

41ST PARLIAMENT



Joint Standing Committee on the  
Corruption and Crime Commission

Report 10

ANNUAL REPORT 2022–23

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Presented by  
Mr M. Hughes, MLA and Hon Dr S.C. Thomas, MLC  
October 2023

## *Committee Members*

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Chair	Mr M. Hughes, MLA Member for Kalamunda
Deputy Chair	Hon Dr S.C. Thomas, MLC Member for South West Region
Members	Hon M.J. Davies, MLA Member for Central Wheatbelt (since 21 February 2023)  Mr R.S. Love, MLA Member for Moore (until 21 February 2023)  Hon K. Andric, MLC Member for South Metropolitan Region

## *Committee Staff*

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

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**Annual Report 2022–23**

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Report No. 10

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  
12 October 2023



## Chair's Foreword

**T**his report summarises the activities of the Joint Standing Committee on the Corruption and Crime Commission between 1 July 2022 and 30 June 2023.

The committee monitors and reports on the exercise of the functions of the Corruption and Crime Commission and the Parliamentary Inspector of the Corruption and Crime Commission, commences own motion inquiries relating to means by which corruption prevention practices may be enhanced within the public sector, and carries out functions under the *Corruption, Crime and Misconduct Act 2003*.

The Corruption and Crime Commission, under the leadership of Commissioner Hon John McKechnie KC, and the Parliamentary Inspector of the Corruption and Crime Commission, Matthew Zilko SC, play an important role in improving the integrity of the public sector. I thank them for their professionalism and productive engagement with the committee this past year.

The committee had a change of membership during the reporting period when Shane Love MLA was replaced by Hon Mia Davies MLA on 21 February 2023. I extend my sincere thanks to Mr Love for his contribution to the work of the committee. I look forward to continuing to work with Ms Davies in the same collegial manner.

I thank all members of the committee for their continual support, commitment and professionalism in undertaking the important work of the committee.



**Mr M. Hughes, MLA**  
**CHAIR**





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## **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 Minister for Police 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.



# Chapter 1

## Committee activities

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This Annual Report summarises the activities of the Joint Standing Committee on the Corruption and Crime Commission between 1 July 2022 and 30 June 2023 (reporting period).

### Functions of the committee

Under Legislative Assembly Standing Order 289 it is the function of the committee to:

- a) 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
- b) inquire into, and report to Parliament on the means by which corruption prevention practices may be enhanced within the public sector
- c) carry out any other functions conferred on the committee under the *Corruption, Crime and Misconduct Act 2003*.

### Committee activities

Table 1: Activities of the committee, 1 July 2022 to 30 June 2023

Description	Activity
Deliberative meetings	16
Formal evidence hearings	18
Witnesses appearing	63
Briefings	3
Reports tabled	3
Report findings tabled	0
Report recommendations tabled	2

### Public hearings

Like other Parliamentary committees, the committee has the power to send for persons, papers and records.

Due to the nature of the committee's work, hearings may be held in closed session, sometimes after a public session with the witnesses.<sup>1</sup> It is also not unusual for committee correspondence and written evidence to remain closed evidence.

The committee posts transcripts of public hearings and other public evidence on its [website](#).

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<sup>1</sup> For Annual Report purposes, a public hearing followed by a private hearing with the same witnesses is recorded as one hearing.

During the reporting period, the committee held 17 public hearings taking evidence from 63 witnesses.

- On 23 November 2022 and 15 March 2023 we held hearings with the Parliamentary Inspector of the Corruption and Crime Commission and the commission to discuss their annual reports and related matters.
- The remainder of the hearings related to the committee's inquiry into What Happens Next? Beyond a finding of serious misconduct.

## Reports tabled and government responses

The committee tabled 3 reports during the reporting period, namely:

- [Annual Report 2021-22](#), tabled in both Houses on 1 December 2022.
- [Unlawful detention in public hospitals](#), Report 8, tabled in both Houses on 30 March 2023.
- [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?](#), Report 9, tabled in both Houses on 30 March 2023.

In Report 8, *Unlawful detention in public hospitals*, we provided an update by the Parliamentary Inspector on his 2022 report, *Report on the operation of the Corruption, Crime and Misconduct Act 2003: the definition of 'public officer'*. This supplementary report alerted Parliament to another case of unlawful detention in a public hospital and a recent District Court of Western Australia ruling on this issue.

The Parliamentary Inspector observed that the law on the right to detain a patient was not well understood by hospital staff. This creates a serious misconduct risk. The Parliamentary Inspector respectfully suggested that cases he highlighted demonstrate a need to ensure that all hospital staff are made aware of the law to avoid future incidents.

The committee recommended that the Minister for Health consider the Parliamentary Inspector's report and advise Parliament of action proposed to be taken by the government with respect to the matters raised in the report.

The Government Response to Report 8 was tabled on 8 August 2023. It can be accessed [here](#). We are pleased with the Government Response. We have asked the Department of Health to update the committee on further action taken to address the matters raised.

