

*Joint Standing Committee on the Corruption and Crime Commission — Fourth Report —  
“Parliamentary Inspector’s report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms”*

Resumed from 12 October.

*Motion*

**Hon ALISON XAMON:** I move —

That the report be noted.

I want to make some comments about this report, which I think is a report of important public interest. If members have not had an opportunity to read the report, I urge them to get a copy. The committee has made a couple of recommendations. It follows the report by the parliamentary inspector, who is responsible for the oversight of the Corruption and Crime Commission and whose report is also tabled at the back of this report.

For those people who are unaware of the history, I might quickly summarise the circumstances that have led to this report. I imagine this may provoke some people’s memories about this incident, because it has been the subject of considerable media coverage over the past decade. In summary, in November 2008, Dr Cunningham and his wife, Catherine Atoms, were arrested while they were attempting to help a man who had fallen into a garden bed in Fremantle. During the course of their arrest they were both tasered and subject to rough treatment by the arresting police officers.

In December 2008, Dr Cunningham complained to the Corruption and Crime Commission about the incidents and the CCC oversaw an internal police investigation that found no evidence of misconduct on behalf of the police officers. I will say a little bit more about that, because the internal police investigation was done effectively by the same people within the station. In April 2010, Dr Cunningham and Ms Atoms were subject to criminal proceedings for their alleged conduct leading to their arrest on 2 November 2008 and the charges were subsequently dismissed. Then in mid-2010, Dr Cunningham wrote to WA Police, the CCC and the Parliamentary Inspector of the Corruption and Crime Commission regarding the ongoing investigation of the incident. I think WA Police, almost predictably, said that they had found that the officers had acted appropriately. The CCC referred the matter back to WA Police for investigation and ultimately determined not to take any further action, so there was no joy for Dr Cunningham and Ms Atoms at that point.

In 2011, the parliamentary inspector decided to investigate the matter and, as I have mentioned, that report is annexed to this report. The parliamentary inspector found that serious and credible complaints concerning police use of excessive force should be subject to a full independent investigation by the CCC. I note, and I think this is quite significant, that in December last year, Dr Cunningham and Catherine Atoms successfully sued the police officers as well as the state of Western Australia. The District Court determined that the nature of the police officers’ conduct was unlawful and malicious, and Dr Cunningham and Ms Atoms were awarded general aggravated exemplary and special damages totalling just over \$110 000 and more than \$1 million respectively. That was after going through all the court proceedings.

What is of great concern to me, however, is that despite having had their case demonstrated in a court of law and despite being awarded damages for what happened to them, the CCC still has not seen fit to further investigate the matter. There are two recommendations from the committee about this. The first recommendation is —

That the Corruption and Crime Commission recommends to the Commissioner of Police that the conduct of the police in this matter is reinvestigated by experienced investigators unconnected to the original internal investigation. Focus would be on ascertaining whether any criminal conduct on the part of police occurred and if so, consideration be given to appropriate prosecution and disciplinary proceedings.

The second recommendation is —

That the Corruption and Crime Commission reassess and report on the conduct of the police involved in the complaint made by Dr Cunningham and Ms Atoms, in the light of all relevant facts, including those established upon investigation and having regard to the findings made by Her Honour Judge Davis in CUNNINGHAM – v – TRAYNOR [2016] ...

They are the recommendations of the committee, effectively backing up the independent report by the parliamentary inspector, who has found that in effect justice has not been served for these two people. This is something we should be particularly concerned about. Police justifiably enjoy a particular status within our community as the people who are responsible for upholding the laws of this state, and that means that when the police breach these laws, when people are subject to police misconduct, it needs to be treated with absolute, utmost seriousness. Likewise, the CCC has unique and very extensive powers and it has an obligation as the independent body charged with the oversight of overarching investigation into what is happening with police corruption to do that.

Quite frankly, I am astounded by the decision of the CCC, with all the evidence that has been made available to it both through an independent assessment by the parliamentary inspector, which all members are welcome to read, and by an independent court that has the full weight of the burden of needing to weigh up evidence in front of it. They found that wrongdoing had occurred and yet the CCC has still formed the view that it will just let it go and

does not have to deal with it anymore. We have made comment about this in the report, but it is only the sheer tenacity of people like Dr Cunningham and his wife, Catherine Atoms, that has enabled things to get to this point. I shudder to think about how many people do not have the sorts of resources these people have at their disposal in terms of being educated and having a level of privilege to be able to pursue this. I shudder at the number of people who have also been subject to gross misconduct by the police, but have never had any opportunity to pursue it as far as they can.

