

**JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION**

*Fourth Report — The definition of ‘public officer’ in the Corruption, Crime and Misconduct Act 2003:  
Parliamentary inspector’s report — Tabling*

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [10.06 am]: I am directed to present the fourth report of the Joint Standing Committee on the Corruption and Crime Commission titled *The definition of ‘public officer’ in the Corruption, Crime and Misconduct Act 2003: Parliamentary inspector’s report*.

[See paper [1175](#).]

**Hon Dr STEVE THOMAS:** This report tables a report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission. The parliamentary inspector alerts Parliament to flaws inherent in the definition of “public officer” in the Corruption, Crime and Misconduct Act 2003. In particular, the report canvasses the complexities of determining when a contractor engaged by the public sector is a public officer, and whether the definition of “public officer” is fit for purpose in the context of modern employment practices.

Section 3 of the Corruption, Crime and Misconduct Act picks up the definition of “public officer” in section 1 of the Criminal Code. A person may be an employee at law, even if they are engaged under a contract that characterises their situation differently.

The commission and parliamentary inspector’s jurisdiction over serious misconduct extends only to acts committed by a “public officer” as defined in legislation. It is therefore critical to have a clear understanding of the scope and meaning of “public officer”.

The question of when a contractor is a public officer came to the attention of the parliamentary inspector when investigating a complaint about a decision of the commission. This case exemplified the difficulties and resources expended in determining when a contractor is a public officer. The 84-year-old complainant alleged that he was assaulted and deprived of his liberty by two security guards at the Albany Health Campus, where he was a voluntary patient. The security guards were employed by a company contracted by the WA Country Health Service. The problem in this case was that some evidence pointed towards the security guards being employees of the WA Country Health Service, such as staff at Albany Health Campus being entitled to give instructions to security guards and expecting them to be obeyed, while other evidence did not, such as the public sector not paying the guards or being able to terminate their employment. In this case, the parliamentary inspector concluded that it was more likely than not that the security guards were not public officers. The commission came to the same conclusion.

The parliamentary inspector seeks amendment to the definition of “public officer” in the Corruption, Crime and Misconduct Act. The Corruption and Crime Commissioner, the Honourable John McKechnie, QC, also considers that the definition of “public officer” requires clarification and is no longer fit for purpose. The current definition reflects the varying employment arrangements outside the traditional employment arrangements in the public sector, such as contractors, public–private partnerships and volunteers. Many public sector agencies use contractors extensively. Commissioner McKechnie says that applying the current definition of “public officer” results in inconsistent outcomes. As the parliamentary inspector observes, it is a matter of policy whether the definition of “public officer” should exclude independent contractors. However, he is concerned about the effect on the public if contractors who may be working with vulnerable people and exercising the coercive powers of the state are excluded from the commissioner’s remit purely because of the nature of the engagement. He considers that this outcome runs counter to the overall purposes of the Corruption, Crime and Misconduct Act.

In the committee’s view, the definition of “public officer” should evolve as employment practices in the public sector evolve. The scope and meaning of “public officer” must be clear. The Department of Justice is undertaking a project to modernise the Corruption, Crime and Misconduct Act. This is an opportunity to examine whether the definition of “public officer” is appropriate in the context of modern employment practices and clarify when a contractor is a “public officer”.

The committee recommends that the Attorney General direct the Department of Justice to examine the definition of “public officer” and matters raised in the report of the parliamentary inspector as a part of its project to modernise the Corruption, Crime and Misconduct Act.

*Fifth Report — Police power of arrest: Parliamentary inspector’s report — Tabling*

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [10.10 am]: I am directed to present the fifth report of the Joint Standing Committee on the Corruption and Crime Commission titled *Police power of arrest: Parliamentary inspector’s report*.

[See paper [1176](#).]

**Hon Dr STEVE THOMAS:** This report tables the second report by Matthew Zilko, SC, Parliamentary Inspector of the Corruption and Crime Commission. The parliamentary inspector alerted Parliament to his concerns about

the operation of the police power of arrest without a warrant in section 128 of the Criminal Investigation Act 2006. These concerns arose from his investigation of a complaint referred to his office by the previous Joint Standing Committee on the Corruption and Crime Commission. In that case, the complainant, a 51-year-old woman with severe arthritis, took issue with her arrest on suspicion of stealing several boxes of hair dye and her treatment by the two arresting police officers. The offending related to goods valued at less than \$100. She did not commit the offence. The actual offender received an infringement notice. The parliamentary inspector's concerns about the manner of arrest and how the complainant was treated after the police realised they had arrested the wrong person are detailed in his report.

