

41ST PARLIAMENT



Joint Standing Committee on the
Corruption and Crime Commission

Report 3

'A GOOD YEAR'

*The work of the Parliamentary Inspector of the
Corruption and Crime Commission*

Presented by
Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC

February 2022

Committee Members

Chair	Mr M. Hughes, MLA Member for Kalamunda
Deputy Chair	Hon Dr S.C. Thomas, MLC Member for South West Region
Members	Mr R.S. Love, MLA Member for Moore Hon K. Andric, MLC Member for South Metropolitan Region

Committee Staff

Principal Research Officer	Ms Suzanne Veletta
Research Officer	Ms Jovita Hogan

Legislative Assembly
Parliament House
4 Harvest Terrace
WEST PERTH WA 6005

Tel: (08) 9222 7494
Email: jscccc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au/jscccc

Published and printed by the authority of the Joint Standing Committee on the Corruption and Crime Commission, Parliament of Western Australia.

February 2022.

ISBN: 978-1-925724-94-3

(Series: Western Australia. Parliament. Legislative Assembly. Committees.
Joint Standing Committee on the Corruption and Crime Commission. Report 3)

328.365



**Joint Standing Committee on the Corruption
and Crime Commission**

‘A good year’

**The work of the Parliamentary Inspector of the
Corruption and Crime Commission**

Report No. 3

Presented by

Mr M. Hughes, MLA and Hon Dr S. C. Thomas, MLC

Laid on the Table of the Legislative Assembly and Legislative Council on
24 February 2022

Chair's Foreword

The title of this report, 'A good year', is how Matthew Zilko SC the Parliamentary Inspector of the Corruption and Crime Commission described the performance of his office in his first year in this role.¹

Mr Zilko commenced as Parliamentary Inspector of the Corruption and Crime Commission in November 2020. He was the first person appointed to this role since Hon Michael Murray AM QC was appointed in 2013.

This report reflects on matters Mr Zilko raised in his *Annual Report 2020–2021* and at his public hearing with the Joint Standing Committee on the Corruption and Crime Commission on 13 October 2021. It canvasses the work of his office, the increase in complaints to his office and the Western Australia Police Force's use of body worn cameras.

The work of the office of the Parliamentary Inspector is vital to ensuring public confidence in the integrity of our public sector.

On behalf of the committee I thank Mr Zilko and his principal advisor Sarah Burnside for their professionalism, diligence and assistance.



MR M. HUGHES, MLA
CHAIR

¹ Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 2.

Contents

Chair’s Foreword	i
Ministerial Response	v
Findings and Recommendations	vii
1 The work of the Parliamentary Inspector	1
<hr/>	
The functions of the Parliamentary Inspector	1
The investigation function – a significant increase in investigations	2
The lack of information in commission outcome letters	5
The audit function	7
2 Police body worn cameras	9
<hr/>	
WA Police Force use of body worn cameras – a positive development	9
The Parliamentary Inspector advocates an increased use of body worn cameras	10
Appendices	15
<hr/>	
1 Committee’s functions and powers	15

Ministerial Response

In accordance with Standing Order 277(1) of the Standing Orders of the Legislative Assembly, the Joint Standing Committee on the Corruption and Crime Commission directs that the Attorney General report to the Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendation of the committee.

Findings and Recommendations

Chapter 1 – The work of the Parliamentary Inspector

Finding 1

Page 6

In 2020–21 the office of Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, investigated 98 new matters. This was a 72% increase on matters investigated in 2019–20.

59 of these matters were complaints from the public about an aspect of the Corruption and Crime Commission’s assessment of their complaint. This was a 79% increase in these complaints since 2019–20.

An increase in public complaints is probably due to the addition of new paragraphs in commission closing letters which advise complainants of their right to contact the Parliamentary Inspector if they are unhappy with the commission’s decision.

Finding 2

Page 6

The Parliamentary Inspector says the lack of information the commission provides in its closing letters may confuse complainants and motivates some to make a complaint to his office.

