was committing or was about to commit an offence at the time the request was made;
 - if so, what were the grounds on which the senior officer formed his suspicion;
 - whether, considered objectively, there were reasonable grounds for the senior officer's suspicion - that is, was the suspicion formed from facts that were rationally capable of supporting the suspicion.
- 24 Third, did the second officer act according to law in making the move on order? That required WA Police to consider the same issues as for the question whether the senior officer acted according to law in requesting Mr Hayward-Jackson's personal details, except the order could be made if the second officer reasonably suspected that Mr Hayward-Jackson had breached the peace or hindered or obstructed one or more of the police officers from performing a lawful activity.
- 25 Fourth, did one or more of the police officers deal with Mr Hayward-Jackson in a way that was unreasonable or unjust or oppressive? That required WA Police to consider the conduct of the officers across the incident having regard to Mr Hayward-Jackson's insistence that at the

time he was stopped by the police he had been intending to retrieve his parked car and leave the area.

The Investigation by WA Police

How the Investigation was Conducted

- 26 WA Police's Ethical Standards Division allocated the investigation to Perth District Office where the subject officers were stationed. It was investigated as a minor conduct matter. The WA Police Integrity Manual Framework describes the minor conduct review process as '[a]llegations of police misconduct triaged as "minor" can be resolved at a local level... low risk investigations.'
- 27 WA Police considered the body worn camera footage from the police officers and the relevant legislation. A written statement was later obtained from the senior officer. The other officers did not provide a statement and were not interviewed.
- 28 As required by s 40 of the CCM Act, WA Police provided a report on the actions taken following the Commission's referral (the **Initial Report**). The Commission determined that the report lacked the detail necessary to explain the conclusions that had been reached and failed to consider the lawfulness of the senior officer's request for Mr Hayward-Jackson's personal details and his actions in conducting a search.

The Commission's Decision to Review the Investigation

- 29 Accordingly, the Commission decided to undertake a review pursuant to s 41 of the CCM Act.⁴ WA Police were advised of the decision in a letter detailing the Commission's concerns.⁵ Following the Commission's letter, WA Police added a further section to the Initial Report (the **Addendum**).

The Outcome of the Investigation

- 30 The Initial Report concluded that:
- (a) The officers had not contravened any law in dealing with Mr Hayward-Jackson.
 - (b) The move on order was incorrectly completed with the inclusion of the disorderly conduct offence. A developmental discussion was held with the second officer who was the officer who made the order.

⁴ Section 41 provides that the Commission may review the way an 'appropriate authority' has dealt with serious misconduct, in relation to either a particular allegation, complaint, information or matter involving serious misconduct or in relation to a class of allegation, complaint, information or matter involving serious misconduct. WA Police are an 'appropriate authority'.

⁵ Letter to WA Police, Referral of allegations pursuant to CCM Act s 41, 12 March 2025.

- (c) The officers had not acted unreasonably, unjustly or in a way that was oppressive.
- 31 The Addendum did not alter the conclusions previously reached - that there was no inappropriate conduct by the officers as they had not acted contrary to law and their actions were not unreasonable, unjust or oppressive.

THE SEARCH

The Reasons why WA Police Found the Search was Lawful

32 WA Police merely noted in the Initial Report that Mr Hayward-Jackson was in a declared area and provided no further justification for the search conducted by the senior officer. The Commission advised that the report contained insufficient detail to establish why it had concluded the search was lawful. The Commission referred to s 69(4) of the CIA in providing that advice.

33 WA Police responded in the Addendum:

The entire area of the convention centre was subject to a Section 69 CIA Declaration, authorising police to conduct a basic search on any person within that declared area, if they did not wish to leave. When provided with this by the [senior officer], having already had the opportunity to pay for his ticket, Hayward-Jackson stated he would not leave the area, that he had to get his car. At this point, even with access to the pay machines Hayward-Jackson continues to discuss the subject with police. Given he chose not to leave, the powers of Section 69 CIA gave the officers the power to search.

The Commission's Opinion

34 So far as is relevant, s 69(4) and s 69(5) of the CIA provide:

(4) *If the powers in this section may be exercised in a public place by a police officer, the officer —*

(a) ...

