

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

*First Report — “The efficiency and timeliness of the current appointment process
for Commissioners and Parliamentary Inspectors of the CCC”*

Resumed from 14 September.

MS M.M. QUIRK (Girrawheen) [10.01 am]: I want to speak first on the first report of the Joint Standing Committee on the Corruption and Crime Commission, “The efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the CCC”. As members will be aware, we have previously tabled that report and were given leave to speak briefly to the reports today. At the outset, I would like to thank my colleagues on the committee—deputy chair, Hon Jim Chown, MLC; Mr Matthew Hughes, member for Kalamunda; and Hon Alison Xamon, MLC. I also want to thank the conscientious and diligent committee staff, principal research officer, Alison Sharpe, and research officer, Vanessa Beckingham, for their efforts.

In the initial stages of the new committee, it has become necessary to quickly assimilate some longstanding and intractable technical issues that the previous committee had the benefit of—substantial oral and written submission evidence—through hearings and the luxury of lengthy deliberations. We, of course, have not had that luxury, so I thank my colleagues and research staff for their efforts in assimilating that information.

*Thirty-first Report (Thirty-ninth Parliament) — “The efficiency and timeliness of the current appointment
process for Commissioners and Parliamentary Inspectors of the CCC”*

MS M.M. QUIRK (Girrawheen) [10.03 am]: This thirty-first report of the Joint Standing Committee on the Corruption and Crime Commission of the thirty-ninth Parliament was laid on the table of the Legislative Council and the Legislative Assembly on 15 November 2016. It is titled “The efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the CCC” and contains 25 findings and three recommendations. Due to the prorogation of Parliament and the dissolution of the Legislative Assembly on 30 January 2017, the Attorney General and the Premier did not have the opportunity to respond to the recommendations of the thirty-ninth Parliament’s committee. Given the importance of these recommendations, the current committee resolved to bring them to the new government’s attention by tabling them in this Parliament. The three recommendations in that report are, firstly —

The Attorney General prepare an amendment to the *Corruption, Crime and Misconduct Act 2003* to allow for the appointment of a Deputy or Assistant Commissioner to assist the Commissioner in the day to day work of the Corruption and Crime Commission.

Members who are familiar with this area will certainly know that has been an ongoing problem and causes great administrative difficulties. We therefore fully endorse that recommendation. The second recommendation is as follows —

The Attorney General prepare an amendment to sections 9(3a)(a) and 9(3b) of the *Corruption, Crime and Misconduct Act 2003* to:

1. Remove the role of a nominating committee in the appointment process for Commissioners and Parliamentary Inspectors; and
2. In lieu thereof, mandate that the Premier propose one name from a list of three people to the Committee for its bipartisan and majority support.

The third recommendation is as follows —

The Premier undertake a review of the internal processes for managing the appointments of Commissioners and Parliamentary Inspectors, with the aim of ensuring that they are more timely and efficient.

An expedient government response is particularly important to ensuring an efficient appointment process is in place at the end of this year following the expiration of the current Parliamentary Inspector of the Corruption and Crime Commission’s appointment. I commend the report to the house, and, as I said, we hope for imminent resolution of the issues raised.

MR M. HUGHES (Kalamunda) [10.06 am]: I would like to add a few comments to the tabling of the report by the Chair of the Joint Standing Committee on the Corruption and Crime Commission this morning. In doing so, I also acknowledge that the body of this work was undertaken by the previous committee, chaired by Hon Nick Goiran. I would also like to acknowledge the work of the principal research officer at the time, Dr David Worth, and his assistant, Ms Jovita Hogan. I am conscious that this report was tabled in the thirty-ninth

Parliament. Members have heard that this committee considers it important that this matter be brought before this Parliament to get a response to the recommendations.

By way of background, the Joint Standing Committee on the Corruption and Crime Commission began this inquiry into the issue in response to the current evident, very significant delay in the selection of persons to fulfil the important roles the chair referred to in her report tabling comments. That was after expressions of interest and responses to those expressions of interest by eminent persons for the position, I think, in relation to one particular expression of interest. The candidate, in fact, had not heard after nine months of expressing their interest. In part, this is something the committee was concerned about.

The house will be aware that the joint standing committee has a significant and important role at the end of an appointment process in the appointment of the positions mentioned this morning, principally the Commissioner of the Corruption and Crime Commission, the acting commissioner, the Parliamentary Inspector of the Corruption and Crime Commission and the acting parliamentary inspector. The committee's role in the selection processes is provided for in sections 9, 14, 189 and 193 of the Corruption, Crime and Misconduct Act 2003. For these appointments, the act requires the Premier to recommend to the Governor the appointment of a person with a majority and bipartisan support of both committees. Having said that, it was noted that both the current parliamentary inspector and the current commissioner, who at the time had recent experience of the selection process and had made important submissions, did not support the current process, which requires the use of a nominating committee. The recommendations of the thirty-first report of the thirty-ninth Parliament and the first report of the committee of this Parliament was that that nominating committee be dispensed with. The committee noted that no other Australian jurisdiction utilises a nominating committee as part of its selection process with the responsibility of supplying a list of candidates to the executive to fill such key roles in, or overseeing, its crime and corruption agency. That selection panel would include the Chief Justice, and there was some discussion about the judicial responsibility remaining somewhat separate from that of the executive. The current committee would be very appreciative if action could be taken to fulfil the recommendations of the report.

Second Report — “The ability of the Corruption and Crime Commission to charge and prosecute”

Resumed from 14 September.