I think this is an issue of enormous public interest. This is something that all members should be very, very concerned and very upset about, because the one thing we expect is that when wrongdoing occurs in the police force, it will be independently assessed in the police force. If that does not occur, we expect the CCC to step in to ensure that wrongdoing is uncovered, remedied and addressed. In this case, I have to say that the system has comprehensively failed Dr Cunningham and Ms Atoms. I also point out that even though they have been through an extensive court process and were awarded damages, they are still being dragged through an appeal process. I think that is an absolute abomination. There is still no independent investigation or oversight pertaining to their matter. They are still being dragged through the courts.

This has been 10 years of their lives. I cannot imagine the toll that this has taken on the two of them. I have to say that this is something that every single member in this place should be paying very close attention to and should be very concerned about. I am not quite sure what is happening with the government response to this report, but the one thing that absolutely needs to happen is for the CCC to suck it up, recognise that it has got this wrong and accept that it should have investigated properly in the first place and that it failed to do that. Now is the time for the CCC to do its job. It is getting a lot of money and it has an awful lot of power. The CCC needs to recognise that it got this wrong. It needs to backflip and ensure, as per the first committee recommendation, that this is properly investigated.

I will also say that in the transcript of the court hearings a number of really concerning matters come to light, and that forms the basis of the second recommendation. There are some serious allegations of potential wrongdoing that are worthy of further investigation. They are not necessarily canvassed in the full report, but, of course, the court transcript is on the public record. I urge members to look at this.

**Hon SIMON O'BRIEN:** I want to comment on this report. This is why Parliament has a standing committee system. This report is from a joint standing committee, one that we place a great deal of store in. I would urge members who have not read this report that they need to read it, as I did, cover to cover. I could not believe the comments in the Chair's foreword at the start of the report. I could not believe what I was reading. I could not believe that with all the checks and balances that have been installed in our systems that it should have to get to this. The police, quite clearly, right through the force, behaved in a way that is less than commendable and reflects very poorly on the police force. I am a big supporter of the WA Police Force and when they have been under attack before I have stood up in this place and defended them when it was not fashionable to do so. But on this occasion, the several officers who were involved in the first instance in this incident did nothing except bring the force into disrepute and in so doing, according to Her Honour, probably broke the law as well.

The matter was not taken up by the Corruption and Crime Commission—or it declined to take it any further—on several occasions. Two successive Parliamentary Inspectors of the Corruption and Crime Commission have raised it with the CCC and even then, all the CCC seems to want to do is find excuses not to open it for further investigation. That is not what it is there for. In the same way as I would never have thought that the CCC is there as some sort of sledgehammer to be used to crack walnuts over very minor matters—we have seen a lot of that happen over the years—its repeated refusal to be involved in this is just staggering. Similarly staggering is the conduct of the police force, at all levels, in not wanting to revisit this matter again and again.

I share Hon Alison Xamon's view that were it not for Dr Cunningham's and Ms Atoms' tenacity and determination, this would not have arrived at where we are today. I think my friend alluded in her remarks to Dr Cunningham's and Ms Atoms' ability to persevere and work their way through a very unresponsive system. It ultimately got them somewhere, but the vast majority of people dealing with police in similar circumstances would in no way have the skills, resources or the credibility to come out on top. We rely on police to behave, in the first instance, in accordance with the law. The description of the events as it emerged here is absolutely appalling. I have been involved in law enforcement and I cannot comprehend why the officers involved behaved as they did. That in itself, we would think, would call for its own line management to inquire into what happened, but apparently that is not seen as a priority.

I am not going to go through the report in detail, but I draw particular attention to page 19 of the report, on which our parliamentary inspector refers to the findings of fact and law by Her Honour that are relevant to his report that then gave rise to this report. The findings of Her Honour about the attitudes that were brought to the court by the three police officers involved are very damning indeed. I suggest members read this report cover to cover for this reason. The standing committee system that all members are a part of exists for a reason. Sometimes the things that happen at standing committees—dare I say, a delegated legislation committee that has a lot of routine matters

that necessarily have to be gone through—can be fairly mundane sometimes. It gets down to a bit of a grind when members have to go through, for example, hundreds of pieces of subsidiary legislation, most of which are going to be given a tick anyway. But it is very important, using this report as an example of what our standing committees can and should be doing. I remind members that if it were not for the parliamentary inspector process set up by the Parliament to oversight one of the agencies set up by Parliament, where would this be? Even now, after the damning findings in the District Court, the government and its agencies will not tap the mat and say, “We got it wrong”, and that is not good enough. I am sure we will all look out with great interest for the government response to this report. Because, with Dr Cunningham and Ms Atoms, there but for the grace of god goes anyone in this community, including any one of us, and so we will look out with great interest for the government’s response.