(b) *having informed a person who is in the place that he or she will be ordered to leave the place unless the person consents —*

(i) *to undergoing a basic search;*

...

may order the person to leave the place if the person does not consent.

(5) *If a person does not obey an order given by a police officer under subsection (4), the officer may physically enforce the order.*

35 Accordingly, under s 69:

(a) the order to which s 65(5) refers is an order requiring a person to leave a place;

(b) a search can only be conducted if the person consents - that appears not only from s 69(4) but also from s 65(6), which provides for how a search is to be conducted and

commences, 'if a person who is ... in a public place consents to undergoing a basic search ...';

- (c) a police officer is not permitted to conduct a search if a person does not consent; rather, the officer may physically remove the person from the place.

36 The body camera footage clearly established that Mr Hayward-Jackson did not consent to a search of his person but the senior officer advised that he intended to search him anyway and a search was subsequently conducted. That was contrary to s 69 of the CIA. It was not suggested that the senior officer was exercising a different statutory power.

37 The senior officer stated in the investigation that he was entitled to search Mr Hayward-Jackson under s 69 because he would not leave the carpark when requested to do so. That misunderstood the effect of the section.

38 That misunderstanding was also shared by WA Police in conducting the investigation. Neither the Initial Report or the Addendum considered the actual effect of s 69. That was despite the Commission drawing the attention of WA Police to s 69(4) and the unambiguous wording of the section when read with s 69(5) and s 69(6). The Commission considered that the investigation by WA Police was inadequate for that reason.

39 Further, in the Commission's opinion it was not open to WA Police to find that the senior officer acted according to law in searching Mr Hayward-Jackson under s 69 of the CIA; rather, WA Police ought to have found that he acted contrary to law.

40 An opinion that police misconduct, has occurred does not mean, and should not be understood to mean, that any person referred to in the Commission's report has committed a criminal or disciplinary offence.⁶

⁶ CCM Act s 217A.

THE REQUEST FOR PERSONAL DETAILS

What Happened During the Incident

- 41 Shortly after being stopped by the police officers, Mr Hayward-Jackson commenced recording his interaction with the officers using his mobile phone. He requested and recorded their name and identifying number.
- 42 Mr Hayward-Jackson was in the process of obtaining the details of the first officer when the senior officer referred to the carpark being a declared area under s 69. Mr Hayward-Jackson interrupted the senior officer by saying, 'I am talking to him', plainly indicating that he was still obtaining the first officer's name and number. He then turned to the senior officer who said, 'you can either leave this area' pointing in the opposite direction to the pay machines as he spoke. Mr Hayward-Jackson immediately responded, 'I am not leaving this area, I have got to get my car. I have got to pay for my car', pointing in the direction of the pay machines. The senior officer then stated he was requesting Mr Hayward-Jackson's details.
- 43 The senior officer was required under s 16 of the CIIPA to have formed a suspicion by this point that Mr Hayward-Jackson had committed or was committing or was about to commit an offence. The request was contrary to law if there were no reasonable grounds for the suspicion.

The Initial Report and Addendum

- 44 According to the Initial Report, the senior officer stated that:
- the officers encountered Mr Hayward-Jackson near one of the pay stations;
 - they asked about his intentions but Mr Hayward-Jackson was reluctant to speak with police and immediately tried to record the interaction;
 - he was unsure if Mr Hayward-Jackson was telling the truth about trying to leave the carpark or whether he was potentially in the carpark to commit an offence;
 - the officers had power under the CIIPA to request Mr Hayward-Jackson's name and to detain him for a reasonable period to obtain and verify his personal details.
- 45 WA Police gave the following reasons in the Initial Report for why it had been concluded that the request for Mr Hayward-Jackson's personal details was lawful:

It could be argued that had the officers allowed Hayward-Jackson to leave, after paying for parking, there would have been no need for the detention and search. However, [the senior officer] explained, he could not be certain Hayward-Jackson actually had a vehicle parked in the car park, the parking ticket produced by Hayward-Jackson could have been picked up off the ground. Further, he felt given the high risk of unlawful protest action, it was best to be certain he properly identified who Hayward-Jackson was and ensure he left the area. [The senior officer] considered the possibility that

Hayward-Jackson did have his car parked in the car park, but could have been planning unlawful protest actions and simply used the opportunity to say he was leaving when confronted by police. [The senior officer] stated he didn't know if Hayward-Jackson was in the car park to interfere with vehicles or to try and gain access to the inside of the venue for unlawful protest action, as there was an unsecured elevator in the car park leading up to the venue.'