MS M.M. QUIRK (Girrawheen) [10.10 am]: Like the Corruption and Crime Commission's first report, this report has previously been tabled. This report, “The ability of the Corruption and Crime Commission to charge and prosecute”, is the current committee's endorsement of the previous committee's report. The thirty-third report of the Joint Standing Committee on the Corruption and Crime Commission in the thirty-ninth Parliament was laid on the table of the Legislative Council and the Legislative Assembly on 17 November 2016. It contained 48 findings and two recommendations. Due to the prorogation of the Parliament and the dissolution of the Legislative Assembly on 30 January 2017, the Attorney General did not have the opportunity to respond to the recommendations of the JSCCCC in the thirty-ninth Parliament. Given the importance of the recommendations made by the previous committee, the current committee resolved to bring them to the new government's attention by tabling them in this Parliament. The committee notes that the recommendations refer to the Corruption and Crime Commission's annual report for 2016–17, which was tabled earlier this week and, given that it has already been tabled, the committee is amenable to changing the time frame of the recommendations to refer to the annual report for 2017–18.

As well as revisiting the oft-vexed question of the CCC's power to prosecute, the previous committee, very usefully, also reviewed the power to prosecute held by a number of Western Australian government agencies, including the then Department of Fisheries, the Department of Mines and Petroleum and the Department of Commerce. All administer acts that allow them to commence prosecutions. It was found by the previous committee that in those cases the powers to prosecute are clearly and expressly set out in their respective legislation but, in the main, any charges are laid and prosecuted by the State Solicitor's Office. The evidence obtained by the previous committee overwhelmingly supports the maintenance of a separation between the investigation of serious misconduct and the prosecution of criminal offences. It considered the approach taken by interstate and international anti-corruption agencies in reaching that conclusion. From my personal experience, having worked in an investigative capacity at the National Crime Authority for just under a decade, I think there is much merit in separating decisions about prosecution from investigations. It gives a level of objectivity and distance, which is required in making these important decisions.

The previous committee was not persuaded that it is either necessary or desirable for the CCC to be empowered to commence or conduct prosecutions for offences unrelated to the administration and enforcement of the Corruption, Crime and Misconduct Act 2003. That committee further recommended that the CCC include a specific update in its annual report on the efficiency and effectiveness of its arrangements with the State Solicitor for the commencement and conduct of prosecutions. There have been some notorious cases in which the time frame for bringing a prosecution has been unsatisfactorily long, and we believe that the efficiency of bringing

matters to prosecution should be canvassed in the annual report of the CCC. In that regard, the report suggests that the Attorney General undertake a review into the efficiency and effectiveness of the commencement and conduct of prosecutions arising from CCC investigations and table a report, as I said, in the commission's annual report.

Finally, I again thank my colleagues on the committee: the deputy chair, Hon Jim Chown, MLC; Mr Matthew Hughes, MLA, member for Kalamunda; and Hon Alison Xamon, MLC; as well as the conscientious and diligent committee staff, principal research officer, Alison Sharpe, and research officer, Vanessa Beckingham. As I have previously noted, in the initial stages of the new committee it has become necessary to quickly assimilate some longstanding and intractable technical issues for which the previous committee had the benefit of substantial oral and written evidence through hearings, the luxury of lengthy deliberations and greater familiarity with the issues on hand. I thank my colleagues and the research staff for their efforts over the short time period, coming to grips with very longstanding technical issues.

MR M. HUGHES (Kalamunda) [10.16 am]: Again, I would like to offer a few comments and, in doing so, recognise the work of the previous committee under the chairmanship of Hon Nick Goiran. The issue dealt with in the Joint Standing Committee on the Corruption and Crime Commission's second report, "The ability of the Corruption and Crime Commission to charge and prosecute", was the ability of the CCC to prosecute its own charges. Members will be aware that the work of the committee in the thirty-ninth Parliament on this matter commenced on 26 June 2014 but, as a result of court action that touched upon the issue, the then committee made a decision to delay its proceedings and, ultimately, change its terms of reference. One of the important points in question was the ability of the commission to prosecute as well as investigate, and the committee chair has already gone through that process. The committee was very thorough in its examination of the issues, and looked at agencies in other jurisdictions charged with responsibility for integrity, finding that none had the express power to prosecute in their own right, other than the Independent Broad-based Anti-corruption Commission in Victoria.

The previous committee received 24 submissions, including from the then Attorney General, the current Corruption and Crime Commissioner and the Parliamentary Inspector of the Corruption and Crime Commission. It undertook closed hearings with the CCC commissioner, the parliamentary inspector, the State Solicitor and the Director of Public Prosecutions. The evidence obtained by the joint standing committee overwhelmingly supported the maintenance of the separation between the investigation of serious misconduct and the prosecution of criminal offences, and the report of this committee underscores that.

The first recommendation of the thirty-third report of the Joint Standing Committee on the Corruption and Crime Commission in the thirty-ninth Parliament, which forms the basis of the current committee's second report to the Parliament, was that the Corruption and Crime Commission include in its annual report for 2016–17 a specific update on the efficiency and effectiveness of its arrangements with the State Solicitor for the commencement and conduct of prosecutions. I note that the commissioner, in his report to Parliament, has made reference to that recommendation, stating that these arrangements, while not concluded, are still developing. It is heartening for the committee that the commissioner is alive to the issues that the committee had brought to the attention of the Parliament. Again, I thank the chamber for its time.

MR A. KRSTICEVIC (Carine) [10.19 am] — by leave: I also wish to speak on the tabling of the second report of the Joint Standing Committee on the Corruption and Crime Commission. It is very useful that this report was tabled in the last sitting week of the previous Parliament, because that has given members of the opposition the opportunity to look at the report so that we can speak on it with some knowledge. We need to make sure that when reports from the Joint Standing Committee on the Corruption and Crime Commission are tabled in the future, opposition members are given the opportunity to speak maybe the following week, because we obviously cannot look at the report and make constructive comments if the tabling of the report and the debate take place at the same time.