Report 9, *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?*, informed the Parliament of a disagreement between the Parliamentary Inspector and commission on the nature of the commission's power to form an opinion of serious misconduct.

The committee recommended that the Attorney General direct the Department of Justice to examine matters raised by the Parliamentary Inspector as part of its project to modernise the *Corruption, Crime and Misconduct Act 2003*.

The Government Response to Report 9 was also tabled on 8 August 2023. The response can be accessed [here](#). We are pleased that the Government accepted the recommendation.

### **Inquiry: What happens next? Beyond a finding of serious misconduct**

On 23 March 2022 the committee commenced an own motion inquiry titled ‘What happens next? Beyond a finding of serious misconduct’.

We are inquiring into what happens after a public officer is found to have engaged in serious misconduct. This includes considering disciplinary and other outcomes imposed on public officers, criminal prosecutions arising from serious misconduct investigations, systemic responses to minimise misconduct risks, and efforts to build public sector integrity.

During the reporting period the committee held hearings to progress the inquiry. Transcripts of public hearings and public submissions and evidence can be accessed [here](#). The inquiry report is due to be tabled on 30 November 2023.

### **Matters arising**

In undertaking its oversight role, the committee receives correspondence relating to a range of matters relevant to its terms of reference. This includes correspondence relating to the commission’s critical function of dealing with serious misconduct by public officers. As noted above, due to the nature of the work of the committee it is not unusual for correspondence to remain closed evidence.

The committee takes this opportunity to bring the following 2 matters to the attention of Parliament.

#### **A gap in the Parliamentary Inspector’s oversight of the commission – *Telecommunications (Interception and Access) Act 1979 (Cth)***

The functions of the Parliamentary Inspector include auditing ‘any operation carried out pursuant to the powers conferred or made available [by the *Corruption, Crime and Misconduct Act 2003*]’ (the audit function) and assessing ‘the effectiveness and appropriateness of the Commission’s procedures’ (the basis of the Parliamentary Inspector’s investigative or complaints function).<sup>2</sup>

In practice, the Office of the Parliamentary Inspector discharges these functions by auditing the commission’s records on a regular basis, and investigating complaints from members of the public about a decision made by the commission. To undertake these functions the Parliamentary Inspector is given access to commission records.

Under the current provisions of the Commonwealth *Telecommunications (Interception and Access) Act 1979* (TI Act) the Parliamentary Inspector is unable to view or access telecommunication information lawfully intercepted by the commission or interception warrant information, including the affidavit to support the application for a warrant, unless it is for the purposes of dealing with matters of misconduct by the commission, an officer of

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<sup>2</sup> *Corruption, Crime and Misconduct Act 2003*, ss 195(1)(cc) and (c).

the commission, or his own officer.<sup>3</sup> Commission files provided to the Parliamentary Inspector redact TI material if they do not relate to the above.

This gap in the Parliamentary Inspector's ability to oversight and scrutinise the work of the commission is of ongoing concern to this committee and others. The Parliamentary Inspector should be provided with powers that enable his office to scrutinise the work of the commission to the fullest extent. The committee does not suggest that there has been any impropriety by the commission.

Current and previous Parliamentary Inspectors have raised deficiencies in oversight due to the operation of the TI Act with this and previous committees.<sup>4</sup> The Joint Standing Committee of the 39th Parliament reported on this issue in its report *Surveillance and Accountability: A gap in the oversight umbrella*.<sup>5</sup>

This committee continues to encourage the State Government to work with the Commonwealth Government to pursue a legislative solution to this problem. There is an opportunity to ensure that appropriate amendments are made as part of the Commonwealth's Electronic Surveillance Reform which includes reform of the TI Act.

This is an issue the Attorney General, Hon John Quigley MLA, is familiar with and has raised at the Commonwealth level, most recently on 13 April 2023. The Attorney General asked 'the Commonwealth Government [to] consider introducing appropriate amendments to ensure State oversight agencies can appropriately carry out their function'.<sup>6</sup>

The committee has asked to be advised of developments.

### **Western Australia Police Force – information sharing between officers**

The committee is concerned about events that followed a police incident resulting in injury to a member of the public during an arrest.

The injured person's legal representative raised the matter with the commission but was not satisfied that all their concerns were adequately addressed by the commission. In April 2021 they wrote to the committee. The committee referred this matter to the Parliamentary Inspector for his consideration and assessment of the commission's actions.

The relevant events are briefly outlined below:

- During an attempt to apprehend a suspect, the person was struck down and injured by a police motor vehicle driven by Officer A. The person was conveyed to hospital by ambulance.
- Later that same day, at the control centre, Officer B, a police officer involved in the arrest of the suspect, briefed the Acting Senior Sergeant (Officer C) about the

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3 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, letter, 20 October 2022, p 1.

4 Parliamentary Inspector of the Corruption and Crime Commission, *Annual Report 2017-2018*, p 7.

5 Joint Standing Committee on the Corruption and Crime Commission, *Surveillance and Accountability: A gap in the oversight umbrella*, 8 November 2012.

