



Crime and Corruption Commission

QUEENSLAND



Submission

Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct

January 2020

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Our Reference: AD-19-1034

28 January 2020

Mr Tim Nicholls MP
Chair
Parliamentary Crime and Corruption Committee
Parliament House
Brisbane QLD 4000

Dear Mr Nicholls,

Inquiry into the Crime and Corruption Commission's performance of its functions to assess and report on complaints about corrupt conduct

I refer to the Parliamentary Crime and Corruption Committee's (PCCC) invitation for submissions in relation to the Crime and Corruption Commission's (CCC) performance of its functions to assess and report on complaints about corrupt conduct.

Thank you for the opportunity to provide a submission to the inquiry. Please find attached the CCC's submission.

I authorise the CCC's submission to be published in the enclosed form.

Please contact my office directly to discuss the submission further if required.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. MacSporran'.

A J MacSporran QC
Chairperson

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Background to the submission

In its correspondence of 16 December 2019 inviting a submission from the CCC to the inquiry, the Committee sought information on a number of specific topics.

Those topics have been enumerated 1 to 10, and each are specifically addressed by reference to that number below. However, for ease of understanding, items 1 and 2 have been swapped from the order in the Committee's correspondence.

They are:

1. The distinctions between the CCC's assessment and investigation of a complaint
2. A summary of the evidence and information gathering powers available to the CCC during an assessment and an investigation
3. Any barriers to the transmission of evidence and information to another body, in circumstances where a complaint is referred to that body following an assessment
4. Illustrative examples of previous referrals the CCC has made to appropriate bodies under section 60 of the Act and a description of the type of information that was provided as part of the referral
5. The adequacy of the current legislative provisions to cater for the referral of matters to the Legislative Assembly
6. The CCC's procedures for developing recommendations for legislative amendments arising from the consideration of a complaint
7. The factors the CCC takes into account when considering how best to publish or announce its determinations in relation to complaints
8. The CCC's procedures for drafting and approving media releases announcing the CCC's determinations in relation to complaints
9. What statutory powers the CCC exercised when concluding 'that there would be no reasonable prospect of a successful prosecution' in relation to the allegations against the Premier, as detailed in the CCC media release dated 27 September 2018, and
10. The statutory basis for, and purpose of, the 'preliminary investigative stage or a feasibility study' referred to in evidence to the Committee at its public meeting on 18 October 2019

The Committee also sought, by that correspondence, copies of the CCC's guidelines, procedures and policies on various matters. These were provided on 20 December 2020, with one supplementary document on 2 January 2020. The following submissions refer extensively to that material, as it underpins the day-to-day work of the CCC, and provides detailed information responsive to many of the Committee's questions.

In particular, as set out in the 20 December 2019 correspondence to the Committee, the CCC has, since 2018, developed an Operations Manual, which supports the Operational Framework and Operating Model. The Operations Manual ('OM') consolidates policies and procedures across the organisation, so as to provide a consistent framework relating to complaint handling and investigations.



Overview

The inquiry being undertaken by the Committee seeks to examine two discrete, but related, areas of the commission's work – how it assesses complaints of corrupt conduct, and how it reports on such work.

There are several key considerations that underpin all of the CCC's work, and that inform the matters about which the Committee is inquiring. These are found in the *Crime and Corruption Act 2001* ('the CC Act'). As the focus of the present inquiry is in relation to how the CCC performs its corruption function, reference will be limited to those considerations that apply particularly to that function.

The CCC's corruption function

All action which the CCC takes must be in pursuit of its statutory functions and purposes. Primarily these are to combat and reduce the incidence of major crime, and to continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.¹ This is to be achieved by the CCC, *inter alia*, investigating corrupt conduct, particularly more serious cases of corrupt conduct, and helping units of public administration to deal effectively and appropriately with corruption by increasing their capacity to do so.²

'Corrupt conduct' is defined in s15 of the CC Act. That effectively defines the CCC's corruption jurisdiction.³ In order to be corrupt conduct, it must be conduct which, if proved, would be a criminal offence, or a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.^{4,5}

Section 35(3) makes clear that the commission must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.

As the Committee notes in its correspondence, ss33 to 51 deal specifically with the CCC's corruption functions. Sections 33 and 34 deal generally with those functions, and the principles that apply in performing those functions.

Section 35 provides a detailed, non-exhaustive guide to how the CCC may perform its corruption functions. This includes (s35(1)(a)) expeditiously assessing complaints about, or involving, corruption made or notified to it.

Section 46 provides that the CCC deals with a complaint about corruption by expeditiously assessing each complaint, and taking the action the commission considers most appropriate in the circumstances, having regard to the principles set out in s34. The term 'assessment' is not defined in the CC Act.

1 s4, CC Act

2 s5(3), CC Act

3 Save for matters of police misconduct, which are included within the corruption jurisdiction, although police misconduct may not necessarily amount to corrupt conduct

4 s15(1)(c), and s15(2)(c), CC Act

5 For some office holders such as members of parliament, whose services may not be 'terminated', this effectively limits the jurisdiction to matters which would, if proved, be a criminal offence.



Assessment and prioritisation

It is clear from the above that an assessment is, for the purposes of the CCC's work, a preliminary consideration of the known, but necessarily incomplete, information relevant to a complaint. An assessment is undertaken in order to determine how to deal with the matter. This may include referring the matter to another body for investigation, taking no action, or undertaking an investigation.⁶ In some circumstances, the CCC may seek further information, or undertake preliminary enquiries, for the purpose of making a better-informed assessment decision.

The CCC, like any public sector agency, has limited resources. In considering whether to commence, continue, or conclude an investigation, resourcing implications must be balanced against the potential value of further investigation.⁷ While this necessarily involves a degree of speculation, it is informed by the information gathered to date, either at an assessment stage, or through an investigation.

The CCC must, at all times, act independently, impartially and fairly having regard to the purposes of the CC Act and the importance of protecting the public interest.⁸ As a public body, the CCC is also obliged to act consistently with its obligations under the *Human Rights Act 2019*.

Reporting and disclosure of information

The CCC may use information in its possession for performing its functions, or give information to other entities as it considers appropriate.⁹ In certain circumstances, the CCC may report on an investigation to a prosecuting authority for the purposes of a criminal prosecution, to the chief of a court where the conduct relates to the conduct of a judicial officer of that Court, or to the chief executive officer of a unit of public administration for the purposes of taking disciplinary action.¹⁰

The CCC may report in performing its functions.¹¹

The decision as to whether, when and how to report on the outcome of a CCC assessment or investigation is one which will be informed by a variety of factors. This decision may be different in different circumstances, depending on the context of the matter. The decision about what to report and how to report it is informed primarily by the CCC's core functions, and the considerations in s57 of the CC Act.

Any report, in whatever form, is fundamentally an exercise in communication. In order to determine how best to communicate in relation to a particular matter, regard must be had to the intended purpose and message, the proposed audience, and the desired outcomes. There is little utility in writing a long and complicated report where there is a discrete issue with simple facts.

Similarly, where an investigation is limited or foreclosed by jurisdictional limitations, or where the fact pattern revealed allows for a clear assessment, the public interest may be best served by communicating succinctly and expeditiously, by a media release, rather than a lengthier report.

⁶ s46, CC Act

⁷ s46(2)(g)(ii) provides that the CCC may take no action or discontinue action if satisfied that dealing with the complaint (or, by implication, further dealing with the complaint), would not be in the public interest, or would not be a justifiable use of resources.

⁸ s57, CC Act

⁹ s60, CC Act

¹⁰ s49, CC Act

¹¹ s64, CC Act – note, certain provisions apply to reports relating to matters in connection with police



The decision as to when and how to report is always informed by the underlying principles set out above – to improve the integrity of, and reduce the incidence of corruption in, the public sector.¹²

Having addressed those background matters, the following then considers the specific questions posed by the Committee.

12 s4, CC Act



Specific questions posed by the Committee

1. The distinctions between the CCC's assessment and investigation of a complaint

The statutory distinction

The CCC uses the terms 'assessment' and 'investigation' to clearly denote, specific stages in its Operating Model Lifecycle. The process by which the CCC conducts an assessment, and the process by which an assessment becomes an investigation (as well as other action which may be taken), are set out in the Operations Manual.

It is the CCC's view, and practice, when performing its corruption function, that an assessment involves the CCC's consideration, at a primary stage (s 45(1)), about what must be done to ensure a complaint about corruption is dealt with in an appropriate way (under s 33(1)(b)) so that it may take the action the CCC considers most appropriate in the circumstances (under s46(1)(b) and 46(2)) having regard to the principles set out in s 34.

Section 35 of the CC Act sets out, without limiting, how the CCC may perform its corruption function as follows:

35 How commission performs its corruption functions

- (1) Without limiting how the commission may perform its corruption functions, it performs its corruption functions by doing 1 or more of the following—
 - (a) expeditiously assessing complaints about, or information or matters (also *complaints*) involving, corruption made or notified to it;
 - (b) referring complaints about corruption within a unit of public administration to a relevant public official to be dealt with by the public official;
 - (c) performing its monitoring role for police misconduct as provided for under [section 47\(1\)](#);
 - (d) performing its monitoring role for corrupt conduct as provided for under [section 48\(1\)](#);
 - (e) dealing with complaints about corrupt conduct, by itself or in cooperation with a unit of public administration;
 - (f) investigating and otherwise dealing with, on its own initiative—
 - (i) the incidence, or particular cases, of corruption throughout the State; or
 - (ii) the matters mentioned in [section 33\(2\)](#);
 - (g) assuming responsibility for, and completing, an investigation, by itself or in cooperation with a unit of public administration, if the commission considers that action to be appropriate having regard to the principles set out in [section 34](#);
 - (h) when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for—
 - (i) the prosecution of persons for offences; or
 - (ii) disciplinary proceedings against persons;
 - (i) assessing the appropriateness of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption;
 - (j) providing advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way.
- (2) In performing its corruption functions in a way mentioned in subsection (1), the commission should, whenever possible, liaise with a relevant public official.
- (3) In performing its corruption function under [section 33\(1\)\(b\)](#), the commission must focus on more serious cases of corrupt conduct and cases of systemic corrupt conduct within a unit of public administration.



Many of these actions can, or must, occur simultaneously. Thus the concepts of 'assessment' and 'investigation' may be regarded as complementary or integrated steps, rather than ones which are strictly mutually exclusive of each other.