In concluding my remarks I want to make it clear that I know a policeman’s job is not always a happy one. It is damn tough and sometimes they have to deal with some pretty nasty types out there at night. Sometimes it is a bit harder to distinguish whether people are deserving of vigorous police intervention or they are just caught up in something like trying to help some bloke who has fallen into a pot plant, as was the case here. We need officers who are able to save some judgement, compassion and ultimately integrity when they are making these decisions, even when they get them wrong. As to changing CCTV footage and erasing it, giving evidence that no-one can rely on and all the rest of it, we expect more from our police. I know that all my friends in the police force do not want to be tarred with that brush because they are people of integrity. We need a firm response, now and at length, to this matter to help not only restore public confidence, but also encourage officers that we share their professional pride in the job that most of them seek to do.

**Hon NICK GOIRAN:** I am pleased to join with Hon Alison Xamon and Hon Simon O’Brien in noting the fourth report of the Joint Standing Committee on the Corruption and Crime Commission. I thank the committee for the work it has done in bringing this report to the attention of the Parliament. My two colleagues who have just spoken mentioned that they are looking forward to a government response to this committee report. Unfortunately, there will be no government response to this report. There is a capacity for committees to ask for a government response. I think “ask” is the right word to use—ask, command, request; I am not sure. That has not been done in this instance. It has been done in the case of the earlier reports that we considered this afternoon. The Joint Standing Committee on the Corruption and Crime Commission operates under the standing orders of the Legislative Assembly. Standing order 277(1) of the Legislative Assembly empowers a committee to direct that a minister provide a response. Therefore, although I would be the first to harass the government in the event that it failed to do something, in this instance, in fairness to members opposite, no government response is required. Having said that, I believe that what has been said by Hon Alison Xamon and Hon Simon O’Brien is sufficient to warrant someone from the government providing a response to this report. The fact that the committee has not directed that the relevant minister provide a response does not mean the government is unable to respond. It would be helpful if someone from the government were to indicate to the house the view of the government about this sorry saga. This is not a one-off event. As has been outlined and is mentioned in this report, this incident goes back to 2008.

**Hon Sue Ellery:** If you will take an interjection, I indicate that I am happy to give you my commitment that I will take that up with the Minister for Police and the Attorney General.

**Hon NICK GOIRAN:** Wonderful. I thank the Leader of the House. That is helpful and entirely appropriate.

This matter has had quite a long history. I recall this matter because it was brought to the attention of the Joint Standing Committee on the Corruption and Crime Commission in 2011 when I was a member of the committee. The then parliamentary inspector had provided a report to our committee, and we tabled that report in the house. The then parliamentary inspector stated in his report that serious credible complaints about police use of excessive force should be subject to a full and independent investigation by the Corruption and Crime Commission. It is laughable that that was examined by the committee in 2011 and we tabled a report in the house, and we are now in 2017 still discussing this matter. The only thing that has transpired in the meantime is that these citizens have had resources at their disposal and have obviously become so exasperated by a failed system that they have taken the matter to court, with spectacular success. It is quite something for a court in the Western Australian jurisdiction to award more than \$1 million in general aggravated, exemplary and special damages. Just a mere award of aggravated damages is highly unusual—it is allowable, but it happens rarely. That again should be a red alert to those involved in this matter that this is not an ordinary case.

I want to mention two things briefly. Firstly, the convention and practice of the Joint Standing Committee on the Corruption and Crime Commission is that when it receives a report from the parliamentary inspector, it has 30 days in which to consider that report and make a decision about whether to table that report in the house. In the event that the committee decides not to table the report, the parliamentary inspector is free to table the report directly in Parliament. It is not necessary for the parliamentary inspector to table the report via the committee, but he or she has the option to do so. That has been the excellent convention and practice of at least the last two parliamentary inspectors, and I am pleased that is continuing, because it is appropriate.

I will not bore members with the detail, but there was an episode in the life of the Corruption and Crime Commission and the parliamentary inspector in which there was a massive dispute between the two—I will say agencies, rather than individuals—and there were suggestions about injunctions and all kinds of things. The commission was able to broker peace by establishing this protocol and convention. This convention provides a further layer of oversight by enabling the joint standing committee to look at a report from the parliamentary inspector before it becomes public. It is often the case that when a report that is highly critical of the CCC is made public, as it was in this case, it becomes explosive. Therefore, it is useful to have someone else look at the report first. That is exactly what has happened in this committee under the chairmanship of the member for Girrawheen. I commend the committee for continuing with that useful practice.