Recommendation 1

Page 6

That the Attorney General direct the Department of Justice in its review of the *Corruption, Crime and Misconduct Act 2003* to review if legislative change is required to prescribe or clarify whether the commission is authorised to disclose information which demonstrates that the complaint has been dealt with in an appropriate way.

Chapter 2 – Police body worn cameras

Finding 3

Page 13

The rollout of body worn cameras (BWCs) has been a positive development delivering benefits to the police and integrity agencies.

BWC footage is an important tool in integrity investigations. It is independent evidence of what occurred during a police interaction.

Corruption and Crime Commissioner Hon John McKechnie QC described BWC footage as ‘very, very useful’ and ‘a very significant misconduct prevention measure’.

Finding 4

Page 13

The Parliamentary Inspector advocates an increased use of BWCs. He considers that the optimum outcome would be for police officers to activate their BWC at all times when interacting with a member of the public.

The Parliamentary Inspector has questioned whether WA Police should amend its BWC policy to mandate the activation of BWCs in a wider range of circumstances. At present BWCs only automatically activate when a police officer draws their firearm from their holster. They do not automatically activate when a taser is drawn.

Chapter 1

The work of the Parliamentary Inspector

A function of the Joint Standing Committee on the Corruption and Crime Commission (committee) is to '[m]onitor and report to the Parliament on the exercise of the functions of ... the Parliamentary Inspector of the Corruption and Crime Commission.' The committee's terms of reference are at Appendix 1.

To undertake this oversight role, the committee conducts hearings and regularly engages with Matthew Zilko SC, the Parliamentary Inspector of the Corruption and Crime Commission (Parliamentary Inspector). The committee reviews his reports including his Annual Report tabled directly in Parliament. If the Parliamentary Inspector provides the committee with a report that is not an Annual Report, the committee may retain it as closed evidence or table it in Parliament. Due to the nature of the committee's work, most communication with the Parliamentary Inspector remains closed evidence.

Mr Zilko QC commenced his 5-year term as Parliamentary Inspector on 23 November 2020. Mr Zilko was the first person appointed to the role since Hon Michael Murray AM QC was appointed in 2013. Between March and November 2020 the Acting Parliamentary Inspectors, Hon John Chaney SC and Matthew Howard SC, acted in this role.

This report reflects matters raised in the Parliamentary Inspector's [Annual Report 2020–2021](#) and at his first public hearing with the committee on 13 October 2021. It canvasses the work of his office in his first year, the significant increase in complaints to his office and his views on police officer's use of body worn cameras (BWCs), a relatively new device in this state. This report also reflects the views of the Corruption and Crime Commission (commission) and Western Australia Police Force (WA Police) on BWCs. The committee held public hearings with these organisations in September and November 2021 respectively.

The functions of the Parliamentary Inspector

The Parliamentary Inspector's primary functions are to:²

- oversee the activities of the commission and its officers
- assess the effectiveness and appropriateness of the commission's procedures
- deal with misconduct on the part of the commission and its officers
- report and make recommendations to either House of Parliament or the committee
- assist the committee to perform its functions.³

The Parliamentary Inspector's most prominent function is to assess and investigate complaints from the public about the actions and decisions of the commission.

² s 195, *Corruption, Crime and Misconduct Act 2003* unless otherwise noted.

³ s 188(4), *Corruption, Crime and Misconduct Act 2003*.

In turn, the most prominent function of the commission is to deal with allegations of ‘serious misconduct’ by public officers in an ‘appropriate way’.⁴ Serious misconduct includes a public officer behaving corruptly or committing an offence punishable by 2 or more years imprisonment while acting or purporting to act in their official capacity, and police misconduct.⁵

It is notable that in 2020–21 the commission received a record 7,190 allegations of serious misconduct, a 25% increase on the 5,743 allegations received in 2019–20.⁶ In 2020–21 the commission decided to take no action on 4,793 allegations (66.7% of allegations), referred 1,860 of the remaining allegations to agencies including departments, local governments and WA Police to investigate, and conducted 58 investigations.⁷ The commission retains an oversight role on referred matters.