While activities undertaken during an assessment may fall within the statutory definition of an investigation, the CCC draws a practical distinction between the two in its day to day work for a variety of reasons. In large part, the distinction is drawn for ease of administrative and governance processes, and to ensure an accurate and transparent public understanding of the CCC's work.

An example may assist to understand this issue. The CCC is responsible for oversight of significant events involving police. This includes police shootings. Where the CCC becomes aware of a police shooting, it conducts an assessment to determine whether the shooting may involve corrupt conduct or police misconduct.

The CCC officer makes an assessment about whether the matter involves a suspicion of corruption on the information available. In many cases, this will involve an examination of footage from a body-worn camera ('BWC') worn by the officer during the shooting incident. This may provide a full and readily available account of the events preceding and following the shooting, and allow a rapid assessment of whether there are any issues raised which fall within the CCC's jurisdiction. Such footage may be obtained cooperatively from the police for the purposes of such an assessment by the CCC. In some circumstances, the body-worn camera footage will provide a sufficient informational basis to assess and determine that the matter does not involve 'corruption' as defined in the Act.

Those preliminary inquiries which informed the assessment decision may meet the statutory definition of 'investigate', as the officer has considered the underlying factual merits of the allegation, and taken some steps and reviewed available information to determine whether there is a reasonable basis to suspect that the allegation has foundation.

While, in a legal sense, an investigation has been conducted, a number of consequences may flow from describing it as such.

The CCC is accountable to the PCCC and through it, to the community more broadly. It reports to the Committee, including providing it with statistical information as to the number and nature of investigations conducted. It provides the Committee with information about the number, nature and timeliness of assessments. All of this information is generally publicly available through the publishing of such reports. Were such assessments to be described as 'investigations', this would run the risk of providing a skewed perception of the number of matters 'investigated' by the CCC, as the community would ordinarily understand the use of that term.

There is a matter of fairness, too, to persons about whom complaints have been made in retaining the distinction in terminology between an 'assessment' and an 'investigation', even where some assessment activities would fall within the definition of an 'investigation'. Confirmation that a person's conduct has been 'investigated' by a law enforcement agency may cause some reputational damage. The term 'investigation' may imply that there was 'something there' which needed to be looked at, as that term is commonly understood.¹³ As a matter of pure pragmatism, it may well be that the use of the term 'assessment' carries a more neutral tone, and thus is less likely to cause reputational damage.

13 It must be recognised that the word 'investigate', or the fact that an investigation is being conducted, does not in fact have a negative connotation. It is a neutral term. Investigations may well reveal that corrupt conduct of the kind alleged did not occur, or at least that evidence could not be gathered to substantiate such an allegation to either a disciplinary or criminal standard (in which case the subject of the investigation is entitled to the benefit of the doubt).



It is a practical reality that complaints are sometimes made to the CCC for the sake of scoring political 'points'.¹⁴ The very fact of a complaint having been made may be used to tarnish a person's reputation. In those circumstances, the public interest may require clarification as to the status of the complaint to the CCC.

Referring back to the hypothetical example set out above, while the assessment which took place of the complaint may have satisfied the statutory definition of an 'investigation', it would be neither fair to the officer to say that they had been 'investigated for corrupt conduct' as a result of the action taken in response to that complaint. Nor would it be appropriate to include the steps taken by in reviewing the BWC footage to allow an immediate assessment of the allegation, in any calculation of the number of 'investigations' undertaken by the CCC in a given reporting period.

The practical and operational distinction which is drawn between these terms is reflected in the information provided on the CCC's website regarding the use of these different terms.¹⁵

Thus the current distinction drawn between an 'assessment' and an 'investigation' as stages within the CCC's process for handling a complaint is a pragmatic utilisation of those terms, and adopting a 'best fit' use of both expressions. This ensures that, when complaints are first received, they are able to be expeditiously assessed, and a decision made as to how to deal with the matter under ss35 and 46, in a timely way that considers the most effective use of the CCC's resources.

The practical/operational use stages of 'assessment' and 'investigation'

A proper understanding of the practical distinctions drawn between an 'assessment' and an 'investigation', are best understood by reference to the Operations Manual, and in particular, its articulation of the assessment process.

The assessment process is detailed in IM03 (and in particular at 4.1.2, as reproduced below).

4.1.2 Assessment process for corruption matters

Assessment of corruption matters other than notification of significant events

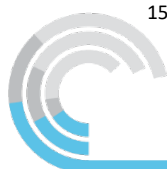
There are two steps in the assessment of a corruption matter:

- A preliminary assessment that is undertaken by the officer responsible for receipting the matter (refer to IM02 – Receiving and recording matters) to:
- determine whether the matter falls within the jurisdiction of the CCC
- categorise and allocate the corruption matter in accordance with the Complaint Categorisation and Prioritisation Model (CCPM).
- An assessment resulting in an assessment decision. The assessment decision is made by an appropriate officer or committee, depending on the categorisation of the corruption matter.

Preliminary assessment of corruption matters other than notification of significant events

¹⁴ In 2016, the CCC held a public forum and considered submissions in relation to this issue. That resulted in a research report, which is publicly available: <https://www.ccc.qld.gov.au/publications/publicising-allegations-corrupt-conduct-it-public-interest> *Publicising allegations of corrupt conduct: Is it in the public interest?* 12 December 2016

¹⁵ <https://www.ccc.qld.gov.au/media/terminology-used-ccc>



Preliminary assessment is undertaken by the officer responsible for receipting a corruption matter and requires consideration of a matter's jurisdiction and categorisation against the CCPM.

Jurisdiction

This step of the assessment establishes that the matter involves suspected corruption, whether corrupt conduct or police misconduct and that the agency is under the purview of the CCC.

Categorisation and Allocation

This step of the assessment categorises the complaint using the CCPM. Matters are categorised as High, Medium or Low based on a range of factors (refer to Complaint Categorisation and Prioritisation Model for detailed information). The categorisation of the matter determines the officer responsible for undertaking further assessment.

Details of the preliminary assessment are registered at the recording stage. For more information refer to IM02 – Receiving and recording matters.

Assessment of corruption matters categorised as High

Where a complaint is assessed, at the preliminary stage, as High, an appropriate responsible officer is allocated to conduct the assessment. The responsible officer must review the categorisation and confirm it is appropriate before proceeding.

The assessment determines whether the matter should be referred to the Executive Leadership Team (ELT) or the Remainder of High Complaints Committee (RoHCC) for an assessment decision.

Only these committees may make an assessment decision for a matter categorised as High.

Referral to ELT for an assessment decision

To refer an assessment decision to ELT, the complaint must meet a number of criteria, for example, death or serious injury (or risk thereof) to a member of the public as a result of the conduct of a public officer, or a complaint is particularly politically sensitive or subject to media scrutiny. ELT assess all complaints recommended to transition to the feasibility stage of an investigation. For more information on the stages of an investigation, refer to MM01 – Matter management, planning and conduct.

A comprehensive list of the criteria to be considered is attached as Appendix A. [not included]

A referral to ELT is undertaken using an Investigation Proposal (Assessment). Two types of forms are available (A01 or A02) depending on the type of recommendation to be made. For more information on referring matters to ELT, refer to IM01 – Portfolio assessment and review.

The decision to refer a matter to ELT is recorded in the case management system (CMS).

Referral to RoHCC for an assessment decision

The RoHCC assesses all matters that are categorised as High but do not meet the assessment criteria for referral to ELT.



For more information on the role of RoHCC refer to Remainder of High Complaints Committee Charter.

If a matter is assessed for referral to RoHCC, the responsible officer must consider the details of the matter and prepare a summary of their assessment considerations and a recommended course of action.

RoHCC members consider the information provided as the basis of an assessment decision.

The decision to refer a matter to RoHCC is recorded in the CMS.

For information on procedures following a decision by RoHCC, refer to IM04 – Implementation of assessment decisions.

To assist in making an assessment decision, RoHCC may refer High matters for further preliminary inquiries. Preliminary inquiries aim to establish whether a complaint involves:

- suspected corruption
- conduct liable to allow, encourage or cause corrupt conduct
- conduct connected with corrupt conduct.

Depending on the outcome of the preliminary inquiries, a complaint will again be referred to RoHCC for assessment or, if a transition to the feasibility stage of an investigation is recommended, to ELT.

For more information refer to IM04 – Implementation of assessment decisions.

Assessment of corruption matters categorised as Medium or Low

A responsible officer is allocated to conduct the assessment, based on the CCPM. The responsible officer must review the categorisation and confirm it is appropriate before proceeding.

The responsible officer uses the General Assessment Criteria for Corruption Matters (attached as Appendix B) as a framework to assess the matter and determine a course of action. [not attached]

Medium matters

The Director, Assessment and Director, Review are briefed on the recommended course of action. This information is used by the Director, Assessment and Director, Review to make an assessment decision with an appropriate course of action, and the allocation of an officer responsible for implementing the assessment decision.

The Director, Assessment in consultation with the Director, Review may determine that a matter should be subject to statutory monitoring. If a medium matter is to be monitored then it should be referred to the UPA, and if it is a police matter it should also be referred to JAMC for consideration. Refer to IM04 - Implementation of assessment decisions.

The assessment decision to approve a course of action is recorded in the CMS.

Low matters



The responsible officer undertakes the appropriate action.

The assessment decision to approve a course of action is recorded in the CMS.

For information on procedures following a decision on Low or Medium matters, refer to IM04 – Implementation of assessment decisions.

The process as set out in the Operations Manual above is summarised below.

Step 1 – matter is received

At the first stage of the process, a matter is received by the CCC. The CCC becomes aware of suspected corruption through:

- Direct complaints (s36) – these may be made by any person and received by any means
- Mandatory notification from a public official (ss37 & 38)
- Note also that under s40 units of public administration may negotiate an arrangement with the CCC as to the frequency with which it notifies that CCC about certain complaints, or categories of complaints, coming to its attention
- Assessing information that has otherwise come to its attention (see s46(1) CC Act) – this may arise in a variety of ways, including routine agency audits, media articles, Crime Stoppers reports, court proceedings, or referrals from the Coroner or another public inquiry, as well as through its own intelligence activities and sources

Step 2 – Preliminary assessment

At that point, a preliminary assessment is undertaken by the officer responsible for receiving the information. That officer is to determine whether the matter falls within the legal jurisdiction of the CCC, by reference to the definitions of 'corruption', 'corrupt conduct', and 'police misconduct' in the CC Act.