I want to talk about the ability of the Corruption and Crime Commission to charge and prosecute. I am concerned that a number of court cases have been thrown out because the court determined that the Corruption and Crime Commission had operated outside the mandate given to it under its governing legislation, the Corruption, Crime and Misconduct Act 2003. I refer in particular to the case concerning the WA Police Union. The report states in finding 33 —

On 15 July 2016 the Western Australian Court of Appeal found that the Corruption and Crime Commission's functions do not extend to the prosecution of offences the subject of investigations conducted by it, but which have no other connection with the CCC or the administration of its Act.

I am not concerned about the ability of the Corruption and Crime Commission to do its work while Hon John McKechnie, QC is head of the Corruption and Crime Commission, because he has been appointed appropriately through a proper bipartisan process. We have had a lot of discussion in this fortieth Parliament about the membership of the Joint Standing Committee on the Corruption and Crime Commission and whether the committee has been formed properly and legally. Obviously, the Labor Party has the numbers in this place so it can do what it likes. It is interesting that a week or two after the committee was formed, a highly accredited

academic gave members a speech about how to interpret legislation. She said that Parliament makes the legislation and the judiciary interprets and applies that legislation. In the formation of the Joint Standing Committee on the Corruption and Crime Commission, the Parliament both made the legislation and interpreted and applied it. I am concerned that if in the future a new commissioner was appointed and there was not bipartisan support, someone might decide to challenge that in the Supreme Court or the High Court. They might look at the legislation, the conventions under which the committee has been formed in the past, the debate in the Parliament and the influence of the politics of the day. It would not take a knowledgeable lawyer long to pull that together and say that is very different from past conventions. From my perspective, the Corruption, Crime and Misconduct Act 2003 is pretty straightforward. I am not a lawyer, so I read these words at a very basic level in terms of what they say, not how they can be twisted or turned around. Our bible for interpretation is, of course, the Interpretation Act. That act states that if the legislation covers a certain point, the Interpretation Act does not need to be looked at.

Dr A.D. Buti: You're sounding like a good lawyer!

Mr A. KRSTICEVIC: Thank you very much—coming from the member for Armadale, who is a very distinguished lawyer. I am concerned about the politics around the way in which we have set up the Joint Standing Committee on the Corruption and Crime Commission. I would hate to think that if a new commissioner was appointed, a tricky lawyer might be able to use the processes around the formation of this committee to get a lot of people off their prosecutions. I would hope the chair of the committee has made inquiries at the highest levels into the complications of that political decision. I would hate to think that the way in which Parliament has interpreted the legislation might impact on the ability of the Corruption and Crime Commission to charge and prosecute. The role of this Parliament is to apply the legislation. The government should have gone to the State Solicitor or another higher authority and said, “We are doing this for political reasons. We want to stack the committee in a certain way.” The government could be doing that as a favour to the Greens, or because it wants to put another member on the committee so they can get their extra allowance. The government should be honest with the State Solicitor about its reasons for doing that.

Mr M. Hughes interjected.

Mr A. KRSTICEVIC: I do not know the reasons; I am trying to show the sorts of things that could be —

The DEPUTY SPEAKER: Member, I am trying to get you back to relevance. You are straying quite a bit.

Mr A. KRSTICEVIC: I am sorry, Madam Deputy Speaker. The relevance is that the ability of the Corruption and Crime Commission to charge and prosecute may be challenged in a court of law and the lawyers could nitpick at various things. We all know how lawyers operate. There are many discussions in this Parliament between lawyers, and none of them seem to agree. Generally speaking, most of them make sense in their arguments. However, one of them is occasionally a bit out of left field, but he is not here at the moment so I will not reflect on him.

Mr P.A. Katsambanis: I want to interject to make sure it is recorded in *Hansard* that I am here!

Mr A. KRSTICEVIC: The member for Hillarys is definitely here and he is very well versed when he presents his arguments. He even supports the Attorney General when he introduces the member for Hillarys' own ideas but then obviously changes his mind.

I am seriously concerned that if the Corruption, Crime and Misconduct Act is not amended, once Hon John McKechnie, QC moves on, the ability of the Corruption and Crime Commission to charge and prosecute will be compromised. There is more than enough evidence on the record to support such a challenge. I am sure plenty of people would love to challenge on that point. I would hate to give them an out. I would hope that people like the member for Armadale and the member for Hillarys, who care about our community and care about justice, are able to influence this Parliament to do what is legally correct rather than what is politically expedient. I do not want a dark cloud to be cast over the ability of the Corruption and Crime Commission in future iterations to do its job.

I reiterate that it is important to provide an opportunity for the opposition to speak on reports of the Joint Standing Committee on the Corruption and Crime Commission when they are tabled in this Parliament so that there is a true reflection of the intentions of the Parliament. If that opportunity is not provided to the opposition, it will be a blight on the Corruption and Crime Commission that will be looked at by the courts when challenges are brought forward. We all take our jobs very seriously. Criminals should not be allowed to get away with their criminal activities. We have seen in the past that there are loopholes in our legislation that we obviously need to close. Sometimes we tighten them up correctly and other times we just do smoke and mirrors for political reasons without taking things to the extent that we need to make sure that criminals and people who need to be in jail stay in jail. I would like everybody in this house to support the chairwoman of the Joint Standing Committee on the Corruption and Crime Commission in making sure she is able to bring commonsense and the correct processes to bear when it comes to reports. I also implore her to make sure that we get a chance to look at the reports before they are spoken on if possible—that is, they are tabled first and we then get a chance to look at them and speak on them the following week to add something to them.

Third Report — “Annual Report 2016–17”

Resumed from 14 September.