The work of the Parliamentary Inspector reflects the breadth of allegations of serious misconduct in the public sector made to the commission. In 2020–21 his office considered complaints relating to alleged serious misconduct in government departments, local governments, universities, WA Police and the commission.⁸

The Parliamentary Inspector’s oversight of the commission gives the Parliament and public a level of confidence in the integrity of the commission and public sector.

The Parliamentary Inspector’s role involves an investigative function and audit function. In 2020–21 the Parliamentary Inspector spent 65% of his resources on his investigation function and 35% on his audit function.⁹ These are discussed in turn below.

The investigation function – a significant increase in investigations

One way the Parliamentary Inspector assesses the effectiveness and appropriateness of the commission's procedures is to investigate complaints from members of the public dissatisfied with how the commission has dealt with an allegation of serious misconduct.¹⁰

After receiving a complaint the Parliamentary Inspector obtains the commission’s file on the complaint in order to assess the procedures of the commission.¹¹

In most matters the Parliamentary Inspector considers that the commission ‘does its job well’ and he finds that the commission handled the complaint in an appropriate and

4 s 18(1), *Corruption, Crime and Misconduct Act 2003* says ‘It is a function of the Commission ... to ensure that an allegation about, or information or matter involving, serious misconduct is dealt with in an appropriate way’.

5 ‘Serious misconduct’ and ‘police misconduct’ are defined in sections 3 and 4 of the *Corruption, Crime and Misconduct Act 2003*. ‘Police misconduct’ includes any ‘reviewable police action’. Section 3 of the Act picks up the meaning of ‘public officer’ in s 1 of *The Criminal Code* which includes a public service officer, police officer, a member, officer or employee of local government, and a member of either House of Parliament.

6 *Corruption and Crime Commission, Annual Report 2020–21*, p 20.

7 *ibid*, pp 20, 23.

8 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 4.

9 *ibid*, p 3.

10 *ibid*.

11 *ibid*.

effective way.¹² Sometimes the Parliamentary Inspector forms a view that the commission has not identified all of the issues.¹³

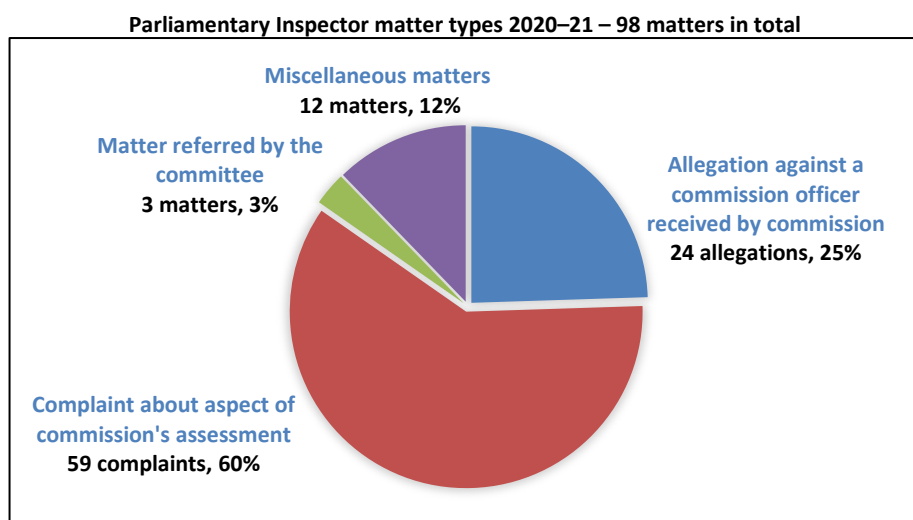
When the Parliamentary Inspector disagrees with the facts the commission has considered or its factual or legal conclusions he engages with the commission. This may include meeting Corruption and Crime Commissioner Hon John McKechnie QC to discuss his concerns. The commission has changed its decision on a number of matters.¹⁴ The committee is aware of a few of these matters. In some matters the Parliamentary Inspector may ultimately form a different conclusion to the commission but may take no issue with the effectiveness and appropriateness of the commission’s procedures and therefore take no further action.

