

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

*Eighth Report — Unlawful detention in public hospitals: Parliamentary inspector's report — Tabling*

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [10.05 am]: I am directed to present for tabling the eighth report of the Joint Standing Committee on the Corruption and Crime Commission titled *Unlawful detention in public hospitals: Parliamentary inspector's report*.

[See paper [2144](#).]

**Hon Dr STEVE THOMAS:** The committee's eighth report tables a report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission. The report provides an update on a previous parliamentary inspector report titled *Report on the operation of the Corruption, Crime and Misconduct Act 2003: the definition of 'public officer'*. That report was attached to the committee's fourth report, tabled in both houses on 24 March 2022. Members may recall that the committee's fourth report highlighted flaws in the statutory definition of "public officer", and the complexities of determining whether a contractor engaged by the public sector is a public officer. It is extremely important that the definition of "public officer" is clear, as it defines the remit of the CCC.

This issue arose from the parliamentary inspector's investigation of a complaint by an 84-year-old man who alleged that he was assaulted by two security guards at the Albany Health Campus, where he was a voluntary patient. The security officers, employed by a company contracted by the WA Country Health Service, detained the man in the corridor of the hospital and in his room. In that case, the CCC concluded that the security guards were not public officers and that therefore the complaint was not within its jurisdiction. Amending the definition of "public officer" will ensure that the jurisdiction of the CCC evolves to recognise the increasing use of varying employment arrangements in the public sector.

In its fourth report the committee recommended that the Attorney General instruct the Department of Justice to examine the definition of "public officer" and matters raised in the report of the parliamentary inspector as part of its current project to modernise the Corruption, Crime and Misconduct Act 2003. The committee is pleased that the government accepted its recommendation. I very much look forward to the modernised CCC bill being tabled in Parliament.

As to the issue of unlawful detention in public hospitals, there are some circumstances in which a person may be detained in hospital against their will; for example, if they are an involuntary patient under the Mental Health Act 2014. There are other circumstances in which a person is under no obligation to stay in the hospital. The parliamentary inspector considered the detention of the 84-year-old voluntary patient at the Albany Health Campus unlawful.

Through this eighth report, the parliamentary inspector alerts Parliament to a District Court of Western Australia ruling that hospital staff did not have the right to detain another voluntary patient in a public hospital. In this case, after the patient advised hospital staff that he intended to walk outside and smoke a cigarette, hospital staff called a code black to prevent him from leaving. Five security guards forcibly brought the patient back inside the hospital. In the struggle, a guard fractured his ankle. The patient was charged with an offence. A District Court jury ultimately returned a verdict of not guilty. Her Honour Judge Linda Black ruled that none of the hospital staff, including doctors, nurses and security personnel, had any legal right to prevent the patient from leaving the hospital or to detain him within the hospital. Her Honour observed that the patient was, as a matter of law, entitled to leave for a smoke; entitled to leave to go home; and entitled to leave to go and sit on a park bench, and hospital staff had no lawful power to detain him or to use any force upon him. Hospital staff appear to have sincerely believed that they had the right to detain a patient.

The parliamentary inspector respectfully suggests that these cases demonstrate a need to ensure that all hospital staff are made aware of the law to avoid future incidents of this kind. The committee considers this suggestion reasonable. Appropriate education and training will minimise the risk of future serious misconduct events. The committee recommends that the Minister for Health consider the parliamentary inspector's report and report to Parliament as to the action, if any, proposed to be taken by the government with respect to the matters raised by the parliamentary inspector. I thank the parliamentary inspector for bringing this issue to the attention of the Parliament.

*Ninth Report — A need for clarity: Parliamentary inspector's report: Can the Corruption and Crime Commission decline to form an opinion that serious misconduct has occurred despite the definition being met? — Tabling*

**HON DR STEVE THOMAS (South West — Leader of the Opposition)** [10.14 am]: I am directed to present the ninth report of the Joint Standing Committee on the Corruption and Crime Commission titled *A need for clarity: Parliamentary inspector's report: Can the Corruption and Crime Commission decline to form an opinion that serious misconduct has occurred despite the definition being met?*

[See paper [2145](#).]

**Hon Dr STEVE THOMAS:** The committee's ninth report attaches another report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission, entitled *Can the Corruption and Crime*

*Commission decline to form an opinion that serious misconduct has occurred despite the definition being met?* The parliamentary inspector informs the Parliament of a legal disagreement between his office and the Corruption and Crime Commission on whether the CCC can decline to form an opinion that “serious misconduct” has occurred, despite that definition in the Corruption, Crime and Misconduct Act 2003 being met.

In summary, the parliamentary inspector advises of a disagreement on how to interpret an important provision of the CCM act. This difference of opinion arose from the inspector’s consideration of a complaint. In that case, a magistrate found that a police officer had unlawfully assaulted the complainant. After that court finding, the complainant made a formal complaint to the WA Police Force and the CCC, alleging that the police officer acted contrary to law and, therefore, engaged in serious misconduct. Members may be aware that the CCC has a broader scope to scrutinise the conduct of police compared with the rest of the public sector. All police misconduct is serious misconduct.

The parliamentary inspector says the CCC and he agree that all unlawful actions by a police officer will be police misconduct and, therefore, serious misconduct. However, they hold different views on whether an opinion of serious misconduct follows. The parliamentary inspector considers that when a public officer has engaged in conduct that meets the definition of “serious misconduct”, it is not open to the CCC to decline to form an opinion that serious misconduct has occurred. The CCC considers that in the above circumstances, it has a discretion as to whether to form an opinion of serious misconduct; that is, it is not bound to make an opinion of serious misconduct. It is undesirable for the office of the parliamentary inspector and the CCC to have opposing views on something as important as the CCC making an opinion of serious misconduct against a public officer. The law should be clear.

The committee agrees with the parliamentary inspector’s suggestion that consideration be given to amending the CCM act to clarify its intent in respect of matters raised in his report. There is an opportunity to do this as part of the Department of Justice’s reform of the CCM act. Therefore, the committee recommends —

That the Attorney General direct the Department of Justice to examine matters raised in the attached report by the Parliamentary Inspector as part of its project to modernise the *Corruption, Crime and Misconduct Act 2003*, and report to Parliament as to the action, if any, proposed to be taken by the government with respect to these matters.

On behalf of the committee, I thank the parliamentary inspector for bringing this issue to the attention of the Parliament.

With today’s tabling of committee reports 8 and 9, the committee has tabled four reports by the parliamentary inspector this Parliament. These reports demonstrate the importance of having an independent body such as the parliamentary inspector whose responsibilities include reporting and making recommendations to either house of Parliament or the committee on the operation of the CCM act. I thank the parliamentary inspector, Matthew Zilko, SC, and his principal adviser, Sarah Burnside, for the support they provide to the committee.

I might just add that this is one of those instances when it is important to clarify the position in law. During the debate on this report in future months, I may well take a position that I support the CCC’s position on this but the CCC’s position may well be in conflict with the laws of the day. Therefore, the rewrite of the CCC act is of particular importance. It is important that the Attorney General consider this as an issue.

The position of the CCC—that it has discretion under its act to make a finding of serious misconduct—may well need to rely on whether that is an appropriate outcome. The CCC currently gives itself that level of discretion. The question in my mind is not whether the CCC should be given that level of discretion as to whether it potentially would not proceed to a finding of misconduct, but whether the law itself enables the CCC to do so. That is the debate that I ask the government and the Attorney General to look at and hopefully report back to this Parliament. If it comes back and says it thinks in a similar way to me, again, the law can be addressed in the update of the CCC act, which I understand is in train, and hopefully we will see some outcome on it soon.