JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

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

MR M. HUGHES (Kalamunda) [10.15 am]: I present for tabling the eighth report of the Joint Standing Committee on the Corruption and Crime Commission, *Unlawful detention in public hospitals: Parliamentary inspector's report*.

[See paper 1895.]

Mr M. HUGHES: This report tables a report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission, on unlawful detention in public hospitals. The report provides an update to a previous report of the parliamentary inspector 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, *The definition of 'public officer' in the Corruption, Crime and Misconduct Act 2003*, tabled in both houses on 24 March 2022. The parliamentary inspector alerts the Parliament to a case of unlawful detention in a public hospital and a recent District Court of Western Australia ruling on this issue. 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 statutory definition of "public officer" is clear, as the remit of the Corruption and Crime Commission and the parliamentary inspector depends on it; that is, the CCC may consider allegations of serious misconduct committed by a public officer only as that term is defined in legislation.

This issue rose 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 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 therefore the complaint of serious misconduct was not within its jurisdiction. The parliamentary inspector concluded that it seemed more likely that the security guards were not WA Country Health Service employees. The parliamentary inspector was concerned that people working with vulnerable people exercising the coercive power of the state were excluded from the jurisdiction of the CCC and his office due only to the nature of their contractual arrangement. Both the CCC and the parliamentary inspector supported amending the definition. This will ensure that the jurisdiction of the CCC evolves to recognise the increasing use of varying employment arrangements in the public sector.

In the 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 project to modernise the Corruption, Crime and Misconduct Act 2003. The committee is pleased that the government has accepted its recommendation. Although I accept that the Parliamentary Counsel's Office is the expert in drafting legislation, I note that in Victoria, the meaning of public officer expressly refers to contractors when it defines "public officer" to include —

> a person that is performing a public function on behalf of the State or a public officer or public body (whether under contract or otherwise);

This definition seems clear. We look forward to a modernised CCC bill being tabled in this house.

As to unlawful detention in public hospitals, there are some circumstances in which people may be detained in hospital against their will—for example, a voluntary 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 hospital. The parliamentary inspector considered the detention of an 84-year-old voluntary patient at Albany Hospital unlawful. Through this report he alerts Parliament to a District Court of Western Australia ruling that found —

> … hospital staff did not have the right to detain another voluntary patient. 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 right ankle.
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> The patient was charged with assault causing grievous bodily harm in circumstances of aggravation, the circumstances of aggravation being that the injured person was hospital staff. A District Court jury ultimately returned a verdict of not guilty.
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> 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 detain him within the hospital.

As Her Honour stated —

> [The patient was] as a matter of law entitled to leave for a smoke, entitled to leave to go home, entitled to leave to go and sit on a park bench … as a matter of law, he was entitled to leave …
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> [Hospital staff] had no lawful power to detain him … had no lawful right to use any force upon him. …
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> the two security guards who held either arm and the security guard who had his hand behind him were all acting, as a matter of law, unlawfully.

The report states —

> The Parliamentary Inspector accepts that in the above 2 cases hospital staff appear to have sincerely believed that they had the right to detain a patient where they considered that the patient was not ready to leave. However, he adds that it seems 'tolerably clear' that the law was not well understood by hospital staff.
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> The Parliamentary Inspector respectfully suggests that these cases demonstrate 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 committee considers this suggestion reasonable. Appropriate education and training minimise the risk of future serious misconduct events. Indeed, a purpose of the Corruption and Crime Commission is to reduce the incidence of misconduct in the public sector. The suggested course of action is entirely consistent with this purpose.

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.

I look forward to reading the government's response, and I thank the parliamentary inspector for bringing this issue to the attention of 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

MR M. HUGHES (Kalamunda) [10.24 am]: I present for tabling the ninth report of the Joint Standing Committee on the Corruption and Crime Commission, *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 1896.]

Mr M. HUGHES: The committee's ninth report attaches another report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission, titled *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 Parliament of the 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 the 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 Corruption, Crime and Misconduct Act 2003. 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. As an aside, it is of interest to me that a woman riding a bicycle at 9.30 at night was stopped and detained by a police officer and the circumstance of how that was handled by the police officer and what then followed could become a matter of dispute between the CCC commissioner and the inspector, but it goes to an important point of the interpretation of the CCC act.

As I said, the difference of opinion arose from the inspector's consideration of a complaint. In that case, the magistrate found that the police officer had unlawfully assaulted the complainant. After that court finding, the complainant made a formal complaint to the Western Australia 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, by definition, serious misconduct. The parliamentary inspector states that 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 the 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 about 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 Corruption, Crime and Misconduct 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 reform of the CCC act. Therefore, the committee recommends that the Attorney General direct the Department of Justice to examine matters raised in the report by the parliamentary inspector as part of its project to modernise the Corruption, Crime and Misconduct Act and to report to Parliament the action, if any, proposed to be taken by the government in respect of these matters.

On behalf of the committee, I thank the parliamentary inspector for bringing this issue to the attention of Parliament. With today's tabling of the eighth and ninth reports of the committee, the committee has tabled four reports by the parliamentary inspector in 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 Corruption, Crime and Misconduct Act. I also thank the parliamentary inspector, Matthew Zilko, SC, and his principal adviser, Sarah Burnside, for the support they provide to the committee.