The Parliamentary Inspector says he has a ‘very good’ relationship with the commission.¹⁵ Commissioner McKechnie told the committee that ‘occasionally we are going to make a mistake, and it is helpful to have the parliamentary inspector there to tell us when they do.’¹⁶

The office of the Parliamentary Inspector was busy in 2020–21.¹⁷ That year his office:

- investigated/assessed 98 new matters, a 72% increase compared to the 57 matters in 2019–20
- finalised 74 matters, compared to 57 in 2019–20.¹⁸

The below figure breaks down the types of new matters in 2020–21.



In 2020–21 there was a significant increase in complaints from members of the public. The Parliamentary Inspector received 59 complaints from the public about the commission, a

12 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 5.

13 *ibid.*

14 *ibid.*

15 *ibid.*, p 2.

16 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 8 September 2021, p 17.

17 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 2.

18 *ibid.* Five finalised matters commenced in the previous financial year.

79% increase on the 33 complaints received in 2019–20.¹⁹ The majority of public complainants were dissatisfied with the commission’s conclusion that it had been unable to form a reasonable suspicion of serious misconduct.²⁰

Given that the work of the Parliamentary Inspector is largely triggered by complaints, this increase in complaints is encouraging, notwithstanding that it represents a small percentage of matters assessed by the commission.

The increase in complaints from the public is probably attributable to the addition of new paragraphs in commission closing letters to complainants since 1 January 2021. These advise complainants of their right to contact the Parliamentary Inspector if they are ‘unhappy with the Commission’s decision’.²¹

The Parliamentary Inspector asked for this text to be included in closing letters due to his concerns about a lack of public awareness of his functions which meant that potential complainants were unaware of their ability to raise an issue with his office.²²

The previous Joint Standing Committee on the Corruption and Crime Commission raised similar concerns in 2020 when it noted that although the Parliamentary Inspector ‘performs a valuable role in handling complaints made about the CCC, it is not clear whether the Office has a sufficient degree of visibility in the public so that complainants will pursue this avenue’.²³

The committee commends the Parliamentary Inspector on this initiative to increase the visibility of his office and the commission for supporting this initiative.

As noted in Figure 1, in 2020–21 the Parliamentary Inspector assessed 24 allegations against commission officers received by the commission. This was 16 more than in 2019–20.²⁴ The Parliamentary Inspector suspects that this increase is due to the increase in allegations made to the commission.²⁵

In most of these matters the Parliamentary Inspector finds no evidence of misconduct. Sometimes officers make mistakes not caused by ‘serious misconduct or any corrupt

We have certainly had a marked increase in the number of complaints we have received, probably down to the fact that the commission is now advising complainants, at my request ... that if they were not happy with the commission’s conclusions then they could come to me.

*Matthew Zilko SC
Parliamentary Inspector*

19 *ibid*, p 4.

20 *ibid*.

21 *ibid*, p 3. The full text inserted into the commission’s closing letter is at p 3 of the Annual Report.

22 *ibid*, p 3.

23 Joint Standing Committee on the Corruption and Crime Commission, *If not the CCC ... then where? An examination of the Corruption and Crime Commission’s oversight of excessive use of force allegations against member of the WA Police Force*, 24 September 2020, p 66.

24 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 4.

25 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 6.

intent'.²⁶ The Parliamentary Inspector considers that the commission takes an 'appropriately broad view' of the types of matters to be disclosed under established protocols²⁷ and has been 'entirely appropriate and correct and honest' in dealing with these matters.²⁸

The rate of total complaints to the office of the Parliamentary Inspector remained steady in the first half of 2021–22, with his office receiving 45 complaints in that period.²⁹

Despite the increase in the workload of his office, in October 2021 the Parliamentary Inspector said his office was adequately funded and resourced.³⁰ He is monitoring the situation and will take action if the number of complaints becomes unwieldy.³¹