46 As part of its review, the Commission advised WA Police that this statement did not sufficiently explain why the request for Mr Hayward-Jackson's details under s 16 of the CIIPA was lawful. The Addendum added a further explanation for the conclusion reached by police to the effect that:

- Mr Hayward-Jackson's initial interaction with the first and second officers was described as 'irate';
- the senior officer attempted to explain the effect of s 69 of the CIA - that Mr Hayward-Jackson must leave the area or be subjected to a search - but Mr Hayward-Jackson stated that he was not leaving the area as he had to get his car;
- the senior officer asked for Mr Hayward-Jackson's personal details as he was continually interrupted by Mr Hayward-Jackson and accordingly, prevented from carrying out his duty;
- Mr Hayward-Jackson had 'unfettered' access to the pay station but had decided to engage with police officers rather than pay for his parking.

The Commission's Opinion

The Investigation by WA Police

47 The Commission considered that WA Police failed to adequately address the issues raised by the allegation that the senior officer acted contrary to law in requesting Mr Hayward-Jackson's personal details.

48 There was a significant and unexplained difference between the Initial Report and the Addendum on the reasons why the senior officer requested Mr Hayward-Jackson's personal details. The effect of the Initial Report was that the senior officer made the request because he considered it was possible Mr Hayward-Jackson intended to commit an offence; that is, the justification for the request was said to be a suspicion held by the senior officer about Mr Hayward-Jackson's intentions. There was no reference to any act by Mr Hayward-Jackson, apart from being initially reluctant to speak with the police officers.

49 The Addendum, on the other hand, justified the request by referring to Mr Hayward-Jackson's actions during the incident which were said to have prevented the senior officer from carrying out his duty. The Addendum did not identify what further investigative action was taken by WA Police after the Initial Report or how that action explained the difference between the two reports.

- 50 The difference between the Initial Report and the Addendum raised a question about what, if any, suspicion was actually held by the senior officer. The Addendum did not identify any suspicion he held for the purpose of s 16 of the CIIPA. Did the senior officer suspect that Mr Hayward-Jackson had committed or was committing or intended to commit the offence of obstructing a police officer from performing their functions (an offence under s 172 of the *Criminal Code*) immediately prior to requesting his personal details? If so, why was that not identified by the senior officer in his statement prior to the Initial Report?
- 51 Further, neither the Initial Report nor the Addendum considered whether there were reasonable grounds for any suspicion that might have been held by the senior officer. The reports merely provided reasons for the request; they did not deal with whether those reasons provided were based on facts that rationally supported any suspicion held by the senior officer. That was the question that had to be answered in determining whether the request for Mr Hayward-Jackson's personal details was lawful. WA Police either did not consider the question or simply assumed that any suspicion the senior officer held was reasonable.
- 52 There were other matters which, in the Commission's view, were relevant to whether there were reasonable grounds for any suspicion held by the senior officer for the purpose of s 16 but which were not considered by WA Police. Those matters are discussed immediately below.