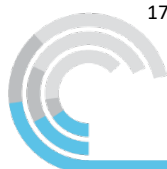
As a general proposition, the CCC can investigate the conduct of public sector employees, including police officers and local government employees; any person whose conduct is believed to corrupt, or has the potential to corrupt, the performance of the functions of a public sector agency; and state and local elected officials, but only to the extent that their conduct would, if proven, amount to a criminal offence.

In conducting the assessment, the officer should also turn their mind to whether the information supports a reasonable suspicion (on the information to hand) that the conduct *could* involve corruption, including considering whether the information appears genuine, and the complaint is made in good faith.¹⁶

If necessary, further information may be gathered as soon as possible to enable the CCC to decide the best course of action. Additional information may come from external sources, such as the complainant, or from internal sources, such as existing intelligence holdings relevant to the matter.¹⁷ The general practice is to make assessment decisions based on the material provided by the complainant, as well as other information which may be readily obtained without resort to compulsory

¹⁶ This consideration arises under s46(2)(g)

¹⁷ See IM03 Appendix B – general assessment criteria for corruption investigations



powers. This is for reasons of expedience, rather than legislative restriction. However, IM03 does contemplate information-gathering at, or prior to, the assessment phase. This is most obviously the case when the CCC responds to a 'significant event' (see IM03 at pp6-7).

Step 3 – Categorisation of matter

Once a preliminary assessment has been made that the complaint falls within jurisdiction, the responsible officer categorises the matter and allocates it for a decision to be made. In accordance with the Complaints Categorisation and Prioritisation Model (tab 16 of the provided materials), and the assessment factors (Appendix B to IM03), a matter is assessed as 'high', 'medium' or 'low'. The level of classification determines the appropriate decision-maker for the assessment.

The factors for classifying a matter include:

- Whether the conduct involves death or serious injury (or risk thereof) to a member of the public
- The potential to have a serious impact on the public sector
- Whether any potential use of resources is justifiable
- Whether the conduct involves high-profile, sensitive or complex issues
- The relative seniority or profile of the public figure or official
- Whether the conduct would have a bearing on public confidence or order
- Whether the information indicates the possibility of systemic corrupt conduct within a unit of public administration

Matters categorised as 'high' may only be decided by the Executive Leadership Team ('ELT') or the Remainder of High Complaints Committee ('RoHC'). Appendix A to IM03 sets out the types of matters which should be referred to the ELT for a decision. As that document makes clear, complaints that do not raise a reasonable suspicion of corrupt conduct should not be automatically referred to the ELT. The remainder of matters assessed as 'high' are to be assessed by RoHC.

The ELT undertakes an assessment of all matters that are to progress to the feasibility stage of an investigation. That includes both matters that are automatically for consideration of the ELT, as well as those matters recommended for further action by the RoHC.

Matters assessed at a 'medium' and 'low' level are dealt with by the Director, Assessments, and Director, Reviews, and to complaints officers respectively.

Step 4 – The assessment decision

The responsible officer or committee reviews the categorisation and confirms agreement with it before proceeding.

The following assessment decisions may be made in relation to a corruption matter:

- Commence a CCC investigation (in which case the matter transitions to the 'feasibility' stage)
- Refer for preliminary inquiry (in which case the matter remains in the assessment stage) – RoHC may refer a matter for further preliminary inquiries to establish whether a complaint may involve suspected corruption
- Refer to the unit of public administration to undertake an investigation
- Refer to another agency for action
- Take no further action



In determining the appropriate course of action, regard is had to the factors set out in s34 of the CC Act.

Matters that are referred to a unit of public administration may be referred on several different bases, having regard to the nature of the matter. These may include an investigation which is monitored by the CCC, an investigation the outcome of which is to be notified to the CCC, and an investigation for which the CCC requires no further advice. This last category is the most common by volume. While there is no ongoing monitoring of these individual investigations, the CCC periodically audits investigations of this kind undertaken by various units of public administration to ensure that they are being dealt with appropriately.

Step 5 – Implementation

The policy and procedures concerning the management, conduct and planning of a matter, or the processes for amending or reviewing an existing investigation are generally set out in MM01.

Only the ELT can approve a corruption matter to progress to an investigation. The transition from the 'assessment' stage to the 'feasibility' stage is regarded as a 'key decision'.

For a CCC investigation, the feasibility stage involves undertaking activities in the nature of a preliminary investigation, whether by way of collecting evidence or information, undertaking enquiries, examining or considering existing or additional material, to determine or assure that the investigation (including the scope of the investigation) is required or justified (on a business case basis), and is technically feasible and cost-effective. The feasibility stage must therefore address whether the investigation is likely to be productive and if so, what strategies and resources may be required to deliver it, over what time frame, and whether the investment of those resources is justifiable, having regard to relevant strategic considerations, risks and priorities.

If a recommendation to proceed to an investigation is approved by the ELT, the matter is assigned to the Executive Director, Corruption Operations, to commence the investigation.

The investigation is then undertaken as set out in MM01.

2. A summary of the evidence and information gathering powers available to the CCC during an assessment and an investigation

Not all investigative actions require statutory powers

At the outset it should be observed that there are actions which may be taken during an investigation that are not found in legislation. At the very least, an officer of the CCC has the same rights and privileges as an ordinary member of the public in inquiring into matters. Police officers seconded to the CCC also retain their powers and duties as a police officer during the secondment.¹⁸ It is uncontroversial that ordinary members of the community may ask questions of each other, may ask to be provided information, and may inquire to determine factual matters of interest to them.

A useful analogy may be drawn with a journalist inquiring into an event – while they have no powers of compulsion to obtain information, it is their everyday business to speak with people, ask questions and exercise a generally inquiring mind to determine relevant facts. Many, in fact, do this to great

¹⁸ s255(5) CC Act, and see also *PRS v CCC* [2019] QSC 83 per Davis J at [48]-[52]



effect. At an assessment phase, there is, at the very least, no limitation on officers of the CCC making inquiries in a similar way – speaking to people, asking questions, asking to see documents, to determine what facts may be readily marshalled in order to conduct a meaningful assessment.

Specific powers

In terms of specific investigative powers available to the CCC, as a legal proposition, those powers which are available during the 'investigation' phase may also be available during the 'assessment' phase.¹⁹ However, in a practical sense, most investigative powers available under the CC Act are not used at this stage of the process.²⁰ There are three main reasons for this.

Firstly, per s46(1)(a) of the CC Act, an 'assessment' is to be conducted expeditiously, and is necessarily preliminary. Part of the assessment process is to consider whether an investigation would be in the public interest and a justifiable use of resources. An amount of factual information is often necessary in order to make such an assessment. Some investigative steps require less resource investment than others. Execution of a search warrant, for example, requires a substantial investment of investigative resources. A written request to a unit of public administration for provision of relevant records it may hold, on the other hand, requires relatively little in the way of resources.

A resource of primary importance during the assessment phase is time. The investigative steps that are taken in the assessment phase are generally those that may be done quickly. Further inquiries may be made of a complainant, for example, to seek to obtain from them relevant materials in their possession. Given the status of a complainant, cooperation can generally be expected. Similarly, a written request to a UPA for relevant records is usually complied with in a timely manner. Given the obligation in ss35 and 46 to 'expeditiously' assess complaints referred or made to the CCC, regard must be had to the time which a step in any inquiry will take.

The second reason some powers may be exercised in the 'investigation' phase, but not in the 'assessment' phase is because some steps/powers are more clearly referable to the conduct of an investigation, as that term is ordinarily understood. For the sake of consistency, powers that are more intrusive (such as telecommunications interception, surveillance devices, search warrants and coercive examination powers) are not used in the assessment phase. A rough delineation of which investigative activities may be, or are, exercised during the 'assessment' phase, is those which are done cooperatively (either in the sense of persons providing information truly voluntarily, or through a request for information from UPAs or appointment holders, from whom cooperation should be expected). Such cooperative information gathering does not require the exercise of any statutory power, and is generally more consistent with the concept of 'expedience' in undertaking assessments. In some circumstances the subject of an assessment may voluntarily provide information which they believe exculpates them.

As information-gathering during the assessment phase is ordinarily undertaken on a voluntary/cooperative basis, it may be provided conditionally (for example, information may be provided to which Legal Professional Privilege might otherwise apply, on the basis that privilege is only waived for the limited purpose of the CCC's assessment). Where that is the case, there may be some consequences for how information is transmitted to other entities who may have a proper interest in the information. This is explored further below in reference to Question 3. In practice, this approach

¹⁹ This is with the obvious exception of where the exercise being undertaken is a pure legal assessment – asking the question as to whether the facts could, as a matter of law, fall within the CCC's jurisdiction.

²⁰ Although note s46(3), which provides that the CCC may direct a public official to provide stated information about the complaint in the way and at the times the commission directs, which may be properly understood in the context of the assessment and decision-making process otherwise set out in s46.



during assessment has been found to strike an acceptable balance between the need to obtain information, and the need to conduct assessments expeditiously.

Thirdly, there is a simple legal reason assessments are generally conducted on information that may be obtained cooperatively. In most cases, the exercise of compulsory powers requires a decision-maker to be provided with sufficient information from which they can reasonably suspect, or reasonably believe, that the conduct in question has occurred, and that evidence may be obtained through the exercise of that power. The rules surrounding the particular power which is sought to be exercised generally govern what information or evidence may be considered by the decision-maker. But such satisfaction would generally require a degree of cogent evidence to be available to the decision-maker which would not necessarily be present before an 'investigation' is commenced (as that expression is used in an operational sense).

Statutory provisions

The Queensland Court of Appeal considered (albeit in a different context) what powers are available to the CCC when conducting an investigation into misconduct (as it was described under the previous iteration of the CC Act) in the decision of *Flori*.²¹ It listed several investigative powers and steps which the CCC may take in pursuit of an investigation. By and large, those are contained within Chapter 3 of the CC Act.

This distinction is reflected in the policies and procedures which govern the conduct of matters within the CCC's corruption function.

Policies and procedures

The policies and procedures do not provide a detailed explanation as to what evidence and information gathering powers are available during an assessment. Specific reference is made at various stages to the use of certain powers called in aid of an 'investigation'. This must be understood by reference to the considerations set out immediately above.

Part 3 of the Manual – Matter Practices – deals with the 'mechanical' aspects of a matter. These include processes such as obtaining witness statements, exercise of compulsory powers, and undertaking covert surveillance.

MP03 relates to hearings. Section 1 makes clear that hearings may be conducted in aid of investigations. Section 176 of the CC Act makes clear that hearings may be conducted in the performance of any of the CCC's functions, excluding the confiscation function. However, that must be read in light of the fact that a notice may only be issued for a crime or corruption investigation (s82), or a witness protection, or intelligence, function hearing.

