

**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*

**MR M. HUGHES (Kalamunda)** [10.11 am]: I present for tabling the fourth report of the Joint Standing Committee on the Corruption and Crime Commission, *The definition of ‘public officer’ in the Corruption, Crime and Misconduct Act 2003: Parliamentary inspector’s report*.

[See paper [1049](#).]

**Mr M. HUGHES:** 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 of law even if they are engaged under a contract that characterises their situation differently. The commission and the 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 whether the 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 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 expect 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. Commissioner Hon John McKechnie, QC, also considers that the definition of “public officer” requires clarification and is no longer fit for purpose. The current definition does not reflect 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, whether the definition of “public officer” should exclude independent contractors is a matter of policy. 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 commission’s remit purely because of the nature of their 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 a clear opportunity to examine whether the definition of “public officer” is appropriate in the context of modern employment practices and clarify whether 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 part of its project to modernise the Corruption, Crime and Misconduct Act.

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

**MR M. HUGHES (Kalamunda)** [10.16 am]: I present for tabling the fifth report of the Joint Standing Committee on the Corruption and Crime Commission, *Police power of arrest: Parliamentary inspector’s report*.

[See paper [1050](#).]

**Mr M. HUGHES:** This report tables a second report by Matthew Zilko, SC, the Parliamentary Inspector of the Corruption and Crime Commission. The parliamentary inspector alerts Parliament to his concerns about the operation of the police power to 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 in receipt of a disability pension, with severe arthritis and requiring the assistance of walking aids or a motorised scooter, took issue with

her arrest on suspicion of stealing several boxes of hair dye and her treatment by the two arresting officers. The alleged offending related to goods with an estimated value of less than \$100. As it turns out, she did not commit the offence and the actual offender received an infringement notice.

Mr Zilko details the circumstances of her arrest in his report, but for the benefit of members present, I would like to describe them in my tabling statement. Two police officers attended the complainant's home and, after a brief discussion, arrested her on suspicion of stealing, as I have mentioned, a few boxes of hair dye from the local pharmacy five days earlier. The price of the goods that had been taken from the pharmacy remains unclear, but the "be on the lookout" flyer generated by the police stated that the suspect removed several boxes of hair dye and placed them down her top. This description would suggest that relatively few goods were taken. Mr Zilko observes that a box of hair dye typically retails in Western Australian pharmacies for between \$7 and \$20 a box and at its highest, the offence related to goods of a value less than \$100.

The two officers who arrested the complainant did so following an anonymous tip-off about the suspect's name and address. No efforts were made by those officers to establish the identity and bone fides of the alleged eyewitness who had nominated the complainant as a suspect. However, the complainant's driver's licence photograph was obtained and compared with the CCTV stills from the pharmacy on the day of the theft. The CCTV stills were contained in a case file. When the officers visited the complainant's home to speak to her about the offence, the case file was left at the station. Therefore, on meeting the complainant, the officers were not able to compare her appearance with that in the CCTV stills while at her home. Had they been able to do so, they would have immediately become aware that the suspect in the stills had one leg, while the complainant had two, was of different physique and used a wheelchair rather than a mobility scooter. They would have realised that the complainant could not possibly be the suspect and would not have arrested her. However, despite not having the CCTV stills to hand, the officers chose to arrest her for stealing the hair dye products.

Following her arrest, she was taken to the police station in the rear unit of a police vehicle, which was very uncomfortable for her given her condition. Upon her arrival at the station, it very quickly became apparent to the officers that she was not the woman captured in the CCTV stills from the pharmacy. The officers apologised to the complainant. They then transported her home, but, again, in the rear unit of the police vehicle. She was not invited to sit in the police vehicle itself, nor offered alternative transportation.

I mention this because a citizen deprived of her liberty by what would be contended to be an unlawful arrest has drawn this anomaly in our current act to the attention of the parliamentary inspector, who has urged that some changes be brought about. The parliamentary inspector's concerns about the manner of her arrest and how the complainant was treated after the police realised they had arrested the wrong person are detailed in his report and are well worth reading carefully.

The Corruption and Crime Commission concluded that the arrest was unreasonable and oppressive but lawful, and the Western Australia Police Force considers the actions of the arresting officers unsatisfactory but lawful. The parliamentary inspector disagrees and considers the arrest unlawful. Under section 128 of the Criminal Investigation Act, an officer may arrest a person if, firstly, the offence is a serious offence as that term is defined and, secondly, the officer reasonably suspects that the person has committed, is committing or is just about to commit the offence. The parliamentary inspector is extremely doubtful that the required reasonable suspicion existed. That is the second criterion that I mentioned.

On the first criterion, section 128 defines "serious offence" to mean an offence with a maximum penalty of imprisonment of five years or more or life. I will repeat that: on the first criterion, 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 an officer's powers of arrest in this state and is the head sentence for the offence. The commission concluded that the offence was a serious offence because the head sentence for stealing under section 378 of the Criminal Code is seven years' imprisonment. This is despite the wide variation in the degree of culpability involved in 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. This gives police very wide powers of arrest and these powers may be exercised for 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 could exercise 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 Commissioner of Police 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 decided 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.

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

**MR M. HUGHES (Kalamunda)** [10.26 am]: I present for tabling the sixth report of the Joint Standing Committee on the Corruption and Crime Commission, *The Corruption and Crime Commission's unexplained wealth function: The review by the Honourable Peter Martino*.

[See paper [1051](#).]

**Mr M. HUGHES:** 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 in court. 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 attaches a report by Hon Peter Martino on his review of the commission's use of its unexplained wealth powers. The commission has been undertaking this function within current resourcing. In February 2022, Commissioner Hon John McKechnie, QC, told the committee that the commission cannot continue to undertake this function and properly fulfil its other functions within current resourcing. Hon Peter Martino noted that undertaking the unexplained wealth function involves a range of expertise and skills. He says that 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 investigation 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 undertake its unexplained wealth function over the next five years. It seeks funding just short of \$5 million a year to fund 20 full-time equivalent officers. In 2020–21, the commission's total cost of services was nearly \$28 million and it employed 116.2 full-time equivalent officers. If approved, the proposed funding will considerably expand the resourcing of the commission. In the committee's view, the commission should be appropriately funded to undertake its functions.