Concerns About the Request for Mr Hayward-Jackson's Details

- 53 In the Commission's view, it is difficult to conclude that there were reasonable grounds for suspecting that Mr Hayward-Jackson had committed or was committing or intended to commit an offence on the matters stated in the Initial Report. Mere speculation that Mr Hayward-Jackson might have picked up a parking ticket off the floor, and that he did so in some way that was connected with possible offending, does not, in the Commission's view, provide a reasonable ground for the purpose of s 16. Similarly, a general concern about the risk of unlawful protests at the conference held in the Centre might provide a reason for stopping and questioning Mr Hayward-Jackson but it is difficult to see how it could provide a reasonable ground for forming a suspicion about his actions and intentions for the purpose of s 16. A general concern of the kind held by the senior officer does not, by itself, provide a reasonable ground for forming a suspicion about a particular person's conduct.
- 54 There are also difficulties in concluding that there were reasonable grounds for suspecting that Mr Hayward-Jackson had committed or was committing or intended to commit the offence of obstructing the senior police officer in performing their functions. The function being performed by the police officers was to exercise the powers conferred by s 69 of the CIA.
- 55 Prior to the request for his particulars, Mr Hayward-Jackson twice communicated his intention to leave the carpark and the Centre (that is, the declared area) by paying the parking fee and exiting in his car. There was no apparent reason to invoke the power under s 69; Mr Hayward-

Jackson was prepared to voluntarily leave the area (that was his reason for being in the carpark), provided he could do so in his car. There was nothing unlawful or unreasonable in the position taken by Mr Hayward-Jackson and arguably, there was no reason to give a direction under s 69 and no function to be performed by the senior officer under that section. If so, there was no function or duty to be performed by the senior officer or the other officers which Mr Hayward-Jackson had obstructed within the meaning and for the purpose of s 172 of the *Criminal Code*.

- 56 There was also a real question as to whether Mr Hayward-Jackson's actions did, in fact, prevent or hinder the senior officer from performing a function under s 69 of the CIA in any event. In the Commission's view, there is a good argument that neither Mr Hayward-Jackson's desire to record the police officer's details, including by completing his brief conversation with the first officer, or his interruption to protest that would not leave the area without his car (following the senior officer apparently indicating that he should leave without retrieving his car) could be regarded as an act that obstructed the senior officer in performing any function under s 69.
- 57 There are other matters which, in the Commission's view, were relevant to the circumstances in which the request for Mr Hayward-Jackson's personal details was made but which were not further dealt with in the Initial Report and Addendum:
- (a) It was not clear from the Addendum whether the senior officer considered at the time of the incident (or even in the investigation by WA Police) that Mr Hayward-Jackson had obstructed him from performing his functions. It is possible that the reference to Mr Hayward-Jackson preventing the senior officer from carrying out his duty was the view of the officer conducting the investigation for WA Police rather than that of the senior officer at the time of the incident.
 - (b) The request for Mr Hayward-Jackson's personal details was made immediately after he stated that he would not leave the carpark without his car. It might be inferred that this was the reason for requesting Mr Hayward-Jackson's details. That is especially as -
 - The only explanation given by the senior officer to Mr Hayward-Jackson for requesting his details was that he was in a declared area. There was no reference to s 16 of the CIIPA – the only reference was to s 69 of the CIA.
 - At no time during the incident did the senior officer put to Mr Hayward-Jackson that he had committed or was committing or was about to commit an offence and Mr Hayward-Jackson was not questioned about any possible offence. It was not suggested to Mr Hayward-Jackson that he had obstructed or was at risk of obstructing the senior officer from carrying out his functions as a police officer.
- 58 Whether those matters were put to the senior officer as part of the investigation by WA Police was not apparent from the Addendum.

59 Finally, the Commission had difficulty in accepting the proposition that Mr Hayward-Jackson had 'unfettered' access to the pay machines but had chosen to engage with the police officers. The proposition suggested that Mr Hayward-Jackson was free to leave the interaction with the police officers at any time but had chosen to remain with the consequences that followed. It did not occur to Mr Hayward-Jackson, and in the Commission's view it would not have occurred to a reasonable person in his position, that Mr Hayward-Jackson could simply walk away from the police officers at any time before he was given permission to do so by the senior officer. How the proposition that he could do so was to be reconciled with the exercise of the powers conferred by s 69 of the CIA and s 16 of the CIIPA was not explained in the Addendum.