MP08 refers to search warrants. At 4.1 that is confined to 'investigations'. That reference may be readily understood having regard to the evidentiary basis required to obtain a search warrant as set out above.

MP09 refers to notices, orders and additional powers. Again, that part refers to investigations and operations. The same evidentiary considerations for exercising such powers apply as set out above.

21 *Flori v Queensland Police Service* [2016] QCA 239 generally at pars [84]-[100] and in a consideration of the difference between an investigation conducted by the then-CMC or conducted by a UPA with monitoring from the CMC/CCC at paragraphs [94]-[100]



Finally, there are a range of other similar policies and procedures dealing with other matter practices (including in relation to matters such as telecommunications interception, controlled operations, information collection and obtaining witness statements). These are not directly relevant to the question, but are of the same nature as those policies and procedures set out above.

3. Any barriers to the transmission of evidence and information to another body, in circumstances where a complaint is referred to that body following an assessment

As a general proposition, s60 of the CC Act governs the dissemination of information in the CCC's possession.²² This section was recently amended to consolidate two previous sections²³ dealing with disclosure of information by the CCC, so as to streamline and clarify the process. Section 60 allows the CCC to give information to any entity the CCC considers appropriate.

Section MM04 of the Operations Manual deals with disclosure and requests for information. Primarily, in disseminating information to another body, an assessment must be made that the information in question is relevant to that body and its functions, and to the purpose for which the dissemination is proposed.

Section 4.2.3 of MM04 makes clear that the CCC may not release information that is unlawful to disclose. Such restrictions may be found, for example, in regards to intercepted telecommunications obtained under an interception warrant.

In general, where a referral is made to another entity following an assessment, the CCC provides all information which: a) it is able to provide; and b) it considers relevant to the purposes for which the referral is made. Where information critical to the purpose of the referral is unable to be disclosed for whatever reason, such a referral would not be made.

As noted in oral evidence given to the Committee on 18 October 2019, what information may be provided to a body may be different following an assessment, compared to information consequent upon an investigation.²⁴ This largely relates to the means by which the information may have been acquired.

As set out above, an assessment, as distinct from a formal investigation, is sought to be undertaken quickly, and on a preliminary basis. The two questions to be asked are, effectively, whether the conduct described falls within the CCC's jurisdiction, and whether there is some reasonable basis to suspect the conduct occurred? Ordinarily, as Senior Executive Officer Corruption, Paul Alsbury, indicated in his evidence of 18 October 2019, this is done without recourse to the CCC's compulsory powers to acquire evidence.²⁵ While evidence may be obtained compulsorily at an assessment stage for the reasons set out above, that is not the usual course.

In those circumstances, evidence obtained for the purposes of an assessment is usually provided voluntarily, but sometimes that evidence is provided on conditions. Agreement by the CCC to such conditions (for example, that the information provided voluntarily may only be used for the CCC's

22 Noting also that s49 requires, where an investigation has been conducted by the CCC and the matter is to be referred to another entity for prosecution or disciplinary action to be taken, that any such report be accompanied by all relevant information known to the commission

23 Section 60 and the now-repealed s62

24 PCCC public meeting transcript, 18 October 2019, pp11-12

25 PCCC public meeting transcript, 18 October 2019, p13



purposes, and may not further be disclosed without further consent), is a balance that is struck to achieve the expedience that an assessment requires.

As the Chairperson noted in his evidence of 18 October 2019,²⁶ a situation may arise where a referral is sought to be made following an assessment. Where information has been provided on a condition of confidentiality, the CCC may contact the entity that provided the information to request that they waive that condition of confidentiality for the purposes of the referral.

Where information is unable to be provided by the CCC following an assessment (for example, because it is Cabinet-in-Confidence, and provided conditionally), but the referred entity believes it requires such information, then it remains open to the referred entity to itself approach the holder of the information and itself seek that information to enable it to make its decision. (This assumes that the referred entity knows who holds the information sought.)

Finally, reference should be made to s66 of the CC Act, which regulates whether and how confidential information should be reported, or may be withheld, including from the Committee. While this s66 does not, strictly speaking, engage with the scenario raised by the Committee's question – where a complaint is referred to the CCC following an assessment, it bears noting. Section 66 provides that the commission need not report on a matter involving information which it believes should remain strictly confidential or, if it reports, may withhold such information. It further provides the process for deciding whether strict confidentiality should be maintained. That provision is directed to exemption from general reporting obligations. It is difficult to envisage a situation in which the CCC referred a matter to a body following an assessment, while seeking to maintain strict confidentiality over information *which was relevant to that assessment*. Moreover, it could hardly be said that, in such situation, s66 would have any work to do except in the unusual circumstance where the CCC had an obligation also to report to that unit of public administration about that matter.

4. Illustrative examples of previous referrals the CCC has made to appropriate bodies under section 60 of the Act and a description of the type of information that was provided as part of the referral

Section 60 of the CC Act provides:

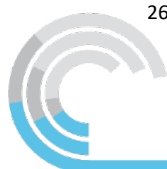
60 Use and disclosure of information, document or thing

- (1) The commission may use any information, document or thing in the commission's possession in performing the commission's functions.
- (2) The commission may give intelligence information or other information to any entity the commission considers appropriate, including, for example—
 - (a) a unit of public administration; and
 - (b) a law enforcement agency; and
 - (c) the auditor-general; and
 - (d) a commissioner under the *Electoral Act 1992*; and
 - (e) the ombudsman.

Note—

See section 213 in relation to making a record of, or wilfully disclosing, information given to a person under this section on the understanding, express or implied, that the information is confidential.

²⁶ PCCC public meeting transcript, 18 October 2019, p12, 1st par



Section 60 of the CC Act is a facilitative provision. Section 60(1) allows the CCC to make use of information in its possession in performing its functions. Section 60(2), allows the CCC to disclose to an entity information which the CCC considers appropriate. Section 60 in its present form consolidates the former ss60 and 62.²⁷ In its prior iteration, section 60 allowed dissemination of information in the CCC's possession to a law enforcement agency to investigate a potential offence, or to a unit of public administration if the commission considered that the unit had a proper interest in the information for the performance of its functions. The former section 62 allowed the commission to use and communicate information in its possession in the performance of its functions, and otherwise only disclose information with its express written consent. As stated previously, the amendment to s60 in November 2018 had the effect of consolidating and streamlining these two provisions.

It should be noted that section 60 is not the primary means by which referrals of matters are made in relation to corruption complaints. A matter may be referred in a variety of ways to units of public administration or their relevant public official to deal with, either in their own right or in cooperation with, or oversight of, the CCC.²⁸

Nevertheless, in some circumstances, information in the CCC's possession may be referred to another entity where it appears such a referral is appropriate. It should also be noted that section 60 is the general means by which information in the CCC's possession may be released. Thus there are innumerable different circumstances in which the dissemination of information in the CCC's possession is authorised under this provision.

It is the nature of investigations that unexpected information may be uncovered. Such information may not be relevant to the particular matters under investigation, but may nonetheless warrant further investigation or action by an appropriate body. The CCC is not an alternative police force, and its jurisdiction is statutorily constrained to those matters which meet the definitions of either 'corrupt conduct' or 'major crime'. It is not unknown for those involved in particular corruption, or major crime activity, to also be engaged in criminal activity that is beyond the scope of the investigation by the CCC. Corrupt public figures may be involved in unrelated drug activity. Organised crime identities may also engage in acts of domestic violence. And it is not unheard of for those earning money through corruption or organised crime to not pay their taxes. Section 60 provides a mechanism by which this information can be provided to an appropriate entity.

The CCC has policies and procedures which govern the release of information in its possession.

In the context of corruption complaints, s60(2) is most commonly used where the entity to which the information is provided has a proper interest in receipt of the information, but is not the unit of public administration with primary responsibility for the matter to which the allegation of corruption relates. For example, where a matter is referred to the unit of public administration for action to be taken in respect of one of its officers (under s49), but the information may also be relevant to the Ombudsman, and disseminated to it for its purposes.

Examples of disseminations under section 60(2) are wide and varied:

- Dissemination of information relating to risks to the health and safety of a person. Such disseminations may be made to agencies like the Queensland Police Service or the Department of Child Safety, Youth and Women (in relation to child safety issues);

²⁷ Section 60 was introduced in its current form by passage of the *Crime and Corruption and Other Legislation) Amendment Act 2018* (Act No. 29 of 2018)

²⁸ In particular, ss 46 and 49 provide for referral to a UPA, either for investigation, or for consideration of prosecution or disciplinary action.



- Dissemination of information to an entity to enable that entity to deal with the information in accordance with the *Public Records Act 2002*. In relation to the CCC's Operation Front, involving investigations relating to the Logan City Council, examination of a mobile phone in the CCC's possession identified a number of communication 'app' conversations which were public records. The information was disseminated to the Logan City Council so they could be preserved as required by the *Public Records Act 2002*.
- Dissemination of information to the Office of the Independent Assessor to enable consideration of whether councillors have engaged in misconduct under the *Local Government Act 2009*. One example of this is in relation to Operation Front (referred to above), where a redacted investigation report and disc containing attachments was disseminated in relation to alleged misconduct constituted by the disposal by a number of councillors of public records. Another example relates to Operation Yabber, involving investigations relating to the Gold Coast City Council. Information has been disseminated to the Office of the Independent Assessor relating to alleged misconduct and potential offences under the *Local Government Act 2009* relating to inappropriate use of a mayoral direction, conflicts of interest, failing to update registers of interests and inappropriate expenditure of council money.
- Dissemination of information to the Queensland Audit Office to inform or trigger audits in relation to local government authorities. In relation to an investigation which examined financial irregularities involving a local government authority and, specifically, allegations against a former Chief Executive Officer who had moved on to another local government authority, systemic governance and accountability issues were found. An investigation report was disseminated to the Queensland Audit Officer to assist in performing functions of carrying out financial and performance audits of local government entities.
- In relation to Operation Windage, involving investigations relating to the Ipswich City Council, photographs and a list of seized property were disseminated to the Ipswich City Council to assist in a reconciliation of property owned by Ipswich City Council.
- Dissemination of material to enable appropriate disciplinary proceedings to be taken by an entity. An example of this relates to a current investigation relating to a senior public servant. A significant amount of material was disseminated to a unit of public administration to enable 'show cause' action to be considered and then taken in relation to the public servant.