6 Hon John Quigley MLA, Attorney General, letter, 13 April 2023.

incident. Officer B gave Officer C information about the arrested man that was not known to Officer A. The information was recorded in the running sheet for that district.<sup>7</sup>

- Officer C then shared that information by email to all officers involved in the incident, including Officer A, for, WA Police advised, the purposes of those parties submitting a District Awareness Summary (DAS) entry.<sup>8</sup> The DAS captures significant incidents and is for state-wide broadcast to WA Police executives and senior officers.<sup>9</sup>

Officer A was subsequently convicted of dangerous driving. At the trial in the Magistrates Court of Western Australia, the presiding Magistrate was critical of the actions of Officer A and Officer C. The Magistrate noted that the evidence Officer A gave at trial, that at the time of the incident Officer A was aware of the information Officer C later conveyed by email, was inconsistent with comments Officer A made after receiving the email.<sup>10</sup> The Magistrate concluded that Officer A was dishonest and adjusted testimony in an attempt to be absolved from criminal liability.<sup>11</sup>

The Magistrate criticised the actions of Officer C in giving the information provided by Officer B to Officer A. His Honour said (names have been redacted):

Given that an investigation was to follow in relation to this incident, which it was clear that it was, I find that it was inappropriate for Detective Sergeant [Officer C] to email Senior Sergeant [Officer A] what Senior Sergeant [Officer B] had told [Officer C] before [Officer A] was interviewed ... And the criticism is that [Officer C's] evidence might then taint [Officer A's] version of what happened.<sup>12</sup>

The commission referred allegations of police misconduct (serious misconduct) against Officer A and Officer C to WA Police. WA Police found that Officer A breached WA Police's *Code of Conduct (Integrity)* in using the information to bolster evidence in the criminal trial.<sup>13</sup>

WA Police made no finding of police misconduct against Officer C on the basis that the officer had acted in accordance with their role and followed standard procedures. Essentially WA Police say that Officer C was not investigating the incident or performing an interview function but instead collating the information. Further, WA Police say that at the time the email was sent, Officer A was not subject to an allegation of police misconduct, and Officer C

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7 Corruption and Crime Commission, *The Commission's oversight function with reference to a specific matter: A report to the JSCCCC*, 14 March 2023, pp 5-6.

8 As well as Officer B's superior officer.

9 Col Blanch, Commissioner, Western Australia Police Force, letter, 21 March 2023, p 1.

10 *WA Police v [name redacted]*, Magistrates Court of Western Australia, AR 13533 of 2018, p 25.

11 The commission considered the conclusion reached by WA Police open on the evidence: Corruption and Crime Commission, *The Commission's oversight function with reference to a specific matter: A report to the JSCCCC*, p 6.

12 Magistrates Court of Western Australia [citation redacted].

13 Corruption and Crime Commission, *The Commission's oversight function with reference to a specific matter: A report to the JSCCCC*, 14 March 2023, p 8.

would not have known that this would eventuate.<sup>14</sup> WA Police also advised that Officer A would have had lawful access to the summary through the function of their duties.<sup>15</sup>

The committee asked the Parliamentary Inspector, Matthew Zilko SC, to review this matter and the response of WA Police. The Inspector responded:

In my respectful view, any situation where a police officer has caused an injury to a member of the public, and certainly where the person injured has been hospitalised as a result, police officers *should* be aware, as a matter of common sense, that a criminal or managerial investigation will ensue. In such circumstances, officers should not wait to receive a complaint from the person injured before taking action to ensure that evidence is safeguarded. As such, the ordinary practice of information-sharing should not include any persons involved in the relevant incident.<sup>16</sup>

The committee agrees with the Parliamentary Inspector.

#### **Recommendation**

That the Western Australia Police Force investigate ways to manage information in circumstances where the conduct of a police officer is likely to result in an allegation of police misconduct.

The Government Response to this recommendation should not identify any of the parties involved in the above incident.

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14 Col Blanch, Commissioner, Western Australia Police Force, letter, 21 March 2023, p 1.

15 The commission considered the conclusion reached by WA Police open on the evidence: Corruption and Crime Commission, *The Commission's oversight function with reference to a specific matter: A report to the JSCCCC*, p 8.

16 Matthew Zilko SC, Parliamentary Inspector of the Corruption and Crime Commission, letter, 29 June 2023, p 2.



## Chapter 2

### Financial statement

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The committee does not have its own formal budget and is funded out of the budget of the Legislative Assembly. Approval for major expenditures is required on a case by case basis and is at the discretion of the Speaker.

The committee's expenditure in the reporting period is set out below.

**Table 2: Expenditure of the committee, 1 July 2022 to 30 June 2023**

Expenditure item	Amount (\$)
Travel	36,444.43
Conference fees	13,965
Miscellaneous	588
<b>TOTAL</b>	<b>50,997.43</b>
Note: Salaries of committee staff and costs of shared administrative expenses including lease costs for committee accommodation are not included.	



**MR M. HUGHES, MLA**  
**CHAIR**



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