

*Joint Standing Committee on the Corruption and Crime Commission — Eighth Report —
Unlawful detention in public hospitals: Parliamentary inspector's report — Motion*

Resumed from 18 October on the following motion moved by Hon Dr Steve Thomas —

That the report be noted.

Hon NICK GOIRAN: The report that we are considering is the eighth report of the Joint Standing Committee on the Corruption and Crime Commission, *Unlawful detention in public hospitals: Parliamentary inspector's report*. I particularly refer to the response provided by the Minister for Health dated 7 August 2023. Members may recall that I had asked for a response from someone within government to update us on the minister's response. The minister had said that the director general of the Department of Health would develop a mandatory policy on restrictive practices that will address both restraint and detention of patients in non-mental health settings. The question is: has that occurred? Has the director general indeed developed that mandatory policy? The minister said that a meeting had been scheduled to take place in mid-July 2023. Did that meeting take place? What were the outcomes? We have been told that the Department of Health, health service providers and the Chief Psychiatrist would continue to work together to address these issues. What have they done in respect of this matter?

Hon LORNA HARPER: I, too, rise this afternoon to say some words and give my thoughts on the eighth report of the Joint Standing Committee on the Corruption and Crime Commission, *Unlawful detention in public hospitals: Parliamentary inspector's report*. Reading the report brought back memories of something that happened to my family that goes towards this issue. As many members know, I have a family member who has complex mental health issues. She was taken to the emergency department because she was having what we call in our family a split, a spiralling or a chaotic moment. She was taken there because we were concerned. This was quite a few years ago before the McGowan Labor government and the Cook Labor government poured money and resources into mental health. The way that she was treated at the hospital was quite concerning. Back then, I did not realise that they could detain a person. My daughter wanted to leave. She had calmed herself down and was coherent. She said, "I know what I need to do; being in an emergency department is not the place for me." We decided to leave. As we did, a nurse who was with two big burly security guards told her that she could not leave. I did not know that she could be detained and obviously my daughter did not know that either. I would say that the nurse and security guards thought that they were doing the right thing.

I feel quite bad for the person who went for a cigarette outside the hospital and was pulled back in. As an ex-smoker, I understand that people do not like smoking and they want smokers to stop. But that was an extreme case of saying to somebody that they cannot do what they want to do. It is very difficult for hospital staff to determine that line. Are they at the point of unlawfully detaining someone or are they at the point of detaining someone for their safety and the safety of the public? That is very difficult for any medical profession to deal with on an ongoing basis. When people present at emergency departments for mental health issues, a person who is what we might call a "frequent flyer" knows how to cheat the system. They know what to say and what to do to get out. It is difficult for the members of the medical profession, such as nurses and doctors, and security guards to decide what to do.

What the Minister for Health is doing, which, I believe, is ongoing, is establishing a working group to develop a consistent education package for staff. These things do not happen overnight—time, energy and consideration has to be given to these things. We do not want a rushed working group that comes up with an answer that will not provide the best results. We need people to spend the time and make sure that we protect not only the patients, but also the medical professionals and security guards who work at hospitals and other areas so that they are not pulled up and told that they are unlawfully detaining a person.

Having read the report, I can see that we—the Cook Labor government—are taking this issue very seriously. Going through this situation must be so difficult. When we think about unlawful detention in public hospitals, we think "Oh my gosh, oh my gosh." We think back to the old days when people were tied to their hospital beds and things like that. But this is about nurses, doctors and security officers trying to do what they think is best.

Security officers are not employed directly; they are generally employed by the health service provider. A lot of people seem to forget that there are five or six health service providers, including the one referred to in the committee report, the WA Country Health Service. The other providers are the East Metropolitan Health Service, the North Metropolitan Health Service, the South Metropolitan Health Service and the Child and Adolescent Health Service. There are a lot of moving parts when it comes to doing anything in our health system. The reason we have these health service providers is because the Barnett government thought it was a good idea to split the public health service into different parts with individual boards running different health services.