The same is true of disseminations of information obtained through investigations conducted in the performance of the CCC's crime function. While the primary focus of such investigations is on criminal activity, there may be other entities (whether units of public administration, other law enforcement agencies, or regulatory bodies) which have a proper interest in receiving, and considering whether to act upon, information in the CCC's possession.

Operation Sterling was a specific intelligence operation conducted by the CCC's Crime division, exploring Cold Call Investment Fraud ('CCIF') activity. CCIF had become a 'cottage industry' on the Gold Coast, and the CCC conducted extensive inquiries in 2016 to identify the criminal networks involved in this activity, and to explore their activities. That operation, and related criminal investigations undertaken by the Queensland Police Service ('QPS') generated a substantial amount of information and evidence about this activity. In addition to revealing significant organised criminal activity, the information suggested that those involved in these crimes may also have not been paying taxes on the income generated. Thus, a substantial amount of evidence gathered during the course of the operation (including evidence from witnesses and documents obtained during the course of the operation) was disseminated to the Australian Tax Office ('ATO') under s60.

5. The adequacy of the current legislative provisions to cater for the referral of matters to the Legislative Assembly



In general, the CCC is of the view that the current legislative provisions are adequate to cater for the referral of matters to the Legislative Assembly, with one reservation.

Where the CCC decides to refer a matter to the Parliament, it is the CCC's understanding that the appropriate individual to receive the referral is the Speaker, rather than the Legislative Assembly itself. However, this specific matter could be clarified through legislative amendment.

There are, in essence, three provisions by which a matter may be referred. Sections 46 and 49 provide for referral of a matter to an officer of a unit of public administration for a particular purpose. Section 60(2) allows the CCC more generally to provide information to another entity the commission considers appropriate, including a unit of public administration. In the first two instances, referral is made to a particular officer, rather than to the entity itself.

Section 46 of the CC Act sets out how the CCC may deal with a complaint about corruption. Section 46(2)(b) provides that the commission may refer a complaint about corrupt conduct to a public official to be dealt with by the public official or in cooperation with the commission, subject to the commission's monitoring role. 'Public official' means the chief executive officer of a unit of public administration.

Similarly, s49 provides that, if the CCC investigates a matter (either by itself or in cooperation with a public official), and decides that, *inter alia*, disciplinary action should be considered, it may report on the investigation to the chief executive officer of the relevant unit of public administration, for the purpose of taking disciplinary action, if the report does not relate to the conduct of a judge, magistrate or other holder of judicial office.

The Legislative Assembly is declared, by s20(1) of the CC Act, to be a unit of public administration. However, there is no clear identification of its chief executive officer.

It is our understanding that the Speaker of the Legislative Assembly is properly to be understood to be the chief executive officer for the following reasons.

Section 33 of the *Acts Interpretation Act 1954* defines the chief executive officer in some legislative circumstances. It is of no assistance in answering this particular question.

Part 3 of the *Parliament of Queensland Act 2001* ('POQA') sets out the role of the Speaker. The POQA also articulates various duties and responsibilities of the Speaker and the Clerk.

Those respective roles are supplemented and expanded by the *Standing Rules and Orders of the Legislative Assembly*. Chapter 2 deals with the Speaker. Chapter 3 deals with the Clerk and other officers.

Order 8(2) provides that the Speaker is the representative of the House and its powers, rights and immunities and is to preside over its proceedings and maintain order in the House and the parliamentary precinct. The Clerk of the Parliament is the principal officer of the House²⁹ and, *inter alia*, is the custodian of the records of the House.³⁰

Of particular relevance, s69C of the POQA provides that the Clerk is to be the registrar responsible for the registers of members', and related persons', interests. It is the CCC's view that this means that circumstances may well arise in which the Clerk may be a witness in relation an allegation of corrupt

29 Standing Order 17

30 Standing Order 19



conduct in which a member's failure to record an interest, or action in misleadingly recording an interest, may be in issue.

Thus, if there is any doubt as between whether the Speaker or the Clerk should properly be regarded as the chief executive officer of the Legislative Assembly, it is the CCC's view that the Speaker would be the appropriate person.

6. The CCC's procedures for developing recommendations for legislative amendments arising from the consideration of a complaint

Sections 4 and 5, 24, and 33 to 51, all make clear that the CCC's objectives in performing its corruption function include raising standards of integrity and conduct in units of public administration, providing advice and recommendations to units of public administration, and reporting on ways to prevent major crime and corruption. Identifying opportunities for, and making recommendations about, legislative reform, is one of the means by which these objectives are achieved.

The CCC's Strategic Plan includes "Inform[ing] public policy about major crime and corruption by providing independent advice to government".³¹

The issue of concern to the Committee in this respect was articulated by the Committee Chair in the meeting with the Parliamentary Commissioner on 29 November 2019: "I think one of the other areas is that oftentimes the CCC may make a recommendation in relation to action by government regarding legislation or legislative changes and a recommendation may come in a media release, which governments adopt but without any real investigation of the rationale behind those recommendations as to why that is being said. In some cases, it may appear bleeding obvious – that it is quite clear that a change needs to be made to a penalty or the absence of a particular action available – but oftentimes the normal policy development process would provide both sides of the argument and why a particular course of action is being recommended and selected and what the elements of that particular action might be."³²

The questions of whether and how to report, and what form any report should take, have been canvassed briefly in the introduction above, and is dealt with more fully below in response to item 8.

There are no formalised procedures for developing recommendations for legislative amendments arising from the consideration of a complaint. Broadly speaking, recommendations for reform arising from a matter are encompassed within the 'delivery' stage of matter management and planning.³³

It is true that in the recent matter involving the Deputy Premier, recommendations were included in a media release, rather than in a lengthier report.³⁴ In that particular instance, the basis for the recommendations made was thought to be sufficiently clear. The CCC had already conducted an extensive inquiry into corruption risks in local government (Operation Belcarra), which produced a comprehensive report, including detailed recommendations.

³¹ This has formed part of the CCC's annual Strategic Plans since the 2016-2020 plan.

³² PCCC public meeting with the Parliamentary Crime and Corruption Commissioner transcript, 29 November 2019, pp3-4

³³ MM01 at 4.2.3, and see also 4.1.4 which provides specific provision for consideration of recommendations which may raise constitutional issues.

³⁴ In the matter involving the Hon Mark Bailey MP (then-Minister for Main Roads, Safety and Ports and Minister for Energy, Biofuels and Water Supply, and presently the Minister for Transport and Main Roads), the CCC did not make its own recommendations consequent upon assessment, but did endorse recommendations made by the State Archivist as a result of its investigation of the allegations. <https://www.ccc.qld.gov.au/news/no-criminal-action-relating-mark-baileys-email-account>



Operation Belcarra focused on integrity in local government election campaigning, and also improvement of transparency and accountability in local government decision-making. Operation Belcarra noted a failure of many councillors to adequately deal with their conflicts of interest. The report from Operation Belcarra noted that the recommendations in relation to local government, if adopted, may give rise to a disparity between the obligations relevant to state and local government. It suggested that the Queensland Government may consider it appropriate to also adopt these recommendations at the state government level.³⁵

In the matter involving the Deputy Premier, the reforms proposed were considered to be consistent with the observations made in Operation Belcarra. Recommendation 4 was specifically linked to those observations.

More broadly, recommendations for legislative amendment are simply that. The Parliament is, of course, the sovereign deliberative body responsible for the introduction, debate, adoption and/or rejection of proposals for legislative amendment. It is never for the CCC to develop government policy – merely to identify what it sees as opportunities to improve integrity and transparency, and make recommendations accordingly.

To the extent that a concern exists that recommendations made by the CCC are uncritically adopted by Parliament for the sake of political expedience, that has not been the CCC's experience. The Legislative process, including the crucial work of committees in the scrutiny of legislation, public consultation and, where more information is sought from the CCC as to the evidentiary basis, rationale, or intent of its recommendations, all inform the outcome. In the CCC's experience, not every recommendation for legislative reform is adopted.³⁶ Some recommendations are adopted in part, or are adopted in a manner which is not consistent with the CCC's recommendations. The deliberative process about what recommendations should be adopted, and in what form, is the Executive arm of Government's prerogative. But that does not detract from the need for public bodies with experience and expertise in relevant areas, to seek to inform that process.

7. The factors the CCC takes into account when considering how best to publish or announce its determinations in relation to complaints

As mentioned above, the decision as to how best to communicate the CCC's determinations in relation to complaints involves balancing a variety of often competing factors.

MM03 of the Operations Manual deals with matter reports and publications. Section 4.1 explains the general principles the CCC considers in deciding what to publish and how best to communicate.

4.1 General principles

Publishing information is a key element of the CCC's communication strategy. Decisions about what to publish and how best to communicate are informed by a number of considerations, including:

- the status of an operational matter and any related activities
- considerations of equity to all stakeholders who have an interest in a matter

³⁵ *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government* public report p14

³⁶ See footnote 17 – it was a recommendation of the CCC's inquiry that publishing allegations within a local government election campaign should be made an offence (paragraphs 196-198). That recommendation was not taken up.



- considerations of any criminal prosecution
- the need to afford natural justice to persons adversely affected by a proposed publication, including the need to comply with section 71A of the CCC Act
- obligations arising from legislative provisions
- how best to communicate the work of the CCC to its stakeholders and increase public confidence about the use of our powers
- the opportunities to maximise our reach to a particular audience
- timeliness and cost
- longevity of the published material.

The above considerations require careful balancing of the competing demands before decisions are made about what, when, where and how to publish.

These considerations are replicated in the Communications policy & procedure.

What constitutes a 'report' is not defined in the CC Act. Nor, in the CCC's view, should it be. The particular form which a 'report' takes in a given matter should be within the CCC's discretion, having regard to appropriate considerations such as those described above.

At a fundamental level, there is always a tension in making an announcement about a matter that is concluded – particularly where the decision is made that the conduct does not warrant further investigation, or is not within jurisdiction. Striking the right balance between properly informing the public and particular stakeholders, so that they maintain confidence in the CCC's work, and providing fairness to those investigated, is a difficult exercise. Reasonable minds will differ on questions about what information should, or should not, have been included in a report, let alone whether the overarching decision is the correct one.