THE MOVE ON ORDER

60 Section 27(1) of the CIA provides:

*A police officer may give a move on order to a person if the officer reasonably suspects that the person, while in a public place or in a vehicle used for public transport (the **relevant place or vehicle**) —*

- (a) *is doing an act —*
 - (i) *that involves the use of violence against a person; or*
 - (ii) *that will cause a person to use violence against another person; or*
 - (iii) *that will cause a person to fear violence will be used by a person against another person;*

or

- (b) *is just about to do an act that is likely to —*
 - (i) *involve the use of violence against a person; or*
 - (ii) *cause a person to use violence against another person; or*
 - (iii) *cause a person to fear violence will be used by a person against another person;*

or

- (c) *is committing any other breach of the peace; or*
- (d) *is hindering, obstructing or preventing any lawful activity that is being, or is about to be, carried out by another person; or*
- (e) *intends to commit an offence; or*
- (f) *has just committed or is committing an offence.*

The Reasons why WA Police Found the Move On Order was Lawful

61 As previously noted, the move on order identified two offences Mr Hayward-Jackson had allegedly committed: disorderly conduct and obstructing a public officer. WA Police concluded, rightly in the Commission's view, that Mr Hayward-Jackson's conduct had not been disorderly.

62 However, WA Police also concluded that the move on order was nevertheless lawful as Mr Hayward-Jackson had committed the offence of preventing a police officer from performing their duty contrary to s 172 of the *Criminal Code*. It was said in the Initial Report:

There is no disorderly conduct on the BWC footage, however, Hayward-Jackson prolonged the identification process by stalling and then obstructed the police by trying to grab his driver's license out of [the first officer's] hand while he was attempting to verify Hayward-Jackson's identity on his OneForce phone. Where [the

first officer] had to stop what he was doing and [the senior officer] had to put his arm between [the first officer] and Hayward-Jackson to prevent him from interfering.

- 63 The Addendum added that the second officer had advised it was his habit to tick the 'disorderly box' in completing a move on order as most orders he had issued included that offence. He subsequently participated in a developmental discussion with the investigating officer which focused on the importance of attention to detail and issuing orders that contained accurate information.

The Commission's Opinion

- 64 WA Police alleged that Mr Hayward-Jackson had committed a second offence against s 172 of the *Criminal Code* in concluding that the move on order was lawful. However, WA Police did not interview or take a statement from the second officer. Consequently, the Commission did not know whether he suspected that Mr Hayward-Jackson had committed the offence on the grounds stated in the Initial Report. That is relevant for two reasons: first, s 27 requires a police officer to form a reasonable suspicion and second, because WA Police had also apparently concluded that Mr Hayward-Jackson had committed another offence against s 172 earlier in the incident.
- 65 In the Commission's view, a statement ought to have been taken from the second officer to properly identify the basis upon which he made the move on order: did he make the order because he suspected that Mr Hayward-Jackson was obstructing the first officer on the grounds stated in the Initial Report or did he suspect that Mr Hayward-Jackson had obstructed the senior officer earlier in the incident or both? Was he merely ticking another box without forming an actual suspicion based on reasonable grounds?
- 66 It appears that WA Police considered the matters stated in the Initial Report provided reasonable grounds for the second officer's suspicion and consequently, for making the move on order. However, s 172 is concerned with acts that obstruct the performance of a function by a public officer. The function that was being performed by the first officer, which it was said Mr Hayward-Jackson had obstructed, was not identified by WA Police.
- 67 If the function was to obtain Mr Hayward-Jackson's personal details, then arguably that function had been completed before the events referred to in the Initial Report had occurred. Mr Hayward-Jackson was only required by the senior officer to provide his name, date of birth and address. He provided those details by handing over his driver's licence to the senior officer who then handed the licence to the first officer. The first officer imaged the licence. He was holding the licence after it had been imaged when Mr Hayward-Jackson reached out to the first officer to retrieve his licence (saying 'thank you' as he did so) and the senior officer intervened.
- 68 In the Commission's view, it was necessary for WA Police to consider whether Mr Hayward-Jackson had provided his details and complied with the request of the senior officer, and his obligation under s 16 of the CIIPA, once he had provided his licence and the licence had been

imaged. If that view is correct, then Mr Hayward-Jackson could not have obstructed the first officer in performing the function of obtaining Mr Hayward-Jackson's personal details.