If we look at the WA Country Health Service, we have to split it up and start looking at the regions because as we know, WACHS covers a massive area—Kimberley, Pilbara, Gascoyne, the south west, the great southern and the goldfields. Each of those has management involved and people who directly run hospitals. It will be quite difficult to come up with a working group that can go through the layers of getting expertise for each of the different health

service providers and each of the different areas. Again, the East Metropolitan Health Service encompasses Armadale, Kalamunda, Royal Perth Hospital and the Midland public–private partnership with St John of God. Again, that is another group of different hospitals and services that has to be looked at. There is no one-size-fits-all approach to this issue. The needs in Armadale are not the same as the needs in Midland, and the needs at Royal Perth Hospital are not the same as anywhere else in WA. It is very difficult to say, “The government was going to form this working group a few months ago; where is it now?” That is quite disingenuous. We have to take the time to do these things correctly and properly and give them the due consideration they need.

There are some circumstances in which a person may be detained in hospital against their will. I refer to an involuntary patient under the Mental Health Act 2014, which would be somebody who is sectioned. It takes quite a lot of time and effort to get somebody sectioned; it is not just a case of somebody wandering in and suddenly being sectioned. Anyone who has spent time with a mental health patient in an emergency department knows that the person can become more agitated because of the sounds, noises, beeps and cries, the nurses and doctors rushing around and having to wait five hours before they see a hospital psychiatrist because they are rushing around, all the while being kept in a locked room because they may or may not pose harm to themselves or others. It must be really difficult. I am thankful that the McGowan and Cook Labor governments have set up many emergency mental health services. There is one at Royal Perth Hospital. One that I have visited is at Joondalup Health Campus, which has a separate area for mental health patients in an emergency. There is a walk-in service for mental health patients at Midland. These patients are not the ones who pose a danger to themselves or others, but who are in severe crisis. This is a very complex and deep matter. We can jump up and down and ask, “Where is it? Where is it?” but for all complex and deep matters, we need to take the time to ensure that we do things correctly and properly for the benefit of patients.

Hon AYOR MAKUR CHUOT: Today I would like to speak on the eighth report of the Joint Standing Committee on the Corruption and Crime Commission, *Unlawful detention in public hospitals: Parliamentary inspector’s report*, which was tabled in the Legislative Assembly and the Legislative Council on 30 March 2023. Before I speak about the report, I would like to thank the committee members who worked on this report. The committee was chaired by Matthew Hughes, with Hon Dr Steve Thomas serving as the deputy chair. The other committee members were Hon Mia Davies and my parliamentary colleague Hon Klara Andric. I would also like to thank the committee staff: our principal research officer, Suzanne Veletta; and research officer, Jovita Hogan.

The Corruption and Crime Commission is responsible for investigating misconduct committed by public officers as defined by legislation. This committee serves as a reminder that the government cannot oversee everything, which is why it is important for the independent bodies to hold public officers accountable for any breach of duty, as my parliamentary colleague Hon Lorna Harper mentioned earlier. It is a very important committee that can help vulnerable community members know their rights within the health system. Serving on this committee, I personally learnt a lot of things I did not know.

Matthew Zilko, the Parliamentary Inspector of the Corruption and Crime Commission, released a report entitled *Report on the operation of the Corruption, Crime and Misconduct Act 2003: Supplementary report regarding unlawful detention in public hospitals*, which is attached to the JSCCCC report as appendix 1. I will focus on that today. The supplementary report highlights another case of unlawful detention in a public hospital and provides an update to the parliamentary inspector’s previous report on the definition of “public officer” under the Corruption, Crime and Misconduct Act 2003. As I mentioned earlier, the previous report was attached to the Joint Standing Committee on the Corruption and Crime Commission’s fourth report, titled *The definition of ‘public officer’ in the Corruption, Crime and Misconduct Act 2003: Parliamentary inspector’s report*, which was tabled in Parliament on 24 March 2022. 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 detain him within the hospital. She stated that the patient —

was allowed to walk out. No one had the right to lay a hand on him, and no one had the right to detain him ...