The Speaker raised concerns in his reference of the complaint regarding the Premier (dealt with further below in response to Question 9) regarding the decision by the CCC in respect of that complaint. In that matter the CCC announced its decision not to take any further action on the complaint (the details of which were widely publicly known, and in which there had been a great deal of public interest), by way of a media release and a subsequent press conference.³⁷ Those concerns were set out in the report of the Ethics Committee in its handling of the complaint.³⁸

At paragraph 25 of the Report, the Committee stated that "As the matter was dealt with by media release and press conference, there is no report detailing the information (evidence) available to the CCC nor detailing the analysis of relevant facts (evidence) against each of the elements of the offence. There was no explanation as to why the CCC believed the Legislative Assembly is the appropriate entity to deal with the matter, when it believes that there is no reasonable prospect of a successful prosecution for an offence." At paragraphs 26 and 27, the report further raised concerns that the matter was left to the Speaker to act on the basis of a media release, and that the release and press conference created a public expectation that the Premier be dealt with for contempt of Parliament.

The release expressly stated the scope of the information that was considered in the CCC's assessment:

³⁷ A copy of the media release is attached at Annexure A to this submission.

³⁸ Ethics Committee report No. 189: *Matter of privilege referred by the Speaker on 12 October 2018 relating to an alleged contempt of Parliament by the Premier and Minister for Trade*, tabled 22 October 2019



“The CCC has considered the relevant records of parliamentary proceedings (Hansard), associated media statements and media reports and also correspondence between the Premier and Mr Robbie Katter MP.”

All of this information was publicly available. Any concern that the CCC created an expectation that the Premier be dealt with for contempt, or that the CCC should have provided a detailed evidentiary analysis of the matter concerning Premier to the Speaker, misunderstands the role of the CCC in that situation. The release set out as follows:

“Even though the answer given by the Premier during question time might be considered to be entirely inappropriate and to have exposed her to the prospect of facing a charge of bribery under s.60 of the Criminal Code, the fact remains that there was no objection from anyone present during the parliamentary debate, and no censure from the Speaker. The motion being debated was ultimately passed by the vote of an overwhelming majority of Parliamentarians. All of these proceedings were conducted openly in Parliament, and were proceedings to which the public had real-time access.

In considering whether an investigation should be commenced, and/or a prosecution launched, the CCC has had regard to the guidelines issued by the Office of the Director of Public Prosecutions which refer to the requirement for there to be not only a *prima facie* case but a reasonable prospect of a successful prosecution. Given the above considerations, the CCC has concluded that there would be no reasonable prospect of a successful prosecution.

Therefore, having regard to the principles for performing the CCC's corruption functions, the CCC is of the view that Parliament is the appropriate entity to decide the propriety of its own proceedings. Unless the Parliament resolves otherwise, the CCC does not consider that there is any prospect of a successful prosecution. Accordingly, the complaint against the Premier is appropriate for the Parliament to deal with.

Any alleged breach of parliamentary privilege not involving a criminal offence may only be dealt with by the respective parliament or the Senate of Australia. The CCC has no jurisdiction and is unable to take any action in relation to these concerns.”

The CCC has jurisdiction to investigate allegations of corrupt conduct. It has no jurisdiction to investigate members of Parliament for breaches of parliamentary rules. Having concluded that there were no reasonable prospects of conviction, that is where the CCC's jurisdiction ended. No analysis of a potential breach of parliamentary rules was undertaken because that is not in the CCC's functions, nor would it have been an efficient use of resources. Finally, the CCC decided and stated that Parliament was the appropriate body to deal with the question of contempt, and left it to do so because, by the time of that announcement, Parliament was already seized of the issue. As noted at paragraph 16 of the report, the Member for Traeger made his complaint to the Speaker alleging contempt by the Premier on 5 September 2018 – two days after his complaint to the CCC, and three weeks before the CCC's announcement that, having found no prospect of proving criminal conduct, it remained for the Speaker to determine the question of contempt.

The factors that determine whether and how to communicate about any particular decision or piece of the CCC's work are set out in the policies and procedures, and reproduced above. While the criticisms set out above are, with respect, properly raised, the decision as to how to publish information always involves a balancing exercise, and reasonable minds may differ about where that balance may properly be struck.

In each of the particular cases referred to above, they involved matters in which the allegations were already publicly known, and in which there was a substantial degree of public interest. It is a vexed



question as to how much and how appropriately to inform all stakeholders about a matter already in the public domain.³⁹

As noted in the matter involving the Premier, the specific allegation under consideration was, unusually, about statements made within a parliamentary debate. Other statements that were relevant to the Ethics Committee's consideration were all in the public record – they involved media interviews and statements, and correspondence exchanged between the Premier and the Member for Traeger.

In the case of the matter involving the Deputy Premier, the decision (having conducted an assessment of the allegations) was that the matter fell outside the CCC's jurisdiction. The media release explained the information considered and the basis for that decision. Further, having identified an opportunity for legislative reform which was both a) consistent with, and foreshadowed in, the CCC's earlier and comprehensive *Operation Belcarra* report, and b) a self-evident 'gap' in the integrity framework, the media release was accompanied by recommendations.

If there has indeed been a trend in recent times towards issuing comprehensive media releases or statements rather than reports in the form that have historically been produced by the CCC, then it reflects an effort to be more transparent, to communicate its work more effectively, and to make the most effective use of its limited resources.

It must always be borne in mind that a lengthy report (such as those recently prepared in relation to Operation Belcarra, Operation Windage, Taskforce Flaxton) requires a substantial investment of resources. Coupled with a changing information landscape in which the means by which members of the community (the CCC's primary stakeholders) consume information, the CCC must remain agile and examine whether such communications are, in any given instance, the most effective option. In considering any potential communication about a matter, the CCC must always consider whether such resources could be more efficiently deployed elsewhere.

8. The CCC's procedures for drafting and approving media releases announcing the CCC's determinations in relation to complaints

MMO1 of the Operations Manual details the requirement for the conduct and planning of a CCC investigation including the development of external publications as part of the delivery stage of a matter. Section 4.2.3 states that the delivery stage for a CCC investigation involves the organisation of information and evidence so that it can be used for the production of discrete products including reports and, more relevantly, media releases.

The requirements for the production of reports are explained in MMO3 of the Operation Manual. Section 4.1 (set out above at Question 7) details the general principles that have to be considered prior to a decision being made as to how best to communicate the CCC's determination in relation to complaints.

Section 4.3 of MMO3 explains the planning and approval process that is to be undertaken for the development of reports. Section 4.4.1 of MMO3 explains the practical considerations taken into account when developing the content of reports. The responsibility for content review and approval is provided in section 4.4.2.

³⁹ See above at footnote 17



4.3 Planning and approval

4.3.1 Planning

The external communication of information should be considered:

- **Within the feasibility stage:** as an anticipated or likely product of an investigation, supporting the business case and forming an element of the high level delivery plan in the Feasibility Report for ELT review
- **Within the delivery stage:** as a stage of delivery, thereby included in the high level delivery plan where requirements estimates will forecast the resource requirements and completion dates for the publication stage (refer to MM01 – Matter management, planning and conduct for further information).

It is the responsibility of the case manager to liaise with Corporate Communications to:

- identify appropriate opportunities for the external publication of reports or similar products with reference to the principles outlined in section 4.1
- consider the most appropriate delivery channel(s) and format, based on the audience and their needs, and any requirements specific to that audience (e.g. language, format or tone)
- identify any additional factors requiring consideration, such as the publication of other material by CCC, timeliness or resource availability
- if a public report, consider printing and distribution requirements, including provision to the Legislative Assembly
- the recommended release classification (public or confidential). Different products from the same investigation may have different release classifications depending on their content and target audience.

Based on these considerations, a discrete plan is developed that incorporates:

- Detailed requirements estimates, including the quality, type and quantity of resources required, and the reliability of those resources based on leave commitments or competing priorities
- The activities required to complete the publication stage of the investigation and who is responsible for completing each activity, and
- The associated timeframe to complete the stage of the investigation.

The publication stage of an investigation is dependent on many factors and estimates are not static. Hence, the case manager is required to review the high level delivery plan ongoing and in light of the progress of delivery, and liaise with Corporate Communications to support effective resource planning and ensure a timely and high quality product.

4.3.2 Approval to prepare a report or publication

The requirement to prepare a confidential investigation report or a report for the public is a key decision. Approval is dependent on the investigation phase and type of product.

Within the feasibility stage, the investigation products form part of the business case for ELT review.



Within the delivery stage, publications comprise a sub-stage of delivery and are reviewed as part of the high level delivery plan (refer to IM01 – Portfolio assessment and review for further information on governance arrangements).

Where an investigation or assessment is likely to, or will, involve the making of a recommendation(s) for law reform in relation to a Cabinet process or a matter involving a constitutional convention, refer to MM01 – Matter management, planning and conduct.⁴⁰

The Case Manager must ensure the ELT decision is recorded in the CCC Case management system.

4.4 Product delivery

4.4.1 Content development

In accordance with the discrete publication plan, the officers tasked with specific activities are responsible for:

- delivering content that is technically accurate
- ensuring that the correct security classification is applied
- ensuring that dissemination authority is obtained (refer to MM04 - Disclosure and requests for information)
- ensuring the content adopts the In-house CCC style guide and brand guidelines.

The case manager is responsible for liaising with the Corporate Communications Unit to coordinate their appropriate input to ensure any proposed publication:

- conforms to the CCC brand guidelines and In-House styles
- is prepared in a format consistent with existing CCC publication types
- adheres to Queensland Government Standards where necessary (refer to Communications policy and procedure for further information)
- adheres to CCC standards (for example, use of PDF format in reports to UPA's or the application of a 'DRAFT' watermark. Refer to Communications policy and procedure for further information and CCC Standards)
- adopts the correct tone, style and messaging for the identified audience
- is supported with the appropriate permissions to reproduce any copyright material, including images
- has the necessary intellectual property requirements (refer to the Intellectual Property policy and procedure and the Communications policy and procedure)
- has any additional proofing or editing requirements planned appropriately
- has a physical production schedule in place if applicable.

The Corporate Communications Unit may also identify additional content requirements relating to the production of communications and will liaise with the investigation team accordingly.

4.4.2 Content review and approval

⁴⁰ That section requires external constitutional advice and consultation with Professor Tiernan, a commissioner with particular expertise in the area, to be consulted in such circumstances.



Confidential reports provided to the head of an agency, recommending specific action to be undertaken in response to a CCC investigation are reviewed by the relevant operational Director and assigned legal officer, and approved by the Senior Executive Officer (Crime or Corruption). Published CCC materials that are considered a routine matter, are:

- reviewed by the relevant Executive Director Operations, appropriate legal officer(s), assigned legal and Corporate Communications Director, and
- approved by the Senior Executive Officer (Crime or Corruption).