- 69 If the function being performed by the first officer was verifying Mr Hayward-Jackson's personal details using his OneForce phone, then it is difficult to see how Mr Hayward-Jackson obstructed the first officer from performing that function. The first officer had the details which were to be verified imaged on his phone. Seemingly, Mr Hayward-Jackson's act in reaching out to retrieve his licence did not hinder the process of verifying the details provided by the licence.
- 70 The Commission accepts that the second officer was only required to form a suspicion before exercising the power under s 27. It is also accepted that the analysis provided above may seem overly elaborate given the nature of the incident. However, in the Commission's view, it was necessary for WA Police, in conducting the investigation, to determine the second officer's state of mind and whether any suspicion he held was based on reasonable grounds. A proper analysis of those matters would better inform any action taken in relation to the second officer - for example, the content of any development discussion.

UNREASONABLE, UNJUST OR OPPRESSIVE?

The Reasons why WA Police Found the Officers had not Acted Unreasonably, Unjustly or in a Way That Was Oppressive

- 71 WA Police concluded in the Initial Report that the police officers had not acted unreasonably, unjustly or in a way that was oppressive as:
- (a) the senior officer had assisted Mr Hayward-Jackson to film the incident;
 - (b) the explanation provided by the senior officer of the legislative powers he exercised 'would suggest he acted according to his understanding of his powers and therefore was not unreasonable, unjust or oppressive';
 - (c) Mr Hayward-Jackson was only detained for the time necessary to establish his details and conduct a search and he was allowed to leave after the move on order had been made;
 - (d) the senior officer had security monitor Mr Hayward-Jackson's departure from the carpark rather than follow him to his car as he did not wish to cause him further anxiety;
 - (e) the demeanour of the first and second officers did not demonstrate unreasonable, unjust or oppressive behaviour.

- 72 The Addendum concluded with the following observations:

'The [investigating officer] discussed with the group that while [the senior officer] was able to satisfactorily explain his rationale ... there was an alternative option. After verifying Hayward-Jackson's identity, he could have issued the initial notification again regarding the Section 69 CIA Declaration either leave or be subject to a search. At which point, if Hayward-Jackson wanted to leave he could have observed him to pay for parking and followed him to his vehicle, allowing him to leave. However, given Hayward-Jackson had unfettered access to the pay station and after walking to the machines without police interference, decided to return and engage with police rather than pay for his parking, its reasonable to accept [the senior officer's] suspicions.'

The Commission's Opinion

- 73 The Addendum partly acknowledged what the Commission considered ought to have occurred when Mr Hayward-Jackson was stopped by the first and second officers. Mr Hayward-Jackson almost immediately stated that he was going to the pay machines to pay for his car parking. If true, he was not intending to take part in unlawful protest. Whether it was true could be easily established by inviting him to pay for his parking and monitoring his exit from the car park. Indeed, arguably a reasonable suspicion about Mr Hayward-Jackson's actions or intentions could not have been formed without giving him that opportunity.

- 74 The failure to take that obvious step, with the consequence that the police officers then exercised coercive powers against Mr Hayward-Jackson was at the heart of the allegation that three of the four attending officers (the senior officer and the first and second officers) had acted unreasonably, unjustly and in a way that was oppressive.
- 75 The Addendum sought to address that aspect by suggesting that Mr Hayward-Jackson could have paid for his parking ticket but chose, instead, to engage with the police officers. As has already been noted, the Commission considered that it would not have occurred to Mr Hayward-Jackson, or a reasonable person in his position, that he could simply leave the police officers whenever he chose. Indeed, the Addendum referred to Mr Hayward-Jackson being allowed to leave only after his personal details had been provided.
- 76 The Addendum suggested that Mr Hayward-Jackson had walked to the pay machines but decided to return to engage with the officers. In fact, the only time Mr Hayward-Jackson approached the pay machines was early in the incident when he placed the flagpole on the ground, away from the police officers. That occurred before the exchange which resulted in the senior officer requesting Mr Hayward-Jackson's personal details. Furthermore, it occurred after the first officer had stated that the police could request Mr Hayward-Jackson's personal details, search him and require him to move on if he did not state why he was in the carpark.
- 77 It was relevant in assessing the police officers' conduct that they were tasked to ascertain why Mr Hayward-Jackson was in the carpark but part way through the incident the senior officer told him that he was not interested in why he was in the carpark. That statement was made in response to Mr Hayward-Jackson endeavouring to prove he was in the carpark to retrieve his car by showing his parking ticket.
- 78 Finally, the reasons given by WA Police in the Initial Report for why the officer had acted reasonably, justly and in a way that was not oppressive included a reference to the senior officer's state of mind. Whether a police officer has acted unreasonably or unjustly or oppressively is to be determined objectively and not according to the police officer's subjective belief.