The lack of information in commission outcome letters

The Parliamentary Inspector has noted the lack of information the commission provides in its outcome or closing letters. He says this may cause complainants to be:

confused and disheartened by the response they receive, concerned that their allegation may not have been properly considered, or frankly offended that the often lengthy materials supplied by them to support their allegation have received only a brief response.³²

On receiving the commission's letter some people are motivated to contact the Parliamentary Inspector and make a complaint about the commission.³³

Part 9 of the *Corruption, Crime and Misconduct Act 2003* (CCMA) includes strict confidentiality provisions. Section 152 of the CCMA limits when a relevant person may disclose 'official information' which is defined as 'information acquired by the person by reason of, or in the course of, the performance of the person's functions under this Act'.

Observations on the paucity of information provided in these letters have been made in several previous Annual Reports of this office prior to my term as Parliamentary Inspector, but the point bears repeating.

*Matthew Zilko SC
Parliamentary Inspector*

The Parliamentary Inspector understands that it is not possible for the commission to provide fulsome explanations of its decision not to take action. However, he says that 'slightly more detailed letters from the commission, responding to the specific information provided to it, would be welcomed by complainants'.³⁴ The Parliamentary Inspector has

26 *ibid.*

27 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 4.

28 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 6.

29 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, letter, 31 January 2022, p 1.

30 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 4.

31 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 3.

32 *ibid.*, p 9.

33 *ibid.*

34 *ibid.*

raised this several times with the commission and says there has been ‘a little bit’ of improvement.³⁵

The Parliamentary Inspector is of the view that the confidentiality provisions should:

protect the identity of any officers concerned, they should not identify the complainant, and they should not identify the nature of it in case anybody can put the pieces together and work out who is saying what. But once you get to that, I think it should be appropriate to be able to give a minimal explanation so that people understand that their concern has been thought about, has been considered and has been addressed, even if they have not got the ... answer [they wanted].³⁶

The Department of Justice is undertaking a major review of the CCMA.³⁷ The Parliamentary Inspector intends to make a submission about the strictness of the confidentiality provisions in the CCMA.³⁸

Finding 1

In 2020–21 the office of Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, investigated 98 new matters. This was a 72% increase on matters investigated in 2019–20.

59 of these matters were complaints from the public about an aspect of the Corruption and Crime Commission’s assessment of their complaint. This was a 79% increase in these complaints since 2019–20.

An increase in public complaints is probably due to the addition of new paragraphs in commission closing letters which advise complainants of their right to contact the Parliamentary Inspector if they are unhappy with the commission’s decision.

Finding 2

The Parliamentary Inspector says the lack of information the commission provides in its closing letters may confuse complainants and motivates some to make a complaint to his office.

Recommendation 1

That the Attorney General direct the Department of Justice in its review of the *Corruption, Crime and Misconduct Act 2003* to review if legislative change is required to prescribe or clarify whether the commission is authorised to disclose information which demonstrates that the complaint has been dealt with in an appropriate way.

35 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 13.

36 *ibid.*

37 Hon Matthew Swinbourn, Parliamentary Secretary to the Attorney General, Legislative Council, Hansard, 17 June 2021, p 1659.

38 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 13.

The audit function

The Parliamentary Inspector's audit function involves:

- auditing the operation of the CCMA
- auditing the operations of the commission for the purpose of monitoring compliance with the laws of the State
- auditing any operation carried out pursuant to the powers conferred or made available by the CCMA.³⁹

The Parliamentary Inspector undertakes his audit responsibilities primarily by assessing and investigating complaints made about commission activities and auditing the commission's records on a quarterly basis. Each quarter the Inspector directs the commission to provide a random series of files and documents that relate to them.⁴⁰

The Parliamentary Inspector raised no issues with the committee about this function.

39 ss 195 (aa), (a) and (cc), *Corruption, Crime and Misconduct Act 2003*.

40 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 4.

