

*Joint Standing Committee on the Corruption and Crime Commission — 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? — Motion*

Resumed from 8 November on the following motion moved by Hon Dr Steve Thomas —

That the report be noted.

**Hon KLARA ANDRIC:** It is with great delight, and I do not think I have ever said that before, that we move on today. It gives me great pleasure to continue my remarks on 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?*

For the sake of clarification, for anyone who may have missed my and Hon Dr Steve Thomas's contributions last week on the ninth report, do not fear; we are back, and we will be making some further contributions on the extensive discussion.

**Hon Dr Steve Thomas:** If you want to roll over and keep going, you're welcome to.

**Hon KLARA ANDRIC:** That is right; I have one minute.

**Hon Dr Steve Thomas:** You could continue. I'm happy to let you go.

**Hon Klara Andric:** I will seek the call, if I may.

**The DEPUTY CHAIR (Hon Stephen Pratt):** Hon Klara Andric.

**Hon KLARA ANDRIC:** Thank you very much, Hon Dr Steve Thomas.

**Hon Dr Steve Thomas:** We're here to help in the opposition!

**Hon KLARA ANDRIC:** Thank you; help from the member is always very welcome.

As stated, we have had extensive discussions on the ninth report. There are a few areas that I was not able to speak to last week, so I take this opportunity to do that today.

As I previously mentioned, the disagreement in question that resulted in this ninth report by the parliamentary inspector related to whether the Corruption and Crime Commission has the discretion to form an opinion of serious misconduct in a situation in which a police officer's actions are, in fact, contrary to the law. We went into quite a lot of detail last week about the actual incident that was raised in the ninth report and resulted in the parliamentary inspector bringing these issues to the knowledge of not only the CCC but also the Parliament. Last week, I gave a step-by-step run-down of that incident and how it all unfolded. I will give a summary now for context purposes.

As mentioned, in May or August of 2022—do not quote me—a complaint was filed regarding an incident involving a male police officer and a woman. The officer had observed the woman cycling without a helmet.

**Hon Dr Steve Thomas:** August.

**Hon KLARA ANDRIC:** Yes. I am sure that many members in this chamber see that quite often. Having lived in South Fremantle, I do not want to call out any of my constituents, but I note that a lot of people are still riding on our roads without helmets.

**Hon Dr Steve Thomas:** The lawless people of South Fremantle!

**Hon KLARA ANDRIC:** No, I think it is an opportunity to remind people, because it is very important. We never know when something will happen on the roads. The roads are very dangerous. I use this opportunity to briefly say that I encourage all cyclists to wear helmets all the time. Although I know they can be a bit annoying, they save lives. I digress; I will try to get back to the report that is on hand.

After the officer observed the woman in question riding without a helmet, he asked her to provide some identification, but not in the correct way that is acceptable by law. As a result, she proceeded to leave the scene away from the police officer, and a physical struggle ensued as a result of that. As members know, the officer's dog was involved. I talked about the injuries in detail last week. During the trial, the officer claimed that the dog was unintentionally released; however, from what I recall, the dog was unintentionally released the first time when the van wagon doors were opened, but the second time, after he had warned the woman, he did in fact let the dog go after her. As a result, she sustained quite significant injuries to her arm. The incident led to charges being laid against the woman. However, her legal representatives at the time argued that the officer had no authority to detain her as he did not correctly request her details as required by law.

I may have mentioned last week that the magistrate ruled that the officer's actions constituted an unlawful assault or arrest—I am not quite sure, but I believe it is assault—which granted the complainant the right to resist, and therefore considered her actions quite reasonable.

In the context of what is now deemed an illegal detainment, I questioned: when can a police officer ask for identification? There is plenty of information about this. I use this opportunity to remind members when this can take place. A police officer can ask someone for identification in circumstances in which the officer holds the belief that the person is breaking the law. The police officer has to actually believe that someone is in the process of breaking the law. An officer asking someone for identification must have a lawful reason to ask, which refers back to the belief that they are breaking the law, and must advise the person of the consequences of failing to comply with the request. If the police officer is in plain clothes—not in uniform—the officer must provide identification to prove that they are, in fact, a police officer.