The commission concluded that the arrest was unreasonable and oppressive but lawful, and the Western Australia Police Force considered the actions of the arresting officer unsatisfactory but lawful. The parliamentary inspector disagreed and considered the arrest unlawful. Under section 128 of the act, an officer may arrest a person if the offence is a "serious offence" as that term is defined and if the officer reasonably suspects that the person has committed, is committing or is just about to commit the offence. The parliamentary inspector was "extremely doubtful" that the required "reasonable suspicion" existed, which is the second criterion.

The first criterion defined in section 128 defines "serious offence" to mean an offence with a maximum penalty of imprisonment of five years or more, or life; that is, the only criterion enlivening the officer's power of arrest in this state is the head sentence of the offence. The commission concluded that the offence was a serious offence because the head sentence for stealing in section 378 of the Criminal Code is seven years' imprisonment. This is despite the wide variation in the degree of culpability involving stealing offences and the fact that, if dealt with summarily, the maximum sentence for the alleged offence, or any offence related to goods valued at less than \$1 000, is a fine. The parliamentary inspector accepts that the offence of stealing, however trivial, is a serious offence as defined, but he is troubled by the broader implications of this conclusion because any stealing offence authorises arrest and gives police very wide powers of arrest. These powers may be exercised in respect of offences that are obviously minor in real terms. He considers this inconsistent with the overall intent of the act.

The intent of section 128 of the act is that although officers have the power to arrest without a warrant for a serious offence, other offenders should be summonsed to attend court and retain their liberty unless particular circumstances apply. The second reading speech emphasised that the act would ensure that police exercised the power to arrest only if reasonably necessary. Laws in other jurisdictions take a different approach to the police power of arrest. For example, in New South Wales the law says that an officer must be satisfied that arrest is reasonably necessary. The parliamentary inspector recommends amendments to the Criminal Investigation Act. He notes that the police commissioner agrees that changes to the law are required, but disagrees with the commissioner's proposed amendment. The parliamentary inspector has written to the Attorney General respectfully requesting that he consider amending the powers of arrest in the act.

In September 2021, the Attorney General advised that the request had been forwarded to the Minister for Police for his consideration and that he had instructed his department to assist in the event that the Minister for Police decides to consider possible amendments. The committee recommends that the Minister for Police respond to this request by way of a government response tabled in Parliament.

I will add that sometimes as committee members we table reports with which we may not necessarily agree. In this case, I personally think that the government may have this right and the parliamentary inspector may have this wrong. However, I am happy to have that in open debate in the house, and I look forward to explaining my reasons for thinking that is the case.

*Sixth Report — The Corruption and Crime Commission's unexplained wealth function:  
The review by the Honourable Peter Martino — Tabling*

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [10.15 am]: I am directed to present for tabling the sixth report of the Joint Standing Committee on the Corruption and Crime Commission titled *The Corruption and Crime Commission's unexplained wealth function: The review by the Honourable Peter Martino*.

[See paper [1177](#).]

**Hon Dr STEVE THOMAS:** The Joint Standing Committee on the Corruption and Crime Commission monitors and reports to Parliament on the exercise of the functions of the Corruption and Crime Commission.

Since September 2018, the commission has had the power to investigate unexplained wealth and criminal benefits, and initiate and conduct confiscation proceedings. The law seeks to deter crime by reducing the profitability of illegal activities. It reverses the onus of proof and requires a person living beyond their apparent means to rebut the presumption that property has been acquired or is derived from criminal activity. The commission has used its unexplained wealth powers to recover the financial benefits of serious misconduct by public officers and organised crime.

This report attached a report by the Hon Peter Martino on his review of the commission's use of its unexplained wealth powers. The commission has been undertaking this function with its current resources. In February 2022,

the commissioner, Hon John McKechnie, QC, told this committee that the commission cannot continue to undertake this function and properly fulfil its other functions within its current resources. Hon Peter Martino noted that undertaking the unexplained wealth function involves a range of expertise and skills. He said it is also highly desirable that there be a commissioner and an acting commissioner at all times so that the commissioner who decides to use the commission's investigative powers against a person is not the same commissioner who examines that person about their property.

The commission has made a submission to government for funding to expand its capacity to undertake this function over the next five years. It has sought funding just short of \$5 million a year to fund 20 full-time equivalent officers. In 2021, the commission's total cost of services was nearly \$28 million and it employed 116.2 FTEs. If approved, the proposed funding will considerably expand the resourcing of the commission. The commission should be appropriately funded to undertake its functions.