Chapter 2

Police body worn cameras

WA Police Force use of body worn cameras – a positive development

Over half of the allegations of serious misconduct by public officers the commission receives relate to police misconduct.⁴¹ It follows that the Parliamentary Inspector investigates complaints about the handling of allegations of police misconduct. The commission refers most allegations that require action to the WA Police to investigate but retains an oversight role.⁴²

Body worn cameras (BWCs) were deployed in Western Australia between June 2019 and June 2020. 5,279 BWCs have been delivered to police. Additional BWCs are being deployed to new officers.⁴³

The rollout of BWCs has been a positive development delivering benefits to the police and integrity agencies.

In November 2021 Acting Police Commissioner Col Blanch told the committee that police have seen a ‘drastic’ change of culture with the introduction of BWCs and ‘police officers trust the camera on their chest to tell the story of their conduct.’⁴⁴ BWC footage may immediately assist police officers when there are different versions of events. In the past careers may have been put on hold while allegations of police misconduct were investigated.

From an integrity perspective, Commissioner McKechnie told the committee that BWCs are ‘very, very useful’ and ‘a very significant misconduct prevention measure and we are very pleased with it.’⁴⁵ BWC footage assists the police, commission and Parliamentary Inspector investigate allegations of police misconduct. It may confirm or refute allegations, and identify misconduct. As the Parliamentary Inspector said, BWC footage is of ‘great assistance in identifying potential misconduct by police officers, as

You cannot have a more independent view of what occurred in a police interaction with the public than it being recorded on the chest of a police officer at any time. That then adds that extra layer of independence, because it is not our version of events versus someone else; there is always that third, impartial version, which is the video.

*Acting Commissioner Col Blanch
Western Australia Police Force*

41 In 2020–21, 3,860 (53.7%) of the 7,190 allegations to the commission related to police misconduct: Corruption and Crime Commission, *Annual Report 2020–21*, p 98.

42 In 2020–21, the commission decided to take no action on 2,894 (75%) of the 3,860 allegations relating to police misconduct, and referred 896 allegations to the Western Australia Police Force to action: Corruption and Crime Commission, *Annual Report 2020–21*, p 98.

43 Private document.

44 Col Blanch, Deputy Commissioner of Police performing the duties of the Commissioner of Police, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 17.

45 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 8 September 2021, p 12.

well as in rebutting such allegations.⁴⁶ He mentioned one allegation where a complainant urged him to view BWC footage and doing so (at commission's office) immediately revealed the opposite of the alleged police misconduct.⁴⁷

BWCs deliver police efficiencies including, in 2019–20, a reduction in the time required to investigate complaints against police officers by 25% and savings in police officer time due to reduced evidence collection and management of CCTV from business and members of the public.⁴⁸ On the other hand, in 2021 Commissioner McKechnie told the committee that every accountability measure has a cost and the cost to the commission is a slowdown in assessing an allegation because the assessor may have to watch many videos of an event.⁴⁹

The Parliamentary Inspector advocates an increased use of body worn cameras

The Parliamentary Inspector commends WA Police on implementing BWCs but advocates an increased use of BWCs. He notes that several complaints would have been more easily resolved if BWC footage was available, and one case where the BWC was activated only at the end of an interaction with a complainant.⁵⁰

While acknowledging that WA Police are moving in the right direction, the Parliamentary Inspector maintains his view that BWCs should be activated at all times when officers interact with the public.⁵¹

[I] remain of the view that the optimum outcome would be for police officers to have their cameras activated at all times when they interact with any member of the public.

*Matthew Zilko SC
Parliamentary Inspector*

As to how often BWCs are activated, the WA Police *2021 Annual Report* noted that it had recorded 1,270,240 uploads from BWCs.⁵² A more meaningful way to assess BWC activation and trends may be to record how many hours footage, on average, is recorded during an officer's shift.