People might bring up the question of the right to silence in circumstances such as this. The right to silence does, in fact, exist. However, there are some questions that, if asked correctly, by law, the person must answer. They include the person's name, address and date of birth. In this case in particular, and I am sure in many cases that have happened subsequently within the police force and our community, it is really important to note the importance of body-worn cameras. I think they have played an incredible role in serving not only the Western Australia Police Force, but also our community as a form of protection for both sides, I would argue. During very heated times and struggles that I am sure our Western Australia Police Force face every day—we know that they face those struggles every day—the use of body-worn cameras to protect themselves in the line of duty is very important. I am glad to see that they are being used more often than not. The purpose of body-worn cameras within the WA Police Force is very clear, and I really strongly support them being implemented here in Western Australia.

Since the ninth report is centred around serious misconduct, I take this opportunity to give a brief breakdown of exactly what constitutes an allegation of serious misconduct. One of the major functions of the Corruption and Crime Commission is, in fact, to investigate these allegations. I note for members that the definition of “serious misconduct” can be found in section 3 of the Corruption, Crime and Misconduct Act. It has been split into two categories—serious misconduct of a public officer and serious misconduct of a police officer. It is broken down into two categories because the implications of serious misconduct are different depending on whether someone is a police or a public officer. The first part of the definition refers to instances that constitute serious misconduct by a public officer. I refer to page 6 of the report to outline the words of the parliamentary inspector. As stated in the ninth report, the instances include —

- a public officer corruptly acts or corruptly fails to act in the performance of the public officer's office or employment; or
- a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to detriment another person; or
- a public officer, while acting or purporting to act in his or her official capacity, commits an offence punishable by two or more years' imprisonment.

**Hon Dr STEVE THOMAS:** Did the member want to finish what she was saying? She can seek the call again.

**Hon Klara Andric:** No; that's fine.

**Hon Dr STEVE THOMAS:** It seemed like the member was in full flight for a moment, and I have had plenty of opportunities so far today.

In my contribution last week, I went through the basics of this case. A police officer stopped somebody on a bicycle who was not wearing a helmet, which is an offence, and said, “Do you have any identification on you?” instead of saying, “You need to provide me with your identification; give me your identification.” That was it. For that simple act, this police officer has committed, under the letter of the law, serious misconduct, because, as I said last week, all misconduct by police is considered serious misconduct and is examined by the Corruption and Crime Commission. My view is that, in this instance, the Corruption and Crime Commission effectively delivered a dose of common sense when it said that obviously the intent was to uphold the law when this person attempted to walk away from the police officer and perhaps the person used the restraints in an overly enthusiastic manner. However, that is actually not what the investigation was for. The Parliamentary Inspector of the Corruption and Crime Commission is quite right; according to the letter of the law, simply by not asking for identification in the correct form, the police officer's subsequent arrest of this person was illegal and therefore it was serious misconduct. Despite that, I think that the Corruption and Crime Commission took a common sense approach to this case.

There are two ways to look at this case. One is through the prism in which some people view the Corruption and Crime Commission and the police as having constant and ever-present corruption. The alternative view is that the legislation that is in place, which was originally put in place following demonstrations of significant corruption and to prevent corruption occurring in the future, overstretched its mark in its attempts to prevent all corruption and is so prescriptive as to not allow common sense to apply. I think that is the outcome we see in this report. In my view, almost everybody who was involved after this sad and unfortunate issue was correct. The original person was obviously wrong in not wearing a helmet while cycling. That is the law. Not many people like helmets. I was

on a committee in the previous term of Parliament, instigated by former member Hon Aaron Stonehouse, that looked at whether they should be compulsory.