THE COMMISSION'S REVIEW

The Nature of a Review by the Commission

- 79 A review by the Commission under s 41 is not an investigation. A review determines whether the investigative actions taken by a public sector agency such as WA Police were, in the Commission's opinion, appropriate. The Commission will also consider the conclusions reached by the agency - whether they were supported by the available evidence and reflected an impartial and reasoned assessment of the conduct under investigation.
- 80 The Commission cannot substitute its opinion for the outcome determined by the agency and it cannot compel WA Police or any other public sector agency to accept its findings or opinions or act on its recommendations.

The Outcome of the Review

- 81 In the Commission's opinion, the investigation by WA Police into the referred allegations was inadequate. The investigation did not consider all the issues raised by the referred allegations and there were other aspects of the investigation which concerned the Commission.
- 82 The body worn camera footage of the incident clearly established that Mr Hayward-Jackson refused to consent to being searched. A police officer can only search a person under s 69 of the CIA if they consent. In the Commission's opinion, it was not open to WA Police to find that the search of Mr Hayward-Jackson was lawful.
- 83 As has been explained, a police officer must form a reasonable suspicion before the power to request a person's details or make a move on order can be exercised. In the Commission's view, the investigation did fully consider whether any suspicion held by the officers who exercised those powers was reasonable. Consequently, the Commission considered that the reasons provided by WA Police did not adequately explain the finding that the powers were lawfully exercised. That was despite the Addendum to the Initial Report.
- 84 The Commission was also concerned by the finding that the police officers involved in the incident had acted reasonably, justly and in a way that was not oppressive. The incident ended with the senior officer telling Mr Hayward-Jackson that 'by all means pay for your ticket and skedaddle'. It was plain from the body worn camera footage that had been his intention when he was intercepted by the police officers; it was what he repeatedly stated he wanted to do during the incident; and it was what he was able to do at the end of the incident as he had a valid parking ticket, he could pay the parking fee and his car was in the carpark.
- 85 As WA Police later observed, the incident would not have occurred if Mr Hayward-Jackson had been allowed at the outset to pay the parking fee and exit the carpark in his car - if necessary, while being observed by the attending police officers. As has already been observed, that was the obvious course of action; it would not have been necessary for the police officers to exercise any coercive power had it been taken.

Other Concerns

- 86 The Commission held other concerns about the investigation or matters arising out of the incident.
- 87 First, an investigation by the District Office to which a subject police officer is attached can be problematic. It can place investigating officers in a potentially difficult position and raises, at least, the perception of a possible conflict of interest or a lack of impartiality.
- 88 Second, the Commission understands that Professional Standards Command undertakes a quality assurance review of investigations conducted by District Offices. It is not clear why the issues raised by the Commission following the Initial Report were not identified and fully addressed in the Addendum.
- 89 Third, it appears that the police officers who dealt with Mr Hayward-Jackson (and possibly, the officer who allocated the task of intercepting him given the reference to establishing his 'credentials') did not have a proper understanding of the limits on the powers conferred by s 69. The power to declare a place a declared area is an exceptional power. It is important that those who exercise the powers conferred by s 69 in respect of a declared area are properly briefed about the limits of those powers.
- 90 Finally, the incident involving Mr Hayward-Jackson might be considered a relatively minor matter - the exchange between Mr Hayward-Jackson and the police lasted about 13 minutes; Mr Hayward-Jackson was free to go at the end of the incident; he was not arrested or charged with an offence and only minimal force was applied by a police officer for a few seconds at one point in the incident. That appears to be how it was viewed by WA Police on the six allegations being referred by the Commission for further investigation.
- 91 However, the allegations referred by the Commission raised questions about whether two of the attending police officers had exercised coercive powers contrary to law. WA Police necessarily have exceptional powers to maintain public order. The community trusts police to exercise those powers according to law and in a way that is reasonable, just and not oppressive. Instances where they may have exercised a coercive power unlawfully, or in a way that is unreasonable, unjust or oppressive, undermine public trust in the police. That is so whether the conduct occurred in the course of day-to-day interactions with members of the public or during an investigation into a serious crime.
- 92 WA Police also have the power to investigate and sanction misconduct by police officers. The proper and impartial exercise of those powers are also essential to maintaining public confidence in the police - that misconduct will be identified and dealt with in an appropriate way if it has occurred.