Acting Commissioner Blanch told the committee that actual use of BWC footage has 'well exceeded' what WA Police estimated when this technology was implemented.⁵³ Senior police were 'quite surprised' at how often BWCs were being used. In particular, he noted 'a very good culture of young police officers wanting to be recorded throughout their shift'.⁵⁴

46 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 9.
47 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, *Transcript of Evidence*, 13 October 2021, p 8.
48 Western Australia Police Force, *Annual Report 2020*, p 37.
49 Hon John McKechnie QC, Commissioner, Corruption and Crime Commission, *Transcript of Evidence*, 8 September 2021, p 12.
50 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 10.
51 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, letter, 31 January 2022, p 1.
52 Western Australia Police Force, *Annual Report 2021*, p 7.
53 Col Blanch, Deputy Commissioner of Police performing the duties of the Commissioner of Police, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 10.
54 *ibid.*

In November 2021, Kylie Whiteley, Assistant Commissioner Professional Standards at WA Police told the committee that it is 'actually quite rare' to investigate an allegation and there is no BWC footage.⁵⁵ WA Police have commissioned a review of BWCs.⁵⁶ The Assistant Commissioner told the committee that officers investigating police misconduct 'do not see officers intentionally not turning [BWCs] on' and if they do the police will investigate why this happened.⁵⁷

In September 2021 the commission's Mary Brown, Director of Assessment and Strategy Development, observed that 'it appears that police officers turn them [BWCs] on more often than not'.⁵⁸

As a relatively new technology in Western Australia police use of BWCs may be evolving.

It is positive that WA Police seem to be encouraging the use of BWCs. Despite the discretion given to officers on when to activate BWCs (see below) WA Police consider its policy on BWCs 'quite clear on when a body-worn camera should be activated'.⁵⁹ Acting Commissioner Blanch described the police's approach as follows:

We say that police should be turning it on in any incidents where they think there is going to be a use of force or was a critical incident at any time. We have just changed our policy to turn it on in all family and domestic violence incidents. We are encouraging police officers to have it on more than off because, at the end of the day, it demonstrates, impartially, the police interaction with the public. The uptake across the agency has been surprisingly good.⁶⁰

The Parliamentary Inspector has questioned whether WA Police should amend its policy to mandate the activation of BWCs in a wider range of circumstances.⁶¹

BWCs are automatically activated when an officer draws their firearm from their holster, as are body worn cameras in the immediate vicinity.⁶² They are not automatically activated when a taser is used (see below).

The previous committee published the following extract from the policy sourced from a public submission from Acting Commissioner Col Blanch.

Body worn cameras should only be activated by an officer where it is safe and practicable to do so and when the officer reasonably believes its use will:

55 Kylie Whiteley, Assistant Commissioner, Professional Standards, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 10.

56 *ibid.*

57 *ibid.*

58 Mary Brown, Director Assessment and Strategy Development, Corruption and Crime Commission, *Transcript of Evidence*, 8 September 2021, p 13.

59 Craig Donaldson, Assistant Commissioner, Professional Development, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 11.

60 Col Blanch, Deputy Commissioner of Police performing the duties of the Commissioner of Police, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 10.

61 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 10.

62 Col Blanch, Deputy Commissioner of Police performing the duties of the Commissioner of Police, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 10.

- a. Assist in capturing a Use of Force event.
- b. Assist in capturing evidence and/or facts pertinent to an operational matter.
- c. Provide transparency and a factual record of actions and events.
- d. Improve the interaction with a member of the public or community.⁶³

In January 2021 the Parliamentary Inspector asked the Police Commissioner about changing policy settings to mandate that cameras be turned on whenever an officer begins interacting with a member of the public in circumstances where it could reasonably be expected that emotions could become heightened.⁶⁴ WA Police did not agree with this proposal.

The terms of police policies in Victoria and Queensland (as publicly available) refer to police activating BWCs in a wider range of circumstances than Western Australian policy – when police are exercising a police power.⁶⁵

As noted above, in Western Australia the use of a police taser does not automatically activate a BWC. The Parliamentary Inspector advocates for BWCs to be automatically activated when a taser is used, which is far more common than drawing a firearm.⁶⁶

WA Police advised the committee that it is working on a technical fix which is quite expensive to enable this capacity.⁶⁷ As at November 2021, the trigger for a taser is not compatible with the BWC system but the next generation of tasers will be compatible.⁶⁸

[An] increased use of body worn cameras would ultimately assist both the police and the Commission, as well as my office. Indeed, my understanding is that in Victoria and Queensland, police officers are expected to deploy these cameras whenever they are exercising any police power.