**Hon Pierre Yang:** I was with you.

**Hon Dr STEVE THOMAS:** Hon Pierre Yang was on that committee, as was Hon Dr Sally Talbot. We looked at that. It is unlawful; that person was wrong. The police officer involved made an incorrect statement. The statement, which he followed up with action, was not completely legal according to the concepts that he should have been using. In that case, both the original protagonists were in error. In my view, the CCC was in error in not making a finding of serious misconduct, but was correct in saying that such a finding would have been a ridiculous outcome of what was a fairly simple case.

Let me be absolutely clear on this: I am backing the police officer in this case, even though the police officer used the wrong words to seek the identification. Members of my committee undoubtedly realise that I am archly conservative and tend to back the police as a matter of principle until proven otherwise rather than vice versa, and in that I differ from some previous members of this committee who assumed a problem with police until they managed to prove themselves innocent.

**Hon Martin Pritchard:** Has it been proven that he did the wrong thing?

**Hon Dr STEVE THOMAS:** What he did wrong was use the wrong wording.

**Hon Martin Pritchard:** I know—technically.

**Hon Dr STEVE THOMAS:** That is right. That is why I say that he was also wrong. Sorry; I may not have been 100 per cent clear. I think they were both wrong. He used the wrong wording. He said, “Do you have identification on you?” If I was asked that, I would provide identification. I have been pulled over on occasions late at night for a random breath test, and I suspect that a police officer would have said to me, “Do you have any identification on you?” I would have said, “Yes; it’s here in my pocket” and I would have grabbed it out. I have never blown over .05, so I am quite comfortable with that. However, if I was asked, “Have you got identification on you?”, I would say, “Yes”, and I would assume that that was a request for identification. In this case, the technicality was that the officer was required to be prescriptive and specific: “Please show me your identification” or “Give me your identification.” To be honest, I suspect that a thousand police officers would say a thousand times a year, “Have you got any ID on you?” In fact, I suspect that that has been said in some of those police shows that are incredibly common: “Have you got any ID on you?” I know that Hon Martin Pritchard is a great advocate of reality TV and we have discussed that in the chamber before—it might come up in my end-of-year speech again.

**Hon Dan Caddy:** Licence and registration, please.

**Hon Dr STEVE THOMAS:** It is quite prescriptive in the United States. Police officers have the little card on which the Miranda rights are written, because if they make a single mistake, once again there are extreme technicalities.

In this circumstance, an error was made by the police officer. The person he was trying to arrest was in the wrong at the beginning of the process. Matthew Zilko, SC, a fine parliamentary inspector, is absolutely right; according to the letter of the law, the Corruption and Crime Commission was unable, and did not have the freedom or the flexibility, to not make a finding of serious misconduct given the circumstances. The simple error by this police officer means that the parliamentary inspector is correct; a finding of serious misconduct should have been made. The CCC applied normal reason and common sense. There is no doubt that, according to the letter of the law, it should have provided a finding of serious misconduct. I probably would not have done that in those circumstances either if there was a section of the act that I could have stretched slightly like a rubber band. It would have been a ridiculous outcome even though it was, according to the letter of the law, the required outcome. I do not know whether this is parliamentary, but there is a statement that says that the law is an ass—and I use the equid version of it and nothing else. The reality is that oftentimes the law does not deliver the things that it should and is designed to deliver. In this circumstance, I think that is absolutely the case.

The recommendation of the parliamentary inspector, which was adopted by the committee, is that the Attorney General should look at this in the review of the Corruption, Crime and Misconduct Act to allow for the sorts of decisions that the CCC and the commissioner took. I am not sure that that was necessarily the intent of Matthew Zilko, SC, when he wrote this report, but he is certainly right in what he said. I think the error lies in not allowing the necessary flexibility within the Corruption, Crime and Misconduct Act to allow the Corruption and Crime Commission to look at something like this and say that it would be a ridiculous outcome for a police officer to have a finding of serious misconduct forever on their record, based on asking, “Do you have ID on you?” instead of “You are now required under section such and such to provide me with ID”. That is precisely what we are talking about. It would be a waste of everybody’s time. In my view, it would be a travesty of justice if that police officer had that on their record forever for something as simple as that. I know that police officers are supposed to get it right, but they are human beings like everybody else. I think that the legislation needs to be looked at to allow the Corruption and Crime Commission to judge a matter to be not reasonable, just, fair or in the public interest,