MS M.M. QUIRK (Girrawheen) [10.30 am]: It is now my privilege to speak on the third Report of the Joint Standing Committee on the Corruption and Crime Commission, “Annual Report 2016–17”. As in previous instances, this was tabled at the last sitting of Parliament. Before I go into it, I say in response to the member for Carine that if he relies on convention in relation to one matter, he also needs to rely on convention and the fact that the normal procedure is that those members not on the committee get to review the report at the time it is tabled. In this committee, where there is a level of sensitivity, it is totally inappropriate that we give the opposition access to a report ahead of time. I am confident, having worked with Hon Jim Chown for a number of months now, without disclosing what happens in the committee, that I can make the general observation that he is bringing a robust and forensic analysis on all the matters before it. This is the annual report to the fortieth Parliament; however, as the committee was only established on 15 June 2017 following baseless concerns raised by the opposition, there was not much work undertaken by the committee in this Parliament in the two weeks leading up to 30 June. As I have said previously this morning, at the time Parliament was prorogued a number of reports, although tabled previously, had not yet been the subject of government response and we have had to revisit them in the time we have been meeting as a committee. As I have also stated this morning, it is worth noting that the committee is composed solely of members who are unfamiliar with the details of previous deliberations, hearings and evidence, and also of the intricacies of the legislation, as none of us had served in this role in the last Parliament. Clarifications of the requirements of the composition of the committee, the capacity to oversee investigations and minor misconduct by the Public Sector Commissioner, and doubts expressed about the power of the CCC to investigate members of Parliament are all live issues confronting the new committee.

I urge that the current deliberations in relation to changing some standing orders by the Procedure and Privileges Committee and elsewhere be expedited. This matter was raised by way of report in the last Parliament and we need to clarify the committee’s role in the oversight of misconduct investigations by the Public Sector Commission previously undertaken by the CCC. We also await clarification of the CCC’s capacity to investigate members of Parliament other than ministers. In recent times that was the subject of a legislative amendment that was later withdrawn.

Finally, I thank my colleagues on the committee: deputy chair, Hon Jim Chown, MLC; Mr Matthew Hughes, MLA, member for Kalamunda; and Hon Alison Xamon, MLC. I also thank, as I have said previously, the conscientious and diligent committee staff: principal research officer, Alison Sharpe, and research officer, Vanessa Beckingham. In the initial stages we had to quickly assimilate some longstanding and intractable technical issues about which the previous committee had extensive corporate knowledge and background. We will address a number of the live issues I have talked about in reports to be tabled in the coming months and, as I said, hopefully the change of standing orders will clarify our position in regard to minor misconduct. We are hopeful that the clarification of these and other issues through subsequent legislative amendment is imminent.

MR M. HUGHES (Kalamunda) [10.34 am]: I am thankful for the opportunity to speak briefly to the 2016–17 annual report of the Joint Standing Committee on the Corruption and Crime Commission. In doing so, I recognise, of course, that the report covers the committee of the thirty-ninth Parliament and the commencing work of the committee of the fortieth Parliament. I would also like to express my thanks to the principal research officer, Alison Sharpe, and Vanessa Beckingham, who have provided me with excellent orientation in my work as a committee member and explained to me in great detail the parliamentary procedures and processes attached to this committee. Members will note that we have been dutiful in bringing before the house two important reports, which the chairwoman has mentioned, the recommendations of which would have otherwise lapsed as a consequence of the prorogation of the thirty-ninth Parliament. I am pleased we have been able to ensure that the house has been able to provide a means by which those charged with the responsibility to respond to those recommendations do so in a timely manner. I was particularly appreciative of the opportunity to meet with the Corruption and Crime Commissioner and his officers on 21 June, which is referred to in this report, and to deeply understand the issues confronting the commission with respect to its resourcing and investigative powers. I also touched upon, and it was reaffirmed, that this commissioner has no desire to be involved in a prosecutorial stance to take matters before the courts; that is, he sees the importance of maintaining that distinction between the investigative role of the CCC and the work of others charged with the responsibility of prosecuting those who have engaged in behaviours that would lead to criminal charges being pressed against them. Again, I am deeply appreciative of the opportunity to be a member of the Joint Standing Committee on the Corruption and Crime Commission and I promise this house that I will discharge my responsibilities being mindful of the concerns that the opposition has in respect of the composition of the committee.

MR W.R. MARMION (Nedlands) [10.37 am] — by leave: I want to make a brief comment. This morning I went to the Assembly chamber to see whether I could get a copy of the reports. Staff misinterpreted that I was seeking the fourth report and I was told that I could not get a copy of the report until it was tabled. That highlights the

problem we now have in this house, the Assembly, of the opposition not being able to get reports. As it turns out, I could have got the other three reports because they were tabled last sitting.

Ms M.M. Quirk: Yes, that is what we were talking about.

Mr W.R. MARMION: Yes, but they did not realise that. Anyway, the point I am making is that in the norm, on the day that the report is tabled no-one from the opposition would be able to speak knowingly on the reports, because that would be the first time —

Ms M.M. Quirk: That is not right. Hon Jim Chown —

Mr W.R. MARMION: In this house. No-one in this house did.

Ms M.M. Quirk: You did not say in this house.

Mr W.R. MARMION: I am saying in this house. This house is different from the other house. In the Assembly the opposition does not have access to the committee reports at the time they are tabled and can obviously not comment on them with any knowledge. I really think that is an abuse of this Assembly and I was very disappointed, not taking anything away from the honourable members, all four of whom I hold in high regard. I am referring to the report that has members of the committee; that is why it is relevant.

The DEPUTY SPEAKER: Member, keep it relevant, because this argument does not really address the issues.

Mr W.R. MARMION: I am bringing to the house's attention that in the future no-one on our side will be able to get up and talk about any of these reports.