As a matter of law —

he should have been allowed to leave.

The judge was referring to a court case. The parliamentary inspector accepted that in the two cases mentioned in the report —

the hospital staff appear to have sincerely believed that they had the right to detain a patient where they did not consider the patient was ready to leave.

I was really surprised that some of our hospital workers would allow this. Some of them are not aware of how they can protect themselves. However, the parliamentary inspector added that it seemed “tolerably clear” that the law was not well understood by hospital staff, as I mentioned earlier. Therefore, the parliamentary inspector suggested that these cases demonstrated a need to ensure that all hospital staff are made aware of the state of the law to avoid

future incidents of this kind. The parliamentary inspector's suggestion seemed reasonable to me and other members of the committee when it was mentioned. Appropriate education and training is needed to minimise the risk of future serious misconduct events in our hospital system, which is fantastic.

The parliamentary inspector also considered the detention of an 84-year-old voluntary patient at the Albany Health Campus to be unlawful. The District Court of Western Australia ruled in a separate incident at a public hospital that hospital staff did not have the right to detain another voluntary patient. In this case, hospital staff called a "code black" to prevent the patient from leaving; however, the patient was ultimately discharged from the hospital. Unlawful detention in public hospitals occurs only in some cases, such as when a person is an involuntary patient under the Mental Health Act 2014 or the subject of a hospital order under the Criminal Law (Mentally Impaired Accused) Act 1996. In other circumstances, a person is under no obligation to stay in the hospital.

We are a government that really listens. A recommendation made to the Minister for Health said that she should consider the parliamentary inspector's report to Parliament on the action, if any, proposed to be taken by the government with respect to the matters raised by the parliamentary inspector. As I said earlier, the issue was heard. The acting director general of the Department of Health wrote to all health service providers' chief executives, making it clear that detaining any person in hospital against their will is only lawful in very limited circumstances and that unless those narrow circumstances apply, a person who presents to the hospital is at liberty to discharge themselves. Again, that was another great recommendation. As system manager, the director general of the Department of Health will develop a mandatory policy on restrictive practices that will address both restraint and detention of patients in non-mental health settings. This policy will include an escalation pathway and support for junior clinicians and security staff—some security staff are not employed by the Department of Health—with senior staff oversight in complex situations where detention and/or restraint might be contemplated.

Another wonderful thing that was suggested by the Chief Psychiatrist was the establishment of a working group to develop a consistent education package for staff across the Western Australian health system in relation to the appropriate use of detention and restraint in non-authorised settings. The working group comprises representatives from the relevant HSPs and the Department of Health. The first meeting was scheduled for mid-July 2023. The Chief Psychiatrist also held communities practice, online clinician peer discussions, covering the issue in August 2022 and March 2023. This included presentations by senior emergency department physicians. This is a wonderful report.

Hon SHELLEY PAYNE: It is great to speak on the eighth report, *Unlawful detention in public hospitals: Parliamentary inspector's report*. Before I start, I commend Hon Klara Andric and Hon Dr Steve Thomas for their work on the Joint Standing Committee on the Corruption and Crime Commission. This report and the previous one demonstrate in a very simple way the importance of not only the Parliamentary Inspector of the Corruption and Crime Commission but also the committee and the way it can alert the government to issues so that action can be taken to improve things.

The eighth report tables a report by Matthew Zilko, the Parliamentary Inspector of the Corruption and Crime Commission. As I said, it relates to his previous report, *Report on the operation of the Corruption, Crime and Misconduct Act 2003: The definition of 'public officer'*. For any members who missed what the actual issue is, both reports refer to an 84-year-old man who alleged that he was assaulted by two security guards at Albany Hospital where he was a voluntary patient. There were two issues here. The first report dealt with the definition of a "public officer" and whether the security officers, who were contractors, were public officers. The remit of the Corruption and Crime Commission is defined by whether these security officers are public officers. The other issue is whether it was lawful for the security guards to detain the patient.