rather than being forced to make a finding of serious misconduct when the current act leaves it no flexibility to do otherwise. That would mean putting a bit of looseness and freedom into the CCC and the Corruption and Crime Commissioner, but I think this is absolutely essential. Otherwise, we lose faith in the Corruption, Crime and Misconduct Act.

**Hon PIERRE YANG:** Thank you for the opportunity to say a few things about 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?* We have heard from Hon Klara Andric and Hon Dr Steve Thomas about the case, which was the basis of a legal dispute, a prosecution, a complaint to the Corruption and Crime Commission and, later, a referral to the parliamentary inspector. We have heard categorically that the police officer in question did not ask the correct question. Instead of asking for the woman's full details, he instead asked for her identification. We have heard from Hon Klara Andric and Hon Dr Steve Thomas about what happened after that.

I will reflect on my personal experience some 22 years ago. I was on my bike, travelling in Osborne Park, and I was stopped by two police officers who asked me why I did not have a helmet on. By that stage, I had been in Western Australia for about three months and in Australia for about two years. I did not possess a bicycle when I was in Sydney, but I obtained a bicycle when I came to Western Australia. I was not too sure about the law and no-one told me. I told the police officer that that was the situation. Later, when I was admitted to law school, I learnt that ignorance of the law is no defence. Nonetheless, on that occasion, the two police officers asked me my name, address and other details, which I provided, and they were very polite and caring in a way. They advised me that it is important that I adhere to the law and get a helmet, and that it was also for my protection. That is what I did afterwards. My encounter with the two police officers was a fantastic demonstration of the positive image of the Western Australia Police Force. I also want to add another point. A few years later, I bought a second-hand car. I think some old second-hand cars have a tendency to have batteries that are not the best, so I had flat batteries a number of times. On one occasion, I was visiting a shop and—there you go—the battery went flat. A police car was next to me, so I asked the police officers whether they could help me to jumpstart my car, and they were very helpful. My car was able to be restarted with their assistance because I had a recharge cable. That is another very positive encounter I had with the Western Australia Police Force.

I come back to this case. Unfortunately, in this case, the police officer did not follow the prescribed question as articulated in the law. Instead of asking for her full details, he asked her for her identification, and a matter ensued from that. Section 16 of the Criminal Investigation (Identifying People) Act 2002 enabled the police officer to “detain the person for a reasonable period for the purpose of the person's compliance with the request” for details. Had the right questions been asked in that case, the person on the other side of the argument would not have been able to successfully prosecute arguments that the whole situation was a breach of law as articulated in Criminal Investigation (Identifying People) Act 2002.

The crux of the commission's argument is about the meaning of the word “may”. The commission is of the view that the word “may” confers a discretion about whether to start an investigation on a complaint. I draw again from my experience in law school. The Criminal Code is a statute that we, as a state, borrowed substantially from the state of Queensland's Criminal Code, but we obviously adapted, added to and amended it over the years to suit Western Australian circumstances. The Criminal Code and many other state and federal legislation use the word “may”. In a literal sense, one may think that “may” means “may”, but as a matter of fact, on many occasions when it appears in legislation—not always, but very often—it actually means “must”. In this case, the commission has given its interpretation. The parliamentary inspector talked about looking at the whole section of the act in its totality and came out with a different opinion. I wholeheartedly agree with the position the parliamentary inspector and the joint standing committee have taken. I would like to quote the second-last paragraph of the parliamentary inspector's report —

... in this instance, I believe it is undesirable that these two bodies —

These being the parliamentary inspector's office and the commission. I will come back to this later.

**Consideration of report postponed, pursuant to standing orders.**