

Recommendation: That the Minister for Police consider matters raised in the attached report of the Parliamentary Inspector and respond to the request to consider amending the powers of arrest in the *Criminal Investigation Act 2006*.

Response: As recommended by the Committee, I have carefully considered the matters raised in Parliamentary Inspector’s Report and the request to consider amending the powers of arrest in the *Criminal Investigation Act 2006*.

The Committee’s Report relates to an incident in March 2020 where police officers arrested a suspect without warrant for an alleged minor stealing offence. The arrested person was later determined to be innocent and due to the arrested person’s treatment, specifically around the circumstances and manner of their arrest, transportation and detention, they raised a complaint with the WA Police Force and the Joint Standing Committee on the Corruption and Crime Commission.

The Parliamentary Inspector of the Corruption and Crime Commission investigated the matter and raised several concerns in regards to the incident which are detailed in the Committee’s Report.

This includes that the investigation to form a reasonable suspicion was substandard, the arrest itself was unnecessary and that the provisions currently within the *Criminal Investigation Act 2006* require amending. The Report does not recommend specific amendments, however alludes to the fact that section 128 of the *Criminal Investigation Act 2006* should be amended to limit the power of arrest without warrant so it cannot be applied to circumstances such as those in the March 2020 incident.

In regards to the March 2020 incident, WA Police Force agrees that the investigation was unsatisfactory and the arrest was not necessary. However, WA Police Force does not agree, that legislative reform is the solution to ensure incidents such as this do not occur in the future.

In this instance, the legislation is not the issue. Instead, it was a combination of unintentional mistakes and unsatisfactory actions taken by the two police officers that led to this very unfortunate series of events. These mistakes were partly down to inexperience and omissions in applying internal policies and procedures.

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.
- WA Police Force conducted a managerial investigation into the incident which resulted in both police officers involved being served with Managerial Notices and being required to undertake additional training in Frontline Investigation, Custodial Care and the use of Criminal Code Infringement Notices. Managerial Notices are a key component of the WA Police Force Integrity Framework, which provides a systemic response to allegations of misconduct and is built upon procedural fairness. These notices represent a formal outcome of the employee’s misconduct and are delivered in person by the District Superintendent.

- One officer has been relocated to another team and the other has been assigned to a new manager. This is to support the officers to have greater supervision and guidance.

A key oversight by the officers involved in this incident is that they chose to arrest their suspect as opposed to issuing a Criminal Code Infringement Notice (CCIN). CCINs are a crucial tool for dealing with prescribed offences of low-level criminal behaviour where the most common court outcome would be a fine. These notices can be issued for a prescribed set of offences, which includes section 378 of *The Criminal Code* - Stealing, where the value of the stolen goods is under \$500, as was the circumstance in the March 2020 incident. Had the officers used a CCIN, there would have been no need for the arrest.

A CCIN was ultimately issued to the person who was identified as responsible for stealing the hair dye in March 2020, and this offender has since paid the penalty. Re-training in the CCIN scheme was a key component of the compulsory training that the two officers were required to undertake as part of their Managerial Notice.

In general, WA Police Force has a high uptake in the use of CCINs. Over the past four calendar years of 2018-2021, WA Police Force has issued an average of over 5,000 CCINs per year with over one-quarter of those issued being for the offence of stealing where the value of the goods is under \$500. These figures indicate that police officers are frequently using this valuable tool as a diversionary option and in place of arrest.

In regards to the Parliamentary Inspector's suggestion that section 128 of the *Criminal Investigation Act 2006* may require amendments, the WA Police Force agrees with the notion of amending this section, however does not agree that amendments are needed in response to this incident and does not agree with the kinds of amendments proposed in the Report.

Section 128 relates to police powers of arrest without warrant. Currently police can arrest without warrant under a number of circumstances including where a 'serious offence' is or has been committed. 'Serious offence' is defined to include any offence where the statutory penalty is imprisonment for 5 years or more or life.

Whilst the Committee's Report does not explicitly outline any proposed amendments to the *Criminal Investigation Act 2006* (the Act), it alludes to the fact that the section 128 should be amended to further restrict the term 'serious offence' so it doesn't capture minor stealing offences and clarify that arrest should only be used where absolutely necessary.

As Parliament is aware, a comprehensive Statutory Review of the *Criminal Investigation Act 2006* (the CIA) was conducted from 2015 to 2018. This review was in accordance with section 157 of the CIA which requires its operation and effectiveness to be reviewed as soon as is practicable after the expiry of 5 years from its commencement, which was in July 2007.

The review received submissions from a wide range of stakeholders including the Commissioner for Children and Young People, Aboriginal Legal Service of Western Australia, the Director of Public Prosecutions, the WA Police Union and notably, the Corruption and Crime Commission. The Statutory Review Final Report was tabled in the other place in October 2018.

The Final Report contained 126 recommendations for reform, with 75 relating to legislative amendment. Recommendation 77 of the Final Report relates to section 128 of the CIA. Recommendation 77 proposes that WA Police Force should consider lowering the statutory threshold for 'serious offence'. This would broaden the definition of 'serious offence' so it would apply to a greater scope of offences.

Of note is that the Corruption and Crime Commission submitted a response to the Statutory Review in regards to section 128 and suggested that this threshold should be lowered to any offence which attracts a penalty of a term of imprisonment of 2 years or more.

WA Police Force supports this general position and agrees with Recommendation 77 and the position of the Corruption and Crime Commission at the time of their submission to the Statutory Review. If section 128 of the Act is to be amended, it should be to lower the existing threshold, rather than to tighten and further restrict it, as suggested by the Parliamentary Inspector.

Lowering the threshold would bring Western Australia into alignment with the many other states and territories which allow police a greater scope to arrest without a warrant where a person has, is, or is about to, commit an offence.

In New Zealand, police officers can arrest for any breach of the peace as well as any offence punishable by imprisonment. South Australia and the Northern Territory allow police officers to arrest for 'any offence'. Victoria and Queensland allow police officers to arrest for any indictable offence. These thresholds are all lower than the existing threshold in WA.

Whilst the Parliamentary Inspector references New South Wales, England, Wales and the Commonwealth as jurisdictions that can be looked to for an alternative legislative approach to arrest without warrant, all other Australian jurisdictions take a different approach.

WA Police Force established a Taskforce and a Legislative Working Group to consider the recommendations from the Statutory Review, and Recommendation 77 is fully supported by WA Police Force and will be actioned as part of reforms to the Act.

There is currently no timeline for this work as there are other significant legislative reforms being progressed in this portfolio that are key priorities. This includes the recent *Firearms Amendment Bill 2021* that targets serious and organised crime groups by restricting their access to firearms; and the rewrite of *Firearms Act 1973* for which consultation is currently underway. These reforms will complement the Government's focus on public safety and disrupting outlaw motorcycle gangs in Western Australia.

I thank the Committee for its report and its ongoing commitment to monitoring and reporting on the important function of the Parliamentary Commissioner of the Corruption and Crime Commission.