

*Joint Standing Committee on the Corruption and Crime Commission — Fifth Report —
Police power of arrest: Parliamentary Inspector's report — Motion*

Resumed from 31 August on the following motion moved by Hon Pierre Yang —

That the report be noted.

Hon Dr STEVE THOMAS: We should now be able to return to some calm and normality after the uproarious behaviour of the government in the last couple of hours.

We are dealing with the fifth report of the Joint Standing Committee on the Corruption and Crime Commission, *Police power of arrest*. The report was generated by the Parliamentary Inspector of the Corruption and Crime Commission. The report highlights the unfortunate case of a person who was incorrectly and wrongly arrested and who it has to be said in the initial stages was treated quite poorly. Just to remind members, a 51-year-old woman with severe arthritis took issue with her arrest on suspicion of having stolen a couple of boxes of hair dye and her treatment by the two arresting police officers. She was arrested at her home in March 2020, so a couple of years ago. This unfortunate lady was suspected of, and charged with, having committed that offence. It is not in debate that the suspected offence was at the minor end of the offending scale.

For some reason, the two police officers involved did not use their ability to customarily summons the person whom they suspected was guilty of a crime but instead made the decision and took the step of using their powers of arrest. As it turns out, this particular person was not, and could not have been, the perpetrator. I do not think there is any doubt in the mind of any person that this person should not have been arrested, and that the treatment of this person was untoward and inadequate. I think that is generally accepted and it has been accepted by the WA Police Force as well. The government response to this report states —

As acknowledged by the Parliamentary Inspector, WA Police Force took this incident very seriously and took a number of steps to respond to this matter. This included:

- The complainant received a written apology from the relevant Police Superintendent for the arresting officers' conduct.

I think we can accept that the WA Police Force recognised that the conduct of the two officers was inappropriate. As a result of that, the WA Police Force conducted a managerial investigation into the incident. As a result of that investigation, both police officers were served with managerial notices and required to take additional training on various things, and one of those officers was relocated and the other was assigned a new manager. There is no doubt in anybody's mind, be it the committee, the Corruption and Crime Commission, the Western Australia Police Force or the Parliamentary Inspector of the Corruption and Crime Commission, that this was a case of an inappropriate and over-the-top response to a situation in which criminality was suspected. Sorry; the criminal act of theft had been engaged, but, with a proper review of the circumstances, it would have been obvious that there was no possibility that the suspect was the perpetrator. That is not the issue, because the police have responded. Perhaps they could have gone further with their apologies, but the police have acknowledged that the action itself was inappropriate. The question that the parliamentary inspector proposes is whether there should be changes to the power of arrest as a result of this case. It is interesting that neither the government nor I necessarily accept that position.

[Member's time extended.]

Hon Dr STEVE THOMAS: Before we get to the substantive debate, I am trying to explain the position so that everybody understands, as we move into the debate, precisely what went on.

There is no doubt that the arrest was inappropriate. On the one hand, we could argue that the police should have been more conciliatory, and apologised in a more appropriate manner. A written letter was not necessarily enough in those circumstances, and if I were the superintendent in those circumstances, when it became obvious that the person who was arrested could not have been the perpetrator of this reasonably minor crime, I would have made every possible effort to assure the person that the police understood the gravity of the situation and acknowledged that the officers acted inappropriately. I would have gone out of my way to make sure that that person was reassured that this was not her fault and that the police would do everything that they could to comfort her in that circumstance. I suspect they could have gone further.

I do, however, make this point, and it is the point made in the government's response to the report. The government—as am I—is inclined not to change the police powers of arrest without warrant just because of this case. The relevant section of the Criminal Code is section 128 and relates to police powers of arrest without warrant. Currently, police can arrest without warrant under a number of circumstances, including when a serious offence is or has been committed. The definition of “serious offence” includes any offence for which the statutory penalty is five years' imprisonment or more or life. One of the issues that the parliamentary inspector points out is that a person can get

a penalty of that magnitude for theft and, therefore, that level of theft can be included under the definition of a serious offence.

One of the recommendations in the parliamentary inspector's report is that the definition of "serious offence" might be changed to more adequately reflect the safety of the community, rather than simply relating it to a potential time frame in prison that somebody might be sentenced to. I would have thought in this circumstance that a prison sentence would have been highly unlikely even if the arrested person was the perpetrator. I would have thought that the theft of a couple of bottles of hair dye was unlikely to have someone banged up at all, let alone for the maximum period.

The other question raised by the parliamentary inspector, apart from simply changing the criteria through which an arrest without warrant might occur, was whether to significantly change or completely remove the powers of arrest without warrant. In each of these circumstances, the question that the Parliament needs to discuss around the government's response is: is it appropriate to remove the section of the Criminal Code that gives police officers the freedom to arrest without warrant under suspicion of criminal activity? Most importantly, should that freedom remain, what guidelines should be in place to minimise its inappropriate use? Ideally, we would eliminate its inappropriate use, but we know about human nature.