Ms J.M. Freeman interjected.

Mr W.R. MARMION: Madam Deputy Speaker, I cannot concentrate when there are interjections.

The chair of the CCC committee in talking about the committee's report just said that she was getting clarity for members of Parliament who could be brought before the committee. That is a serious issue. If it transpires in the future that there is a negative report about, possibly, a member from this side of the house, that report will come in and two government members will be able to talk about that opposition member. That is a very important point. I think that that shows a failure of leadership by the Premier of Western Australia. If he aspires to be a great Premier and to do great things for Western Australia, he is failing dismally on this very important test—to make sure that probity and fairness is delivered in this house. It is no use making the excuse that there is a Liberal member from the other house on the committee. How precious is that? Each house is distinct from the other, so that argument fails.

I make this point: every time the CCC committee presents a report to this house, someone on this side of the house will get up and make the same point I am making now.

*Fourth Report — “Parliamentary Inspector’s report on a complaint by Dr Robert Cunningham
and Ms Catherine Atoms” — Tabling*

MS M.M. QUIRK (Girrawheen) [10.41 am]: I table the fourth report of the Joint Standing Committee on the Corruption and Crime Commission, titled “Parliamentary Inspector’s report on a complaint by Dr Robert Cunningham and Ms Catherine Atoms”.

[See paper 865.]

Ms M.M. QUIRK: Before I speak to the report, I will briefly comment on the comments made by the member for Nedlands. I have to say, the evidence of the opposition's interest in these matters is clear by virtue of the fact that even though the report was tabled last week, the member for Nedlands was scrambling this morning, trying to get copies of the report. I think that actions speak louder than words. It is clear that the opposition is taking a debating point and is not interested in the merits of the issues. The member for Nedlands demonstrates a complete misunderstanding of the role of the committee when he suggests that the committee has the capacity to make findings on the conduct of members of Parliament, which it does not. I implore other members of the chamber to treat the member for Nedlands' comments with the contempt they deserve.

On this report, I thank, firstly, my colleagues on the committee for their assistance: Hon Jim Chown, MLC; Mr Matthew Hughes, MLA; and, Hon Alison Xamon, MLC. I am repeating myself, but, of course, I also thank the conscientious and diligent research staff: Alison Sharpe, principal research officer; and, Vanessa Beckingham, research officer.

This is the first substantive report of the committee and is an endorsement of the work of the Parliamentary Inspector of the Corruption and Crime Commission. As the report states, the role of the parliamentary inspector is incredibly valuable and we thank him for his efforts.

Extract from Hansard

[ASSEMBLY — Thursday, 12 October 2017]

p4715b-4725a

Ms Margaret Quirk; Mr Matthew Hughes; Mr Tony Krsticevic; Mr Bill Marmion; Dr Tony Buti

Before going to the committee's conclusions, I will spend a little time going through the chronology of this matter, which has dragged on for nine years. The matter has been raised previously in this Parliament, but I think that for the benefit of more recent members of the house, it is worth addressing the issues that arose prior to addressing the committee's conclusions and discussion of the parliamentary inspector's report. I heavily rely on the previous parliamentary inspector, Mr Steyler, QC, for the chronology in the earlier report on the matter.

In the early hours of 2 November 2008, Ms Atoms was walking near the Esplanade Hotel in Fremantle with Dr Cunningham and another friend, after celebrating her birthday. She had not been drinking. Dr Cunningham and his friends came across two men in the street. One had fallen into a garden bed and the other was trying to pull him out. Dr Cunningham and his friends were asked to help pull out the man who had become wedged in the bushes. In the course of lending aid, Dr Cunningham was pushed from behind into the same garden bed by an unknown person. After Dr Cunningham had extricated himself from the garden bed, he saw two police officers speaking to Ms Atoms nearby. As she turned and walked away from the officers, one of the officers grabbed her by the arm. She screamed in pain. Dr Cunningham approached the officer to ask what was going on. As he approached he heard the officer say to Ms Atoms in an aggressive tone, "You're required to leave Fremantle", to which she replied, "That's not really possible; I live in Fremantle." This comment related to a move-on notice that the officer was attempting to issue to Ms Atoms.

Dr Cunningham approached the officer and told him he was a solicitor. As he said this, the other police officer grabbed Dr Cunningham by the arm. Dr Cunningham again said that he was a solicitor and asked why Ms Atoms was receiving a move-on notice. Both police officers then placed Dr Cunningham's hands behind his back. One officer removed his handcuffs and armaments belt. I have to say, from my past experience, I would advise people not to identify themselves as lawyers in these situations. As a young prosecutor I once asked a police officer why we were prosecuting a particular person, and the officer said that they had failed the test, to which I naively replied, "What test?" The officer replied, "The attitude test." As the officers pulled Dr Cunningham's arms behind his back he asked them to be careful with his left shoulder as a football injury had restricted the movement of his left arm. One officer pushed Dr Cunningham into the street whilst handcuffing him. Once he had been handcuffed, the other officer kicked Dr Cunningham very hard in the legs a number of times in an attempt to trip him, notwithstanding that he was wearing spectacles. Dr Cunningham was further pushed into the street towards a parked police van. He heard someone shouting from the balcony of the nearby Esplanade Hotel, "Stop the violence." That bystander was recording the incident. Dr Cunningham was then tasered, which caused excruciating pain. He fell to the ground on his face whilst handcuffed and as he lay on the road he suffered several electric shocks to his back. Ms Atoms was also tasered.