If a product is non routine, the Senior Executive Officer is encouraged to consult the CEO and/or Chairperson (refer to the Communications policy and procedure).

The CCC has a unique position and unique powers in Queensland and, as such, needs to be accountable and transparent in its communication to stakeholders, most particularly members of the public. The CCC is committed to stakeholder communications in order to promote public understanding of its role and confidence in the effectiveness of the organisation. The more traditional methods of communication include the release of public reports from investigations such as Operation Belcarra, Operation Windage and Taskforce Flaxton, and the issuing of media releases.

The PCCC has raised concerns about the detail and length of the media release issued on 6 September 2019 regarding the completion of the assessment of allegations of corrupt conduct by the Deputy Premier.⁴¹ Whilst acknowledging that the release was some seven pages in length, as outlined previously in this submission, the release detailed the information considered, the basis for the decision and recommendations for proposed legislative reform. This would have provided the public with a thorough explanation and better understanding as to the reasons for the assessment outcome. The assessment was a matter of significant public interest and it would have been inconsistent with the CCC's purpose of combating crime and reducing corruption for the benefit of the Queensland community if recommendations were not made to prevent any future similar occurrences.

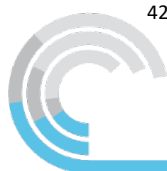
The CCC has issued other detailed media releases in the past regarding assessments as the occasion and the public interest has demanded. A review of the CCC's media releases from 2011 to date has shown a further 12 have equalled or exceeded two pages. These have included the assessments of allegations of official misconduct by the Hon Campbell Newman while he was Mayor of Brisbane, the conduct of dam engineers following the 2011 floods, complaints regarding Gold Coast Police and the conclusion of the investigation of the use of a personal email account by the Hon Mark Bailey MP.

It should be noted that the issuing of lengthier and more explanatory media releases has not meant that the CCC has stopped or reduced the publication of detailed reports such as Operation Belcarra.

The review of media releases also showed that the CCC has not commented on any investigations or assessments prior to their completion except where the matters have already been in the public domain. The CCC received 8329 corruption allegations and 3109 corruption complaints in the 2018/19 financial year. In the same period, 3381 complaints of suspected corruption were assessed. It has been the Commission's practice not to comment publicly on allegations or assessments unless a party to the matter, being the complainant, the subject of the complaint or the agency involved, made it publicly known.⁴² The CCC may still not provide information to the media where a matter is publicly known if

41 PCCC public meeting with CCC 18 October 2019, transcript pp 6-7; PCCC public meeting with Parliamentary Commissioner 27 November 2019, transcript pp 2-3

42 Again, see footnote 17 regarding this issue.



there is a risk of prejudicing operational activities or where legal obligations require the maintenance of confidentiality.

The finalisation of the assessment of allegations of corrupt conduct by the Deputy Premier was of high public interest and importance. The matter was already in the public domain. As outlined in the CCC's response to issue 7 and the reasons outlined above, the more comprehensive media release issued was an effort to be more transparent, to increase public understanding of the outcome and to make more effective use of limited resources in a timely manner.

9. What statutory powers the CCC exercised when concluding 'that there would be no reasonable prospect of a successful prosecution' in relation to the allegations against the Premier, as detailed in the CCC media release dated 27 September 2018

The statement made in the media release of 27 September 2018 "that there would be no reasonable prospect of a successful prosecution" was in the performance of the CCC's corruption function, and was made in the context of explaining its decision as to how the matter would be 'dealt with' pursuant to s46 of the CC Act.

To be entirely clear – in making such a statement, the CCC was not, itself, making any prosecutorial decision, nor exercising any power to prosecute or decline to prosecute a matter criminally. The CCC does not, as an agency, generally commence a criminal prosecution.⁴³

Section 35 of the CC act sets out how the CCC performs its Corruption functions. Those include: expeditiously assessing complaints about corruption; investigating, and otherwise dealing with, the incidence of corruption throughout the State; and when conducting or monitoring investigations, gathering evidence for or ensuring evidence is gathered for the prosecution of persons for offences or disciplinary proceedings against persons. The CCC is also directed by subsection (3) to focus on more serious cases of corrupt conduct, and cases of systemic corrupt conduct within a unit of public administration.

Assessing complaints about corrupt conduct necessarily involves a consideration as to whether conducting an investigation is in the public interest. Further, consideration must be given as to whether evidence which may be gathered is likely to result in any prosecution for offences, or in disciplinary proceedings. There is no point investigating a matter where there would be no prospect of a successful prosecution or disciplinary proceedings. It would be an unusual circumstance in which such an assessment could be made at a relatively early stage, but the present case was an unusual one in which all the relevant facts were not only known, but on the public record.

Section 46 provides that the CCC deals with a complaint about corruption by expeditiously assessing each complaint, and taking the action the commission considers most appropriate in the circumstances.

The nature of the action which may be taken is set out in s46(2). That action includes referring a complaint to a public official to be dealt with by the public official, or referring a complaint about corrupt conduct of a person holding an appointment in a unit of public administration that may involve criminal activity to the police to deal with.

43 See *PRS v CCC* [2019 QSC 83 per Davis J at [36] and [37]

Further, if the commission is satisfied that dealing with the complaint would not be in the public interest, or would be an unjustifiable use of resources, it may decide to take no action or discontinue action.⁴⁴

Whether a complaint may involve criminal conduct is relevant in two respects to the performance of the CCC's corruption function. Firstly, it may determine whether a matter falls within the CCC's jurisdiction.⁴⁵ Secondly, it may reflect the relative seriousness of the conduct in question.⁴⁶ As noted above, the CCC is mandated to focus its resources on more serious (or systemic) cases of corrupt conduct.

The particular matter involving the Premier raised an unusual set of circumstances. The information upon which the assessment was made (and which effectively comprised the evidentiary record which may be available in the matter) was in the public domain. Most of the conduct, in fact, occurred in parliamentary debate.⁴⁷

The question then arose, at the assessment stage, as to what action, if any, should be taken. As noted in the media release, the CCC considered "whether an investigation should be commenced, and/or a prosecution launched for potentially criminal conduct." It is the CCC's view that there is no point in referring a complaint that may involve criminal activity to the police if there are no reasonable prospects of conviction.

The release itself set out the reasons for concluding that there were no reasonable prospects of conviction, and thus for the declination to further investigate, or refer the matter to the police. In particular, it referred to the Director of Public Prosecutions' *Director's Guidelines*, which inform how prosecutorial discretion in criminal matters is exercised in Queensland by the Director's office. Those guidelines are publicly available.

MM02 of the Operations Manual – "Matter Briefs" – sets out at 4.2.2 the factors in considering a criminal prosecution. That again ties back to the two-tiered test set out in the *Director's Guidelines* – the sufficiency of evidence and the public interest in a prosecution. While that section of the Operations Manual has specific application to investigations, as distinct from assessments, the same considerations apply in determining what action to take following an assessment under s46. The decision under s46 is in turn informed by s34, which includes public interest considerations including the nature and seriousness of the conduct. Again, while an assessment that conduct could arguably be criminal may seemingly elevate the seriousness of the conduct in any such assessment, that is counterbalanced, as it was in this instance, by the assessment that any prosecution would have no reasonable prospects of success.

Finally it should be noted that the decision not to refer the matter to the police to consider criminal prosecution, in no way foreclosed a criminal complaint being made by another person, including the complainant themselves. As noted above, the CCC does not itself either commence, or decline to commence, criminal proceedings. That decision is reserved to a 'prosecuting authority'.

The above matters were all set out in evidence given by the Chairperson on 19 October 2018.⁴⁸

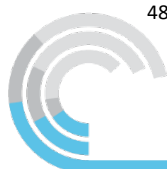
44 s46(2)(g)

45 Noting, as set out above, that the definition of corrupt conduct as it applies to members of parliament is limited to conduct which could amount to a criminal offence, as a member may not be 'dismissed' for a disciplinary breach.

46 Noting that, ordinarily, conduct which may amount to a criminal offence may be regarded as objectively more serious than a matter which would be exclusively a disciplinary breach.

47 To which the public has access through attendance in the assembly, live streaming of the session, or access after the fact to Hansard.

48 PCCC public meeting transcript, at pp7-8



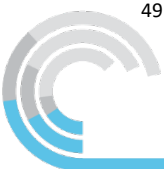
The statement made regarding the Premier's actions, potential criminal exposure, and the assessment of the prospects of conviction for such potential exposure were all made by way of explaining the CCC's decision not to take any further action in relation to the matter under s46(2)(g).