*Matthew Zilko SC
Parliamentary Inspector*

63 Joint Standing Committee on the Corruption and Crime Commission, *If not the CCC ... then where? An examination of the Corruption and Crime Commission's oversight of excessive use of force allegations against member of the WA Police Force*, 24 September 2020, p 39. Sourced from Western Australia Police Force, submission 9, 24 January 2020, p 11.

64 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 10.

65 For example, Queensland Police say that '[w]herever possible, officers should make sure the device is recording before and during the use of a police power under legislation, or when applying a use of force': <https://www.police.qld.gov.au/initiatives/body-worn-cameras>, viewed 19 January 2022. Victoria Police says an officer 'will activate the camera when they believe recording is necessary to capture an incident or interaction with the public and when they are exercising a police power':

<https://www.police.vic.gov.au/body-worn-cameras>, viewed on 19 January 2022. The previous committee heard that in New South Wales the culture is to turn the BWC on and leave it on during a shift: Deputy Commissioner Colin Blanch, WA Police, *Transcript of Evidence*, 1 July 2020, p 8.

66 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2020–2021*, p 10, and *Transcript of Evidence*, 13 October 2021, p 8.

67 Craig Donaldson, Assistant Commissioner, Professional Development, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 11.

68 Col Blanch, Deputy Commissioner of Police performing the duties of the Commissioner of Police, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 10. Also, newer technology has the capacity to livestream from a BWC which would enable the state operations

WA Police said there was an '80 per cent body-worn camera available and activated' in a use of force context, which includes the use of taser. If a police officer does not activate a BWC in this context, the police question why not.⁶⁹

It is clear that BWCs are an important tool in integrity investigations. Their use should be maximised. The committee intends to continue to monitor the use of BWCs and how their use affects integrity investigations and agencies.

Finding 3

The rollout of body worn cameras (BWCs) has been a positive development delivering benefits to the police and integrity agencies.

BWC footage is an important tool in integrity investigations. It is independent evidence of what occurred during a police interaction.

Corruption and Crime Commissioner Hon John McKechnie QC described BWC footage as 'very, very useful' and 'a very significant misconduct prevention measure'.

Finding 4

The Parliamentary Inspector advocates an increased use of BWCs. He considers that the optimum outcome would be for police officers to activate their BWC at all times when interacting with a member of the public.

The Parliamentary Inspector has questioned whether WA Police should amend its BWC policy to mandate the activation of BWCs in a wider range of circumstances. At present BWCs only automatically activate when a police officer draws their firearm from their holster. They do not automatically activate when a taser is drawn.



MR M. HUGHES, MLA
CHAIR

command centre or similar to watch BWC footage in real time. This expensive option is 'something that police would explore in our future options': Acting Commissioner Col Blanch, *Transcript of Evidence*, 10 November 2021, p 13.

69 Craig Donaldson, Assistant Commissioner, Professional Development, Western Australia Police Force, *Transcript of Evidence*, 10 November 2021, p 11.

Appendix One

Committee's functions and powers

By concurrence between the Legislative Assembly and the Legislative Council, the Joint Standing Committee on the Corruption and Crime Commission was established on 25 May 2021.

The Joint Standing Committee's functions and powers are defined in the Legislative Assembly's Standing Orders 289-292 and other Assembly Standing Orders relating to standing and select committees, as far as they can be applied.

It is the function of the Joint Standing Committee to:

1. monitor and report to Parliament on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission
2. inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector
3. carry out any other functions conferred on the committee under the *Corruption, Crime and Misconduct Act 2003*.

The committee consists of 4 members, 2 from the Legislative Assembly and 2 from the Legislative Council.



Parliament House
4 Harvest Terrace, West Perth WA 6005
Telephone: +61 8 9222 7222
Email: laco@parliament.wa.gov.au
Website: www.parliament.wa.gov.au