I just wanted to relay to the house the fourth report, which dealt with flaws in the definition of "public officer" and the recommendation to amend the definition of "public officer". The committee is pleased that the government is accepting that recommendation and is looking forward to the modernisation of the Corruption and Crime Commission legislation when a bill is introduced in Parliament at some future date.

This report dealt with unlawful detention in public hospitals and it tables the parliamentary inspector's report on the issue. As I said, an 84-year-old man was unlawfully detained in Albany Hospital when he tried to leave. This report, which has been prepared by the Parliamentary Inspector of the Corruption and Crime Commission, highlights a District Court of Western Australia ruling about hospital staff not having the right to detain a voluntary patient at a public hospital. In that ruling, which was to do with a different patient, the judge in that case, 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 detain him within the hospital. Her Honour stated:

[The patient] was allowed to walk out. No one had the right to lay a hand on him, and no one had the right to detain him. ... as a matter of law, he should have been allowed to leave ...

In his report the parliamentary inspector suggests that this case demonstrates the need to ensure that all hospital staff are made aware so that this incident does not happen again and suggests that appropriate education and training would minimise the risk of future events. The committee thought this was very reasonable and in its report it recommends that as well. The committee recommends —

That the Minister for Health consider the attached report by the Parliamentary Inspector 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.

We heard Hon Nick Goiran just previously raise some issues with the government's response. It is really great; on 7 August minister Hon Amber-Jade Sanderson prepared a very positive government response to this report.

Following on from the tabling of this report, I can report to the house that the acting director general of the Department of Health wrote to all the service providers' chief executives, making it very clear to everyone that detaining any person in hospital against their will is only lawful in very limited circumstances, and that is mainly related to mental capacity, and unless those very narrow circumstances apply, a person who presents to a hospital is at liberty to discharge themselves.

Hon Lorna Harper talked about her daughter and the issues there. I had the same issue just recently with a patient who was flown by Royal Flying Doctor Service to Perth from Esperance. His phone was smashed and he was very concerned that he was not able to leave to get another phone. He was terminally ill and quite unwell, but he was very keen to go out and make sure that he had proper communication and a new phone. When he contacted my office, we were able to tell him that he was able to leave the hospital and he was not detained there and had every right to leave if he needed to. We were made aware of that through reading this report.

The things that the government has committed to doing in this letter that the minister has written is, first of all, the creation of a system-wide mandatory policy on restricted practices and also development of an education package. With respect to the policy and procedures, the director general of the Department of Health as the system manager will develop a mandatory policy on restrictive practices that will address both restraint and detention of patients in non-mental health settings. The policy will also include an escalation pathway and support for junior clinicians and security staff with senior staff oversight for complex situations in which detention or restraint might be contemplated. All health service providers will also be required to amend their policies and procedures to align with this new system-wide mandatory policy. This is consistent with what is happening in a lot of other jurisdictions. In the interim, the acting director general has requested that the chief executives of all health service providers urgently review their existing policies and procedures to ensure that current documented practice reflects this legal framework as set out in the report.

The second part is the education package. I am pleased to announce that the Chief Psychiatrist has established a working group to develop a consistent education package for staff across the whole health system on appropriate detention and restraint in non-authorised settings. The Chief Psychiatrist has also done a few other things, including holding online clinical peer discussions, produced an information sheet and provided education on the use of restraint and detention to the WA branch forum of the Australian College of Emergency Medicine. That was done back in March 2023.

The minister has confirmed that the Department of Health, health service providers and the Chief Psychiatrist will all continue to work together to address this issue.

Consideration of report postponed, pursuant to standing orders.