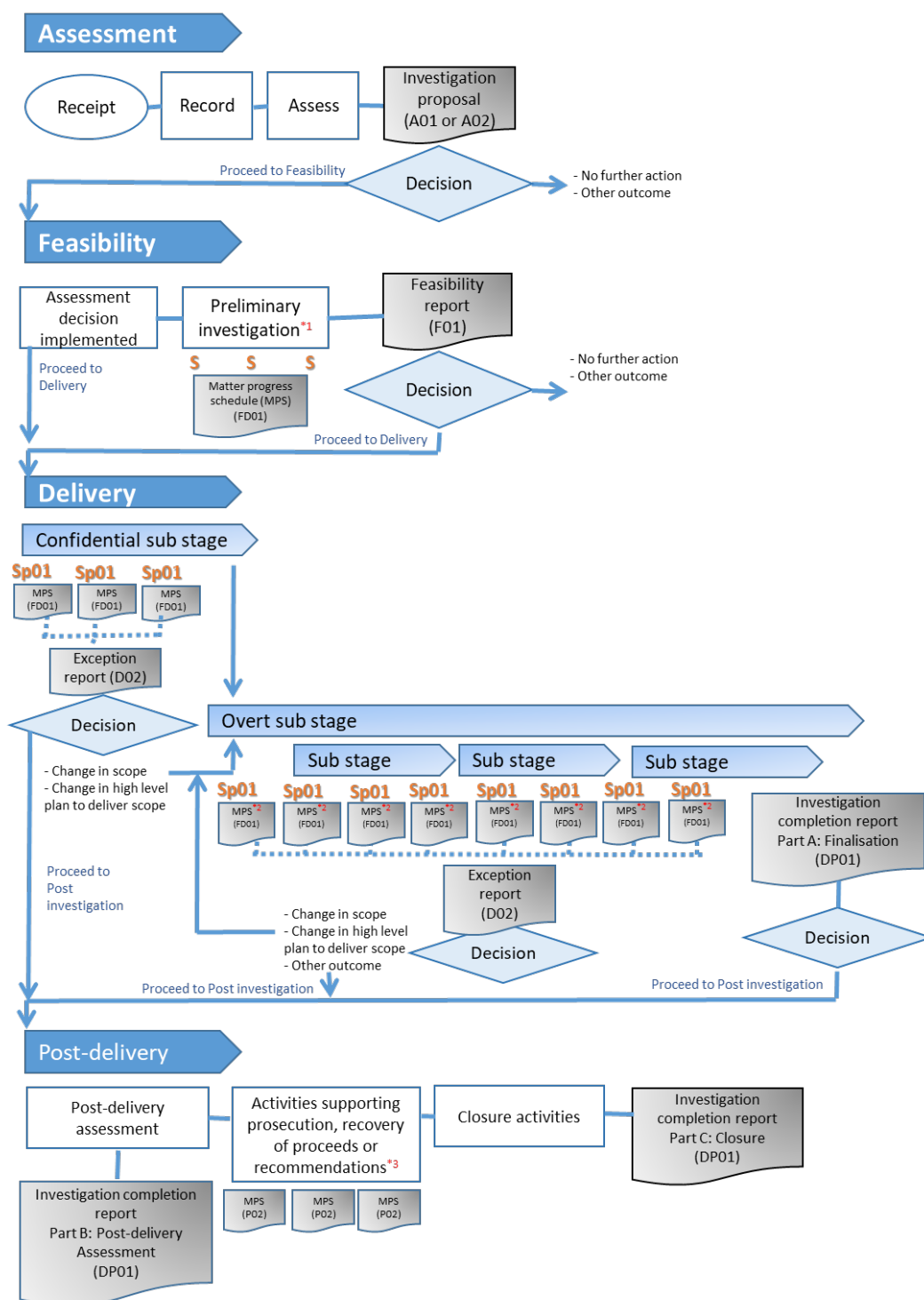
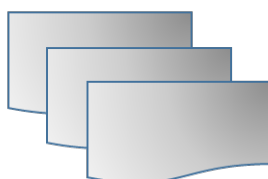
10. The statutory basis for, and purpose of, the 'preliminary investigative stage or a feasibility study' referred to in evidence to the Committee at its public meeting on 18 October 2019

In evidence before the Committee at its public meeting on 18 October 2019, the Chairperson referred to '... a hybrid area which is a preliminary investigative stage or feasibility study' where 'further inquiries' may be made but before the 'investigation phase'.⁴⁹

The CCC's Operations Manual MM01 *Matter management, planning and conduct* sets out four stages in the lifecycle of an investigation: assessment, feasibility, delivery and post-delivery.

49 p10



**Sprint action plan (Sp01)****Supporting documentation****Matter progress schedule**

*1. By exception at feasibility stage (FD01)
 *2. Common MPS template across crime, corruption and confiscation at delivery stage (FD01)
 *3. By prosecution schedule (crime, corruption) or recovery schedule (confiscation) at post investigation stage



At the culmination of the assessment stage, a decision is made whether a matter should progress to the feasibility stage.

Preliminary investigation and development of a feasibility report are part of the feasibility stage of the lifecycle. The feasibility report endeavours to support a stage transition from feasibility to delivery.

Preliminary investigation may involve collecting evidence or information, undertaking inquiries, examining or considering existing or additional material to determine or assure that the investigation is required or justified. The investigation must be technically feasible and cost-effective.

Decisions made in relation to each investigative stage are taken with regard to the statutory principles for performing CCC corruption functions. It is the commission's obligation to ensure that corruption complaints are dealt with in an appropriate way (s33(1)). Having regard to the CCC's limited resources, the commission must 'focus on more serious cases of corrupt conduct and systemic corrupt conduct within a unit of administration' (s35(3)). The principles for performing corruption functions are set out in section 34 of the CC Act and comprise: cooperation, capacity building, devolution and public interest.

A matter that has reached the feasibility stage of the investigation lifecycle has been initially assessed as generally more appropriate for CCC investigation than devolution to the unit of public administration on the basis of the information considered up to that point. This is likely to be due to the commission's overriding responsibility to promote public confidence in the way suspected corruption is dealt with in units of public administration (s34(d)). The commission has regard to the capacity and resources of the unit of public administration to effectively deal with corruption, the nature and seriousness of the alleged corruption (in particular if the corruption is prevalent or systemic) and any likely increase in public confidence in having corruption dealt with by the commission directly (s34(d)).

A non-exhaustive list of ways the commission may perform its corruption functions is set out in s35(1) of the CC Act (set out in full above). The investigation may involve an assessment of systems and procedures adopted by a unit of public administration for dealing with complaints about corruption. The ways the commission may perform its corruption functions set out in section 35(1) are reinforced by the dictates of section 46(1) to deal with complaints by expeditious assessment and take the action the commission considers most appropriate in accordance with the section 34 principles. Further, section 46(2)(a) reinforces that the CCC may deal with each complaint about corrupt conduct that it considers should not be referred to a public official to be dealt with.

The CCC's feasibility stage is an internal Operating Model construction designed to ensure the investigation lifecycle proceeds with regard to the principles under the CC Act for dealing with corrupt conduct. Preliminary investigation that enables the matter to be resolved without recourse to the full investigative process allows the CCC to preserve public confidence by dealing with more serious matters, while optimising its limited public resources (s34(d)).

Activities within the feasibility stage are further authorised by the legislatively prescribed ways the commission may perform its corruption functions (s35(1)) and actions it may take (s46(2)). 'Dealing with' a complaint of corruption is a very broad concept (ss35(1)(e), 45(1) and 46(2)) that would clearly encompass the activities undertaken in the feasibility stage of the investigation lifecycle.

For the above reasons, the feasibility stage, including preliminary investigation and a feasibility report, are clearly authorised by the powers and responsibilities granted to the CCC under the CC Act.



Annexure A

Media release: CCC finalises assessment of complaint by Mr Robbie Katter MP⁵⁰

Date published: 27 September 2018

The CCC has completed its assessment of the complaint by Mr Robbie Katter MP.

Having regard to the principles for performing its corruption functions, the CCC considers that the Legislative Assembly (Parliament) is the appropriate entity to deal with the complaint.

The complaint involves allegations about the process concerning the removal of staffing resources from Katter's Australian Party (KAP) announced by the Premier on 2 September 2018. The CCC was asked to investigate—

1. Whether the Premier had breached —
 - (a) Criminal Code offences of bribery of a Member of Parliament (s. 60); interfering with a political right (s. 78); and extortion (s. 415); or
 - (b) Parliamentary privilege conferred on State KAP members or Senate Privilege conferred upon Senator Fraser Anning; and
2. Members of the LNP, in particular the Member for Warrego, Ann Leahy MP, the Member for Nanango, Deb Frecklington MP and the Member for Everton, Tim Mander MP concerning the termination of staffing resources for the KAP. The complaint alleged that comments made inside and outside Parliament might amount to unduly influencing the conduct of KAP members in relation to the exercise of their duties as Members of Parliament.

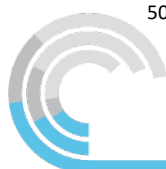
The CCC has considered the relevant records of parliamentary proceedings (Hansard), associated media statements and media reports and also correspondence between the Premier and Mr Robbie Katter MP.

Corrupt conduct as it relates to parliamentarians is limited to conduct that would amount to a criminal offence.

The Government has the right to allocate and withdraw the relevant staffing resources from the KAP. The information available provides no grounds to suspect that anything said or done inside or outside Parliament by the Premier or members of the LNP involves an offence against ss. 78 or 415 of the Criminal Code. There are no grounds to suspect that members of the LNP committed an offence against s. 60 of the Criminal Code.

The information available, if proved, may involve an offence against s. 60 regarding the answer given by the Premier to a Question without Notice by the Member for Warrego on 22 August 2018. The Premier's answer allegedly contained an implied threat to withdraw KAP staffing resources with the intent to influence KAP parliamentary members in their vote and opinion upon a question arising in the Legislative Assembly.

⁵⁰ <https://www.ccc.qld.gov.au/news/ccc-finalises-assessment-complaint-mr-robbie-katter-mp>



The Premier's answer could be admitted in proceedings against her to the extent necessary to prosecute an offence against s. 60. However, the CCC does not consider that s. 60 is intended to apply to statements made openly during parliamentary proceedings conducted under the *Parliament of Queensland Act 2001* and apparently in compliance with the *Standing Rules and Orders of the Legislative Assembly*. Generally, those proceedings may not be impeached outside Parliament.

Even though the answer given by the Premier during question time might be considered to be entirely inappropriate and to have exposed her to the prospect of facing a charge of bribery under s. 60 of the Criminal Code, the fact remains that there was no objection from anyone present during the parliamentary debate, and no censure from the Speaker. The motion being debated was ultimately passed by the vote of an overwhelming majority of Parliamentarians. All of these proceedings were conducted openly in Parliament, and were proceedings to which the public had real-time access.

In considering whether an investigation should be commenced, and/or a prosecution launched, the CCC has had regard to the guidelines issued by the Office of the Director of Public Prosecutions which refer to the requirement for there to be not only a prima facie case but a reasonable prospect of a successful prosecution. Given the above considerations, the CCC has concluded that there would be no reasonable prospect of a successful prosecution.

Therefore, having regard to the principles for performing the CCC's corruption functions, the CCC is of the view that Parliament is the appropriate entity to decide the propriety of its own proceedings. Unless the Parliament resolves otherwise, the CCC does not consider that there is any prospect of a successful prosecution. Accordingly, the complaint against the Premier is appropriate for the Parliament to deal with.

Any alleged breach of parliamentary privilege not involving a criminal offence may only be dealt with by the respective parliament or the Senate of Australia. The CCC has no jurisdiction and is unable to take any action in relation to these concerns.

The CCC acknowledges that the government of the day has authority to determine appropriate resourcing for Ministerial and other office holders.

However, following the assessment, the CCC is of the view the process to decide an appropriate level of resourcing for all Members of Parliament should be determined by an entity independent of the government of the day. This would serve the public interest by ensuring an objective and consistent assessment of the duties of Members of Parliament. The CCC recommends the Parliament should consider this further.

ENDS

Press Conference Details:

Where: CCC – Level 2, 515 St Pauls Terrace Fortitude Valley Qld

When: 12.30pm - Media are asked to arrive earlier to ensure appropriate time for set up.

Who: CCC Chairperson Alan MacSporran QC

Contact: media@ccc.qld.gov.au or 07 3360 6000





Crime and Corruption Commission

QUEENSLAND

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