A more senior police officer arrived. Dr Cunningham told him that he was a solicitor and that all he had done was to ask one of the officers a question. The officer responded by saying words to the effect—I am quoting—"Mate, we don't give a fuck who you are or what you were doing." Dr Cunningham saw the arresting officers looking up towards the balcony from which the person had shouted earlier. They were counting the floors leading to that balcony. Dr Cunningham was then roughly put into the back of a police van with Ms Atoms. He asked several police officers why he was under arrest. His question was ignored. At no time was Dr Cunningham told that he was under arrest. Dr Cunningham asked that the handcuffs that had been overtightened to be loosened because he was in pain. His request was ignored.

At the Fremantle Police Station, Dr Cunningham asked if he could be given medical assistance. One of the officers replied—again I am quoting—"We don't give a shit about you, mate. You can always make your way to the hospital when we let you out of here." Shortly afterwards, Ms Atoms, who was nearby, made a phone call on her mobile phone. While she was in mid-sentence, the officer took the telephone from her and said words to the effect, "If you know of anyone else with a camera, tell them to bring it down here so we can delete the images."

Dr Cunningham, whose wrists were bleeding and who was suffering the after-effects of being tasered, again asked for medical assistance. This was refused. Dr Cunningham asked if he could speak with the most senior officer at the station. His request was eventually granted and he was taken into a separate room where he spoke to a sergeant. Dr Cunningham told her what had happened. Afterwards, Dr Cunningham was provided with bail, which contained a condition preventing him from attending the Esplanade Hotel. Dr Cunningham had planned to return there to see whether he could find any witnesses to the incident. He refused to sign the bail form containing this condition. Eventually, this condition was removed. After being charged and released, Dr Cunningham and Ms Atoms were charged with the offence of resisting arrest. Both Dr Cunningham and Ms Atoms were spoken to outside the station by the sergeant to whom Dr Cunningham had earlier complained. As outlined in the report, Dr Cunningham says that the sergeant said —

"Look guys, I am really sorry about what happened to you two tonight. We have a problem in WA whereby there is a shortage of police. Recently, the government has been recruiting police officers from the UK. Many of these guys have had little training and they can go a little overboard at times. Look, I am really sorry, ok?"

Eventually, both Dr Cunningham and Ms Atoms pleaded not guilty to criminal charges in the Magistrates Court and received from WA Police disclosure materials in respect of the prosecution. This included CCTV footage obtained from Marine House in Essex Street. Dr Cunningham also alleges that his office was broken into, which he believes was related to the prosecution. Also, the CCTV footage that was made available had gaps, including gaps of 13 seconds, one minute and 12 seconds, and 32 seconds respectively. The first of these occurred at the approximate time that Dr Cunningham was being kicked and tripped, and the second and third occurred at the approximate times that both were being tasered.

The matter went to the Magistrates Court on 29 April and after cross-examination of the first witness called by the prosecution, one of the arresting officers, the police prosecutor—I have to commend him for this—suggested to Dr Cunningham’s legal representative that he make a no-case submission. The submission was made and accepted by the magistrate. The charges were dismissed and \$15 000 in costs were ordered in favour of Dr Cunningham and Ms Atoms. The magistrate was extremely critical of the officer who gave evidence and made adverse findings about his credibility and also found that he was evasive and imprecise. The magistrate also noted the admission that the summary of facts was inaccurate. She believed that there had been collusion between the two officers in formulating their statements, which was further reinforced by the fact that both statements contained exactly the same spelling error, terminology and wording. Despite this, the officers continued to maintain that the statements were prepared completely independently.

In December 2008, prior to the hearing, Dr Cunningham complained to the Corruption and Crime Commission, and the CCC referred the complaint to WA Police. In May 2010, after being acquitted, Dr Cunningham wrote to the police about the incident and asked them to reopen the investigation. He was told that the police would review the court proceedings. He also wrote to the CCC asking it to investigate the complaint, given the outcome of the prosecution. On 10 July, Dr Cunningham received an opinion from the CCC that misconduct on the part of one or more of the officers may have occurred and that the CCC had asked for the police file. On 21 July, the CCC wrote to Dr Cunningham informing him that it had decided to refer the complaint back to WA Police for investigatory or other action. There is a substantial amount of correspondence, and time does not allow me to go through it all.

Dr Cunningham and Ms Atoms then took civil proceedings in the District Court. In 2016, both successfully sued three police officers involved in the incident. In December 2016, Her Honour District Court Judge Davis gave comprehensive reasons in a 241-page judgement for the plaintiffs. She awarded damages to Dr Cunningham assessed in the figure of \$110 304, and Ms Atoms was awarded damages assessed in the sum of \$1 024 822.11. She found that both plaintiffs were honest and conscientious in their evidence. Significantly, because of the malice shown by police officers in their treatment of Dr Cunningham and Ms Atoms, Her Honour awarded general, aggravated, exemplary and special damages to both. She found that the police officers’ use of excessive force constituted battery, Dr Cunningham’s imprisonment was neither lawful nor justified, the officers acted in malice in their dealings with Dr Cunningham, and the bringing and continuation of criminal charges amounted to a misuse, or wrongful or unreasonable use, of power for a purpose other than proper invocation of criminal law.

Dr Cunningham then effectively asked whether, in light of these matters and the extensive and very detailed findings of the District Court, the CCC would reopen the matter. The CCC refused to do so and Dr Cunningham then complained to the Parliamentary Inspector of the Corruption and Crime Commission, and that is the report that we have tabled today. There are comprehensive details annexed to the parliamentary inspector’s report, which I have been able to only quickly skim over. This is a significant matter and the committee entirely endorses and concurs with the findings of the parliamentary inspector, which were effectively at odds with those of the Corruption and Crime Commission.