I have enormous respect for police officers; they have an enormously demanding job. They perform the community safety role, more often with abuse from the community rather than its support. They are a group that sees the worst of humanity. The mental health of police officers is a very difficult thing to address, so I have enormous respect for them. We need to be careful that we do not simply fall into the position of joining all those who like to attack the police force. Police officers are not a corrupt group of people who are out to pinch you for whatever they can, so we need to make sure that we respect the role of the police in the debate, which I am sure will occur over a number of days—hopefully, a very sensible debate. We need to respect the role of the police and make sure that they have the capacity to do their job.

In my and the government's view, retaining the powers to arrest without warrant is an important part of the way police do their job. I suspect that not every member of the chamber will agree with that, but we will have a really healthy debate on that. I think that it is important that the government, in its response, indicates that it holds a similar view and that retaining those police powers is important because it gives them the opportunity to best protect the community and to proceed doing their job, and I have some support in it.

I am not necessarily opposed to the government's position on that. I do not think that that should necessarily, though, stop a review of how this piece of legislation and section 13 is used. If honourable members read the specific details of the case outlined by the parliamentary inspector, I do not think they could come to any other conclusion but that the powers were used inappropriately. Decisions were made on the day that were inappropriate. Unfortunately, many times the police's role is very tough. People do not want to tell them the truth, and sometimes police are under physical threat—sometimes every day of their working week. We have to give them the benefit of the doubt, but, at the same time, the response that they give when they get it wrong is critically important.

Police are given a greater power, a power greater than anybody else has. Yes; anybody can make a citizen's arrest, but they have to be pretty careful when they do it. It is a highly overrated and, I suspect, generally unrewarding experience, so even if you think you have the right to do it, I would normally recommend that you do not. Police have the power of arrest without warrant—that is, without having a judicial tick-off to say that this is where it should be. In many circumstances, particularly when dealing with the most unsavoury parts of the community, they absolutely need that power. Police are dealing with organised gangs, outlaw motorcycle gangs and those groups of people. The problem is that we cannot take away that power for one part of the community and leave in place for other parts. We cannot have a half-pregnant-type rule. We either accept or do not accept that the police have these extraordinary powers and that every once in a while those powers will be inappropriately or excessively used, and that police officers will make the wrong call. When they make the wrong call, they should absolutely be held to account. Hopefully, they should just be counselled if their mistake is not significant. If there are other untoward actions involved in an arrest, it should be dealt with under other bits of legislation and other things.

Having said that, in my view we need to not take away that power, but simply require that it be used judiciously. In that respect, I think I disagree with the position of the parliamentary inspector. We might more appropriately look at where it might be used. Are there cases in which it would be inappropriate to use that power of arrest without warrant? I presume someone else will want to speak to this report, so I will give them a little time so they can start the next debate on this report.

Hon SHELLEY PAYNE: I thank the Deputy Chair for the opportunity to speak to the fifth report from the Joint Standing Committee on the Corruption and Crime Commission, *Police power of arrest—Parliamentary Inspector's report*. I thank Hon Dr Steve Thomas, who is a member of this committee, for his contribution and insight into this issue. I also thank Hon Klara Andric, who is also on the committee. As Hon Dr Steve Thomas

mentioned, this report concerns police power of arrest. The report attaches another report from Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission, on police powers of arrest without a warrant.

The parliamentary inspector has alerted Parliament to the operation of the police power of arrest in section 128 of the Criminal Investigation Act. He became aware of this issue while investigating a complaint referred to his office by the previous Joint Standing Committee on the Corruption and Crime Commission. As Hon Dr Steve Thomas mentioned, this complaint involved a 51-year-old woman with severe arthritis who was arrested on suspicion of stealing several boxes of hair dye. She actually did not commit the offence, but she made a complaint about her treatment by the two arresting officers when she was arrested at her home in March 2020. The offence related to goods valued at less than \$100.

The parliamentary inspector was concerned about the matter of arrest and how the complainant was treated after the police realised that they had arrested the wrong person. As I said, she was a 51-year-old woman with severe arthritis and she suffered a shoulder injury and was profoundly shaken by the incident. There was a bit of a differing view between the CCC, the Western Australia Police Force and the parliamentary inspector on this arrest. Both the CCC and WAPOL concluded that the arrest, although unreasonable and oppressive, was not unlawful. That varied a bit from the parliamentary inspector's views.

This issue also raised some broader issues about section 128 of the Criminal Investigation Act. I will continue my comments in the next sitting.

Consideration of report postponed, pursuant to standing orders.