The Commissioner of Police Representations

- 93 Section 86 of the CCM Act provides that before reporting to Parliament any matter that is adverse to a person or body, the Commission must give the person or body a reasonable

opportunity to make representations concerning the adverse matter. The Commission complied with that requirement by providing WA Police with a draft of this report. The Commissioner of Police made representations in response to the draft.

- 94 The Commissioner accepted that there had been a misunderstanding regarding the interpretation and application of s 69 of the CIA by the officers who dealt with Mr Hayward-Jackson and that the misinterpretation had extended into aspects of the subsequent assessment of the officers' conduct by WA Police. It was noted that s 69 conferred powers that were intended for use in limited and specific circumstances and the Commissioner acknowledged the importance of ensuring that such powers were consistently understood and applied.
- 95 The Commissioner maintained that the actions of the officers in engaging with Mr Hayward-Jackson was not unreasonable, unjust or oppressive. It was noted that the engagement was relatively short in duration and the officers had conducted themselves in a polite, calm and professional manner and were not overly 'obtrusive'. Further, Mr Hayward-Jackson had not been arrested, charged or subjected to prolonged detention and the engagement concluded with him being permitted to leave the location. The officers' actions occurred in the context of a genuine security concern associated with a high-risk event.
- 96 However, the Commissioner also accepted that an opportunity had been missed to de-escalate the situation at an early stage by allowing Mr Hayward-Jackson to pay for his parking and depart the area under observation.
- 97 The Commission accepts the Commissioner's comments regarding the officers' demeanour when engaging with Mr Hayward-Jackson. However, the Commission was not concerned with the officers' demeanor in finding that their conduct was unreasonable. Rather, the Commission's concern was with the effect of the officers' actions – that is, whether their actions were reasonable in the circumstances. Further, the officers' actions were obtrusive in that Mr Hayward-Jackson was, in the Commission's view, unreasonably and unnecessarily detained while the police exercised various coercive powers. The reasonable and non-oppressive action open to the officers was to allow Mr Hayward-Jackson to leave the car park under observation without exercising any coercive power.
- 98 The Commissioner acknowledged that the review process undertaken by WA Police did not comprehensively address the issues that had been raised by the Commission when the allegations were referred for investigation and action. The importance of a continued focus on quality assurance within the Professional Standards Command was recognised.
- 99 The Commissioner also accepted that the Commission's review highlighted a broader operational issue concerning the intersection between protest activity and access to declared areas. The limited use of the powers under s 69 of the CIA, coupled with operational complexities, demonstrated the need for improved planning. That included explicit referencing and guidance to officers using s 69 powers to ensure appropriate responses. The Commissioner noted that officers received training in relation to the powers conferred by s 69, but it was accepted that additional action was required to ensure the use and limits of the

powers were explicitly covered in operational orders and event action plans and reinforced during operational briefings for major events. Further, Professional Standards Command have initiated further consultation with the Police Academy and Police Promotions to explore opportunities to adjust training and assessment to more explicitly include issues in the interpretation and use of the powers conferred by s 69.

Recommendation

- 100 The Commission recommends under s 43, CCM Act that WA Police officers are:
- (a) trained on the powers that can be exercised under s 69;
 - (b) briefed on those powers when it is proposed to declare an area under s 69 as part of an operation such as providing security around an event.
- 101 The Commission notes and welcomes the Commissioner's advice that it is proposed to implement those recommendations.