We believe this report is significant for a number of reasons. First, it demonstrates how valuable the role of the parliamentary inspector is. His close examination and provision of independent bias without fear or favour serves as a bulwark against complacency, inertia or, even worse, incompetence. Second, we believe it sets out a course of conduct by the CCC and, to a lesser extent, WA Police that reflects badly on both organisations. Third, the report begs the question that if the Corruption and Crime Commission declines to independently investigate a matter such as this, what are the characteristics of a case that it would be prepared to take on? Moreover, the oft-repeated assertion by the commission that it does not have the resources to undertake further examination of the matter, in light of the comprehensive 2016 findings of the District Court, is simply indefensible. As the previous parliamentary inspector, Chris Steytler, QC, found, there were credible and serious allegations, so members of the committee were really confounded that this case was considered unworthy of the commission’s ongoing attention. How is it that such scrutiny by the commission is regarded as not being in the public interest? The recommendations of the parliamentary inspector are in the strongest terms available to him within his jurisdiction. The disinclination of the CCC to review the incident after evidence had been tested in civil proceedings may stem from the desire of the current commissioner to draw a line across past sub-optimal practices. Reference is made

on more than one occasion in correspondence with the PICCC that many of the matters currently in contention were issues dealt with by his predecessors over a period of nine years and he was unwilling to revisit them.

The desire for quality improvement and more robust procedures in future cases is commendable and laudable. Similarly, it is conceded that the commission's scrutiny would, at best, result in a non-binding opinion and certainly would have no power to lead to prosecution action on its own motion, but the committee rejects this. The public interest suggests that WA Police deliver more proportionate disposition of the matter and this needs to be initiated by the commission making recommendations for this to occur. There will be ongoing concerns with the integrity and the capacity of the Corruption and Crime Commission to oversight internal police investigations or its own independent inquiries if, at this stage, it is not prepared to assess whether systemic deficiencies or procedures were present throughout the assessment process of this case over the years.

Finally, the most cursory examination of the efforts over many years of Dr Cunningham and Ms Atoms to have the incident reviewed leads to the conclusion that it was only their considerable persistence and resources, as well as a familiarity with the law, that enabled them to do so. This leads to the inevitable conclusion that others in similar circumstances would have capitulated at a much earlier stage. In the same way that we encourage access to justice with the legal system, the Joint Standing Committee on the Corruption and Crime Commission is highly uncomfortable with the situation in which serious misconduct and breaches of integrity standards can be disclosed only after such long, protracted and tenacious efforts.

MR M. HUGHES (Kalamunda) [11.00 am]: I will be reasonably brief on this because I believe that reports from another committee need to be tabled. My parliamentary colleague is very eager to make a contribution on that matter so I will be brief.

The chair has gone through the history of this matter in quite close detail. I have to say that as a parent in my 60s, I think of these people who were out for a good time celebrating someone's birthday and went to someone else's aid. One understands that there can be tense situations in any circumstance in which police officers have to police areas such as the Esplanade where people may be described as revelling in the experience of other birthday parties or whatever it might be. They were caught up in a process whereby in going to someone's aid, they ended up tasered, handcuffed and taken to the lock-up. There was a cover-up of what may have gone on in the street with the excessive use of force by police officers. This is not to say that this is standard behaviour by the police force, but it is certainly something that required substantial investigation by the police, given their responsibility to look at their own house and make sure that it is in order.

I am absolutely flabbergasted that the incident happened in 2008 and we are still talking about it in 2017; it is a long time. I think it is important that we take the point made by the committee chair that the only reason that it has got to this point of the Parliamentary Inspector of the Corruption and Crime Commission insisting that the Corruption and Crime Commissioner exercise the power that was given to him by the Parliament to look at serious matters of misconduct by the police is that two highly educated persons doggedly pursued their civil rights. This was not a trivial matter. Yet, for whatever reason, the CCC refused to proceed along that path. These people pursued the right to have the searchlight played across what occurred in the street and at the police station, what occurred as a result of the police investigating itself, and the evidence provided in the Magistrates Court to discredit the attempt by the police to proceed with what I regard as a malicious prosecution and an abuse of power. The parliamentary inspector sees it for what it is. The committee urges the commissioner of the CCC to see it in the same way. This is a matter of great concern to the public and cannot be ignored any longer. It requires the commissioner to take note of what the parliamentary inspector has said and to re-examine what happened and why it happened. In that way, we can ensure that it does not happen again in the future. That is what the work of the commissioner and the CCC is all about.

Others may be less skilful in their ability to prosecute their own self-interest. From my point of view, it goes to the heart of why we have the organisation of the CCC. We want to ensure that instruments of the state do not mistreat the citizens of the state. I fully endorse the recommendations that have been provided by the committee in light of the report that the parliamentary inspector has provided to the joint standing committee. This has been before the joint standing committee previously. At that time, the joint standing committee stated —

When an apparent serious and credible complaint alleging excessive use of force by police is made to the CCC, it is plainly the role of the commission to conduct a full and independent investigation. As stated by the committee in ... an earlier report, —

To Parliament —

the committee is firmly of the belief that the CCC's priority should be on improving its oversight of WA Police, as the committee believes that the CCC's most important function is to ensure that the work and role of WA Police is not hampered by misconduct or corruption.

The parliamentary inspector's report on this matter has strengthened the committee's belief that the CCC should be doing significantly more. When will the commissioner hear what the joint standing committee is saying and what the parliamentary inspector is saying about this matter? He should do something about it.

DR A.D. BUTI (Armadale) [11.06 am] — by leave: We have just heard significant contributions from the chair of the committee and the member for Kalamunda, who is also a member of the Joint Standing Committee on the Corruption and Crime Commission. We are all diminished in this place by the fact that it has taken all these years for a report on this case by the Parliamentary Inspector of the Corruption and Crime Commission to finally be tabled in this Parliament. This matter was first raised in this Parliament in 2011 by the then shadow Attorney General as a matter of public interest. The government at the time did not appear to take great interest in the matter. The member for Girrawheen, who is the chair of the committee, outlined a chronology of this event. As she was doing that, many members were surprised to hear the details of this case. If one goes through the facts of this case, it is hard to understand how the police were not brought to account until many years later. It took a civil action at considerable financial and personal cost to Ms Atoms and Dr Cunningham.