Secondly, I want to mention the reason why this particular report is so important. I also recall an episode in the life of the CCC in which the former parliamentary inspector and the joint standing committee raised the concern that the CCC was not giving enough attention, priority and focus to the independent investigation of complaints against police and was in almost every instance referring everything back to police internal affairs. The concern was that that was not appropriate. After some discussion among those various bodies and agencies, there was a change in attitude by the CCC and greater focus and attention was placed on the police. That was good. However, I fear that the CCC has now reverted to type and is not taking on these investigations itself but is sending everything back to the police. The CCC does not have the resources to respond to every single complaint against the police. However, it has the opportunity to select cases that it will take in-house and investigate. Clearly, this must be one of those cases. If this is not one of those cases, there would be no point in the CCC having any oversight over the police. Two different parliamentary inspectors have expressed concern about this matter. A judge of the District Court of Western Australia has also expressed her view and awarded substantial damages.

I commend the committee for bringing this matter to the attention of the house, and I look forward to at some point in time a verbal response from the government about this disturbing incident.

**The CHAIR:** Hon Alison Xamon, were you about to seek leave to make a further contribution?

**Hon ALISON XAMON:** Yes, I am.

Leave granted.

**Hon ALISON XAMON:** I understand that I have five minutes.

I rise to thank members for their contributions and to thank the Leader of the House for giving an undertaking to draw the attention of relevant ministers to this report and seeking to be able to give a response. I think it is really important that we do not allow this issue to fall off the agenda, precisely for the reasons that have already been articulated. We have many amazing police officers in this state. Police officers I know tell me that they really do not like the rotten apples within their ranks who bring disrepute to the entire force. Likewise, when internal investigations break down, it reflects badly on the entire Police Force as well as other police officers. In this case, I frankly think that the Corruption and Crime Commission has also brought itself into disrepute by stubbornly refusing, despite all the evidence that was presented to it over and over again, to undertake an independent investigation.

I would like to offer a personal apology to Dr Cunningham and Ms Catherine Atoms for what they have been through. I would like to thank them for their sheer bloody-mindedness in making sure they pursued this to try to get some sort of justice. I recognise that it is not over for them yet and it will not be until the whole appeals process is effectively resolved, when it is either withdrawn or found in their favour. I am sorry that a decade on, they are still not able to put this behind them. I hope that at the very least, if the appeals process is disposed of and if the damages are still able to be maintained—even if the CCC decides it will not do its job—there can be some comfort for Dr Cunningham and Ms Catherine Atoms. At the very least, I hope that the Joint Standing Committee on the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission, and, reflecting on comments in this chamber, the members of the Legislative Council, recognise that a wrong has been committed and that justice has not been served. As such, it is important to me that I acknowledge this and offer my apologies for what they have been subject to.

I remain very concerned about the situation with many people who do not have the level of training and education that these two have, as well as the privilege of being white and educated—all these things—that have enabled them to pursue this matter as doggedly as they did. I look forward to hearing the government's response. I particularly hope that a decision is made not to pursue the appeal. I do not think that would be in the interests of justice; it is certainly not in the interests of the wellbeing of those two people who were subject to such ongoing injustices. Again, I urge members to read the report. I think it is really important to have an idea of how wrong things can go and when our systems fail. Systems are in place for very good reasons. When we fail to ensure they do their jobs, it has very real repercussions for innocent citizens. I encourage members to read the report and I thank members for their contributions.

*Consideration Postponed*

**Hon PETER COLLIER:** I move —

That we postpone the consideration of the fourth report given that the Leader of the House has offered to provide a response from the government.

**The CHAIR:** The Leader of the Opposition has moved that we defer further consideration until the next sitting of the house.

**Hon SUE ELLERY:** I am not sure whether I need to do this as a point of order or if you will give me the call, but I indicated by way of interjection that I would raise the issues with the Attorney General and the Minister for Police. Without speaking to them, I cannot give a commitment on behalf of both of them that members will get a formal response from the government. I have said that I will raise the issues with them.

**The CHAIR:** Thank you, Leader of the House. In contemplation of that, I think the intent of the motion is to keep this report alive. It is for procedural convenience. It has been moved that the consideration of this report be deferred.

**Question put and passed.**