I think it is on record, but before I continue I should state that they are friends of mine and that I used to work with Dr Cunningham. Members have heard the basic facts of the case, which went all the way to the District Court. Members have heard of the consistent battles and the effort of Dr Cunningham to have this matter addressed by the CCC. At every turn, the CCC did not act in a positive manner. I have just received a copy of the report that has just been tabled. If members turn to page 19, which is part of the parliamentary inspector's report that is an appendix to the tabled report, they will see some points he mentions that came out of the District Court decision by the honourable Justice Davis.

We heard that Ms Atoms and Professor Cunningham were successful in pursuing that case. We should be aware that they received damages because of the wrongs that have been committed against them. I will go to some of the points in this document. It states —

3. Very little of the evidence given by police officer Traynor as to what occurred on the footpath at the time of the incident was supported by CCTV footage; on critical issues his evidence was manufactured or reconstructed in an attempt to put himself in the best possible light or to justify what he did; his evidence was inconsistent and neither accurate nor reliable, and Her Honour was unable to accept any of his evidence unless it was inherently probable or corroborated by other acceptable evidence;

Further down, it states —

6. There were no reasonable grounds for the police officers to suspect that Ms Atoms committed a breach of the peace or the offence of disorderly conduct or was hindering or obstructing the officers; there were no reasonable grounds for the officers to give her a move-on notice, or for telling her that she would be getting such an order; there were no reasonable grounds for the officers to ask her for her name and address ...

And there was —

no lawful reason to touch, grab or detain her, and—

The police officer's —

... restraint and detention of her was unlawful;

These are the words of a judge of the District Court, as summarised by the Parliamentary Inspector of the Corruption and Crime Commission —

8. The three police officers acted with malice in their dealings with Ms Atom, and the bringing and continuation of the charges against her by officer Clark amounted to a misuse, or wrongful or unreasonable use, of power for a purpose other than the proper invocation of the criminal law;
9. There was no justification for the arrest of Dr Cunningham and it, and everything which followed his arrest, was unlawful;
10. The force used to arrest Dr Cunningham and his subsequent treatment by police officers Traynor and Clark was unnecessary and excessive, and there was no justification for tasing him ...

I actually went to the initial hearing on this matter in the Magistrates Court, where the charges were brought against Dr Cunningham and Ms Atoms, and I saw some of the closed-circuit television footage. The footage does not actually show the tasing, but it is hard to believe that in Western Australia in the twenty-first century this has happened and the police officers were not brought to account by either internal investigation or the Corruption and Crime Commission. We have to remember here that the former parliamentary inspector, Justice Steytler, came across this matter by chance because Dr Cunningham bumped into him at the Law School at the University of Western Australia where they were colleagues.

Extract from *Hansard*

[ASSEMBLY — Thursday, 12 October 2017]

p4715b-4725a

Ms Margaret Quirk; Mr Matthew Hughes; Mr Tony Krsticevic; Mr Bill Marmion; Dr Tony Buti

I wish I had all day to talk about this case. Another issue not raised in this report is that when Dr Cunningham was working at UWA, his office was broken into and the hard drive was taken from his computer. I used to work in that building so I know that a person would have to have known where his office was. My view is that it was not a random burglary. I also raised in this house previously the intimidation that they both endured as a result of pursuing this case. An allegation was made that one day a police officer knocked on the door of Ms Atoms' apartment holding some paperwork that indicated her car had been involved in a hit-and-run accident, which did not take place. The allegations that were made by Ms Atoms and Dr Cunningham have now been proven to be correct. The institutions that we live under in Western Australia have failed them. It was only through the fact that they have a good knowledge of the law and were very determined individuals that this case was pursued in the District Court. It could be argued that the District Court case dealt with their personal issues—that is true, obviously—but Dr Cunningham's continual efforts in asking the Corruption and Crime Commission to investigate this is not only for him, it is for every citizen of Western Australia. As I said, how the internal investigation and the initial CCC report could say that no excessive force was used in this case is truly beyond comprehension. Dr Cunningham and Ms Atoms have pursued this case because they want to live in a society—I think the member for Kalamunda mentioned this—that protects civil rights; not just their civil rights but the civil rights of all Western Australians.

Dr Cunningham and Ms Atoms had gone out for an evening in Fremantle and were minding their own business. Actually, Dr Cunningham was being a good Samaritan because he had stopped to help someone who had fallen into a garden bed outside the Esplanade Hotel. As a result, he and Ms Atoms were tasered and treated appallingly by the police officers at Fremantle Police Station. Their efforts to have the police officers brought to account were disregarded. They endured a criminal prosecution, but by lunchtime the police prosecutor had decided there were grounds for a no-case submission. In that hearing, a police officer gave evidence and, if I remember rightly, the defence lawyer asked one of the police officers, "Did you corroborate with the other police witness with regard to your statement?" He answered that he had not. The lawyer then said, "Well, it's funny how on that line of your statement you have the same spelling mistake as he does." As the magistrate in that hearing stated, the evidence of the police officer was unreliable, and when it got to the District Court it was proven to be unreliable. This goes beyond some of the matters that I have just mentioned. I think the member for Girrawheen mentioned that footage was taken of the incident by Dr Mark Brophy. A number of witnesses were also present, but footage was taken of the incident. Police went back to the person who took the footage and confiscated it, so there was also a cover-up. This case is appalling because this incident occurred in 2008 and it is only now, in 2017, that justice is finally being addressed.